

Allgemeines Treuunternehmen

No. 1 – February 1998

In this issue:

- Lower formation duties
- Legislation on the duty to exercise due diligence

Lower formation duties in Liechtenstein

The following lower formation duties apply in Liechtenstein with effect from 1 January 1998:

1. Establishments, trust enterprises (trusts reg.)

The rate of formation duty is reduced from 3% to 1%. The rate is further reduced to 0.5% for capital in excess of CHF 5 million and to 0.3% for capital in excess of CHF 10 million.

Another new feature is the *general allowance of CHF 250 000* for the payment of duty. Thus, in all cases (including increases in capital), duty will now be payable only on capital sums in excess of CHF 250 000.

2. Foundations

Provided that they do not engage in any commercial activity, religious, charitable and family foundations, as well as foundations having as their exclusive object asset management, the acquisition of interests in other undertakings or the ongoing management of interests in other undertakings, will continue to pay a formation duty of 0.2%, with a *minimum of CHF 200*. The rate of duty for

capital in excess of CHF 5 million has been reduced to 0.1% and for capital in excess of CHF 10 million to 0.06%.

3. Companies limited by shares

With effect from 1 April 1998, the rate of stamp duty on share issues will be

reduced from 2% to 1% and a *general allowance of CHF 250 000* will be introduced. This means that from that date stamp duty will be levied only on issues (including increases in capital) in excess of CHF 250 000.

Examples

Example 1:	Formation of an establishment or trust enterprise (trust reg.) with a capital of CHF 30 000:	No formation duty
Example 2:	Formation of an establishment or trust enterprise (trust reg.) with a capital of CHF 1 000 000: Formation duty of 1% on CHF 750 000	CHF 7 500
Example 3:	Formation of an establishment or trust enterprise (trust reg.) with a capital of CHF 200 000, later increased by CHF 300 000 to CHF 500 000: <i>No formation duty at the time of formation</i> Formation duty of 1% on CHF 250 000 at the time of the increase in capital	CHF 2 500
Example 4:	Establishment of a family foundation with a capital of CHF 30 000: Formation duty of 0.2% as previously	Minimum of CHF 200
Example 5:	Establishment of a family foundation with a capital of CHF 20 000 000: 0.2% up to CHF 5 000 000 0.1% from CHF 5 000 001 up to CHF 10 000 000 0.06% from CHF 10 000 001 up to CHF 20 000 000 Total formation duty	CHF 10 000 CHF 5 000 CHF 6 000 CHF 21 000

Source: Tax Authorities of the Principality of Liechtenstein

Legislation on the duty to exercise due diligence in Liechtenstein

Introduction

The law of 22 May 1996 on the duty to exercise due diligence in the acceptance of assets (published in Official Gazette No. 116, 1996) came into force on 1 January 1997. The related executive order of 18 February 1997 (published in Official Gazette No. 64, 1997) then came into force on 1 March 1997. This legislation fully incorporated into Liechtenstein law the directives of 10 June 1991 issued by the Council of the European Communities to prevent the financial system from being used for purposes of money-laundering. To comply with the law, financial intermediaries in Liechtenstein are required to complete certain formalities, depending on the position of the foreign contracting party (its professional environment, how well it is known and how close the contacts are).

1. Who is subject to the law on the duty to exercise due diligence?

All licensed banks and financial companies, lawyers, trustees, trust companies, investment enterprises, life insurers and qualified¹⁾ members of the board of administration (= Liechtenstein financial intermediaries) domiciled in Liechtenstein are subject to the provisions of the law on the duty to exercise due diligence when entering into any commercial relations for the pur-

pose of accepting assets to be transmitted, held, managed or invested. In the case of *cash operations*, the law applies to *any sum exceeding CHF 25 000*, whether in respect of a single transaction or a number of interconnected transactions.

2. What are the legal duties of due diligence of the Liechtenstein financial intermediary?

When entering into commercial relations, the Liechtenstein financial intermediary is required, as in the past, to give an account of the relationship. The law on the duty to exercise due diligence lays down the following *minimum standard*:

- the contracting party (the first contracting party: mandator) must be identified
- the party introducing the assets (the second contracting party) must be identified
- the beneficial owner (the beneficiary of the assets introduced) must be established.

Identification means recording the main particulars of the mandator and, where applicable, the party introducing the assets (name, first name(s), date of birth, nationality, home address or business name and domicile address, plus

(in the case of natural persons who are not personally known to the intermediary) a copy of the passport, identity card or driving licence, or (in all cases involving a legal entity) a commercial register extract, certificate of incorporation or equivalent official document.

In certain circumstances, it may be necessary to document the professional qualification²⁾ of the first contracting party (see under Point 3 below).

Establishing identity means documenting the personal particulars of the natural person (name, first name(s), home address, or the business name and domicile of a legal entity/company), who/which is the beneficial owner of the assets. The party introducing the assets and the beneficial owner may be identical.

