

## Allgemeines Treuunternehmen

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## Tax consequences of a foundation being dissolved due to lack of assets

In a decision of 13 June 2001, the High Court of the Principality of Liechtenstein held that, in accordance with Art. 568 PGR (Persons and Companies Law), «a foundation is dissolved ipso jure if its object can no longer be achieved, a situation which arises particularly if the foundation is unable to fulfil its purpose due to lack of assets».

Thus, under the terms of Article 568 PGR, a foundation is to be deemed to be dissolved ipso jure as soon as the foundation board notifies the Land and Public Registry that the foundation lacks sufficient assets.

In such an eventuality, the Tax Authority no longer has any possibility of demanding payment of outstanding taxes from the foundation as a taxpayer. «Thus, in accordance with Art. 14 (a) of Liechten-

stein's Tax Law (SteG), the determination of the lack of assets of the foundation means that the Tax Authority is obliged to demand payment of outstanding and pending taxes from the foundation board, which is jointly and severally liable with the dissolved foundation»<sup>1</sup>.

Art. 14 (a) of the Tax Law provides as follows: «The persons entrusted with the task of the management and liquidation of a company with or without legal personality, or of an endowment of assets or of a simple community of rights, shall be jointly and severally liable with the taxpayer up to the total amount of the managed assets or the proceeds of the liquidation.»

The High Court further held that, even in the event of a dissolution resolved by the foundation board, a foundation does

not lose its legal personality so long as assets remain available, even if the foundation board is not aware of their existence. Thus, if assets are subsequently discovered, after the dissolution, the foundation will not have lost its capacity as a taxpayer and payment will be demanded of the taxes due since the supposed termination of the foundation.

The High Court decision relates to foundations deposited with the Land and Public Registry. However, if a registered foundation is dissolved in the same way – i.e. in the absence of a regular liquidation with a six-month waiting period – the tax consequences for the registered foundation are the same as those for the deposited foundation.

<sup>1</sup>) Liechtenstein Tax Authority, January 2003, Circular No. 1/2003

## Changes in relation to the official dissolution of legal entities

The proceedings for the dissolution and liquidation of a legal entity are instituted officially if the entity ceases trading, if the governing bodies responsible for business dealings and representation (including legal representation) in Liechtenstein are lacking, if no member of the management fulfils the requirements of Art. 180a PGR, or if there is conduct contrary to the national interest.

What is new is that, in cases where taxes remain unpaid after unsuccessful prosecution for debt, it is not bankrupt-

cy proceedings which are instituted. Instead the Liechtenstein Tax Authority will apply to the Land and Public Registry for dissolution and liquidation proceedings to be instituted officially. The Land and Public Registry will notify the Liechtenstein member of the board of directors and/or the legal representative of the entity of the application and their right of appeal. If the 14-day notice period then expires without response, the legal entity will be placed in liquidation by the Land and Public Registry. This will result in the dismissal of all the existing board members and the last

Liechtenstein member of the board of directors satisfying the qualification criteria laid down in Art. 180a PGR will be appointed as the liquidator.

As compared with the previous procedure, the effect of this change is that in the event of a subsequent payment of taxes, the entity must be removed from liquidation status, a move which entails the re-election of the last members of the board, as well as a resolution for the attention of the Land and Public Registry, with the costs arising thereby.

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## Other provisions concerning the dissolution of legal entities

A legal entity is officially dissolved, *inter alia*, if it no longer has an appointed legal representative and this lack has not been authorised by the Land and Public Registry, or if it has no official mailing address in Liechtenstein (Art. 239, Art. 971.1.2 PGR).

In this regard, it will be noted that Liechtenstein legal entities which act as legal representatives must appoint for themselves a natural person as representative.

Dissolution on grounds of the absence of the legal representative is a new feature.

## Completely revised Public Register Law in force since 18 February 2003

Liechtenstein's Public Register Law has been completely revised and this has given rise to changes in the Persons and Companies Law (PGR). The revision of the Public Register Law was based, on the one hand, on the applicable law, and on the other, on Swiss law wherever its adoption was deemed appropriate and of contemporary relevance<sup>2</sup>.

The PGR contains the basic provisions for the establishment of the Public Register, as well as the procedure, the legal possibilities of appeal and the rights, obligations and responsibilities of the Register authorities. The implementation provisions, the technical provisions and the detailed procedural regulations are to be laid down in a government ordinance so as to ensure that the law is not too unwieldy<sup>3</sup>.

In this Bulletin, we will be highlighting only the changes of greatest relevance to our readers.

### Corporate capital

Art. 122.1a PGR provides again that companies limited by shares and other legal entities with a capital divided into parts may have their share capital entered in the Public Register denominated in USD or EUR, the minimum being USD 50 000 or EUR 50 000. In the case of limited liability companies and legal entities with a capital not divided into

parts, the minimum for corporate capital is USD 30 000 or EUR 30 000. It goes without saying that it is possible to register entities with a corporate capital denominated in CHF, in which case as before the minimum is CHF 50 000 and CHF 30 000 respectively.