If the beneficial owner is stated to be a legal entity/company/trust, then, in the case of domiciliary and holding companies, their beneficial owners are also to be established, in so far as such companies are not represented by a Liechtenstein financial intermediary.

¹⁾ Qualified within the meaning of the law on the duty to exercise due diligence.

²⁾ Qualification within the meaning of the law on the duty to exercise due diligence.

3. Duties to exercise due diligence in the case of qualified³⁾ foreign financial intermediaries from Switzerland, the area of the European Union, the USA and Canada

If a qualified³⁾ foreign financial intermediary from one of the above-mentioned economic areas (belonging to a recognised professional organisation or entered in a public register recognised by the government, acting as the first contracting party) arranges to establish a legal entity/company or trust (domiciled in Liechtenstein or abroad) through a Liechtenstein financial intermediary by way of correspondence, and if this first contracting party is a natural person personally known from previous commercial relations or is a legal entity identified in the course of previous business through a commercial register extract or equivalent document (in which case the legal representative or representative of the board must also be identified, or known) then no further identification measures are necessary.

Thanks to the qualification of the first contracting party, the party introducing the assets (the second contracting party) does not need to be further identified (i.e. it is not necessary to provide names). The first contracting party, however, must disclose the beneficial owner to the Liechtenstein financial intermediary, communicating the name, first name(s) and home address, or the business name and domicile, either in writing or by telephone.

If the above-mentioned first contracting party is a natural person who is not

personally known, or a legal entity which is not formally identified, then the Liechtenstein financial intermediary must first identify the first contracting party in a personal meeting, following the procedure specified above in Point 2.

In correspondence, the first contracting party (if a natural person) can be identified by presenting to the Liechtenstein financial intermediary a certified true copy of his passport or his signature and personal particulars certified by a notary public. Alternatively, the first contracting party can have a certified true copy of his passport or his signature and personal particulars confirmed by a bank, lawyer or chartered accountant domiciled in the above-mentioned economic areas. In the case of legal entities, the identification by the Liechtenstein financial intermediary requires the presentation of a current commercial register extract (in which case the legal representative or representative of the board must also be identified or known) or an equivalent document.

A first contracting party domiciled in Switzerland or Liechtenstein may also be identified by correspondence.

4. Duties to exercise due diligence in the case of a non-qualified⁴⁾ foreign financial intermediary acting as mandator (first contracting party)

If such an intermediary is acting in his own name for a third party (who is the party introducing the assets), both parties to the contract (i.e. the direct inter-

locutor acting as the first contracting party and the party introducing the assets as the second contracting party) must be identified. The identity of the beneficial owner must be personally established by the Liechtenstein financial intermediary and documented in the manner described above, in so far as the beneficial owner is not identical with the party introducing the assets.

5. Repetition of the foregoing measures; procedure in the event of deception; severance of relations

If, in the course of business relations, doubt arises as to the identity of the first contracting party or the second contracting party or as to the beneficial owner, or if there is a strong suspicion of deception in this connection, the information must be rechecked and, if necessary, corrected. In the event of deception, the law provides that the Liechtenstein financial intermediary may sever relations, provided that the assets are not put at risk and that the withdrawal of the assets is adequately documented.

³⁾ Qualified within the meaning of the law on the duty to exercise due diligence.

⁴⁾ Non-qualified foreign financial intermediaries are those not included in the persons and economic areas listed in Point 3.

6. Duty of the Liechtenstein financial intermediary to monitor and, if necessary, report

If the Liechtenstein financial intermediary suspects that a transaction is connected with money-laundering within the meaning of the Penal Code, he must clarify the background and purpose of the transaction and the origin of the funds.

In the event of *strong suspicion* in this regard, then, as an additional measure, a report must be made immediately to the Liechtenstein Department for Banking Supervision. At the same time, the Liechtenstein public prosecutor may also be notified.

7. Duty of the Liechtenstein financial intermediary to provide documentation

The identification, establishment of identity and actions taken in the event of repetition, as well as the actions taken in the event of the establishment of deception or suspicion of money-laundering, must be documented in a separate special file. Correspondence, bank vouchers, agreements of authorisation and representation, statutes and by-laws are not the object of this special file.

8. External control of compliance with the duty to exercise due diligence and reporting to the state supervisory authority

Liechtenstein financial intermediaries will be examined by chartered accountants and auditing companies for compliance with the exercise of due diligence and the relevant files will be subject to formal random checks.

Note:

For further information with regard to Liechtenstein's law on the duty to exercise due diligence, please contact *the author of this article*, Mr Roger Frick (Betriebsökonom HWV, eidg. dipl. Bücherexperte), at the Allgemeines Treuunternehmen.

Allgemeines Treuunternehmen

Aeulestrasse 5
PO Box 83
FL-9490 Vaduz
Principality of Liechtenstein

Tel. +(41 75) 237 34 34
Fax +(41 75) 237 34 60

This bulletin is also published in German, French and Italian.

The ATU Bulletin is a publication of the Allgemeines Treuunternehmen which appears from time to time. It is intended simply to provide general information and cannot replace legal advice.