The registered trust enterprise (Trust reg.) is treated in the same way as legal entities, the relevant provisions being laid down in Art. 932a.22.1 PGR. According to these provisions, a Trust reg. with a capital divided into parts must have a minimum corporate capital of CHF 50 000, USD 50 000 or EUR 50 000. Similarly, a Trust reg. with a capital not divided into parts must have a minimum corporate capital of CHF 30 000, USD 30 000 or EUR 30 000.

### Transfer of registered office

If the registered office of a legal entity is transferred from abroad to Liechtenstein or vice-versa, a change in jurisdiction occurs.

#### ***Transfer of registered office from abroad to Liechtenstein***

Subject to the authorisation of the Land and Public Registry, a foreign legal entity may, through entry in the Public Register and the appointment of a representative, place itself under Liechtenstein law and transfer its registered of-

fice to Liechtenstein, without need for dissolution abroad and re-establishment in Liechtenstein or the transfer of its business activity or management (Art. 233.1 PGR).

To grant authorisation, the Land and Public Registry requires the following:

1. a certified and legalised extract from the trade register for the existing registered office;
2. a certified and legalised copy of the existing memorandum and articles of association (statutes);
3. a resolution in due form providing for the transfer of the registered office and the adjustment of the statutes to Liechtenstein law, a copy of the amended statutes having to be enclosed with the application;
4. confirmation from the State of the existing registered office that such a transfer of the registered office is permissible under its domestic law (Art. 233.2 PGR);
5. an auditor's report (for companies with share capital) or equivalent proof (for other legal entities) to show cover for the capital declared to be fully paid up at the time of the transfer of the registered office (Art. 233.3 PGR);
6. appointment of the governing bodies required under Liechtenstein law (e.g. management in accordance with Art. 180a PGR).

<sup>2</sup>) See government report of 3.9.2002 on the public consultation concerning the amendment of the Persons and Companies Law of 20 January 1926 (PGR) - Complete revision of the Public Register Law, p. 3.

<sup>3</sup>) See government report of 3.9.2002 on the public consultation concerning the amendment of the Persons and Companies Law of 20 January 1926 (PGR) - Complete revision of the Public Register Law, p. 3.

### **Transfer of registered office abroad from Liechtenstein**

For a Liechtenstein legal entity to make itself subject to foreign law and transfer its registered office abroad without dissolution, it must first obtain authorisation from the Land and Public Registry (Art. 234.1 PGR). Legal entities can be dissolved by reason of the transfer of their registered office abroad only if they can credibly show that their creditors will be satisfied or that their creditors consent to the dissolution (Art. 234.3 PGR). There has been a change in the existing practice, in that the legal entity must now show that a public announcement has been made, advising creditors of the forthcoming amendment of the statutes and inviting them to present their claims (Art. 234.2.3 PGR). In the past, it was the general opinion that such publication was necessary but there was no legal provision to that effect. If the situation was perfectly clear, the board of directors could refrain from publication. Publication may be avoided if a written declaration from the auditors is presented to certify that there is no possibility of prejudice to the creditors from the transfer of the registered office.

To grant authorisation, the Land and Public Registry requires the following:

1. a resolution in due form concerning the transfer of the registered office abroad;
2. the last balance sheet and auditor's report (for legal entities subject to rendering of accounts);
3. an announcement to creditors, respectively the auditor's declaration referred to above;
4. a confirmation from the board of directors in Liechtenstein that the legal entity has no obligations to third parties, respectively a declaration of the board of directors in Liechtenstein that the creditors have been satisfied, respectively that their claims are secured, or the presentation of a written declaration of consent from the creditors;
5. a confirmation from the Tax Authority that no taxes remain unpaid;
6. a certified and where necessary legalised confirmation that the entity will continue in existence under foreign law (trade register extract or official confirmation of entry).

In this connection, it will further be noted that Liechtenstein law makes no provision for the possibility of a cross-border merger.

### **Compulsory entry in the Public Register**

It is compulsory for anyone engaged in trading, manufacturing or any other commercially operated activity to have his firm entered in the Public Register with responsibility for his main place of business (Art. 945.1 PGR).

The detailed rules regarding the compulsory entry in the Public Register are laid down by government implementing ordinances. In the absence of provision to the contrary under other regulations, the firm is liable for trade tax and annual turnover tax (Art. 945.4 PGR). Under the Public Register Ordinance (OeRegV), firms are relieved of the obligation to register if their annual turnover is less than CHF 300 000.

The new regulations are intended to relieve sole traders and the smallest

businesses of the obligation of compulsory entry in the Public Register.

If there is any doubt as to the obligation to register, the Land and Public Registry will decide the question in accordance with the legal procedure laid down in Art. 945.5 PGR.

A person who carries on a business which is not subject to registration and who does not have a residence or registered office in Liechtenstein is entitled to be entered in the Public Register at the location of his main place of business (Art. 946.1 PGR).

A person who wishes to run a firm for the operation of a business or the exercise of a profession is entitled to do so only if he has a head office or branch in Liechtenstein or has or elects domicile in Liechtenstein and arranges for entry in the Public Register (Art. 946.2 PGR).

### **Public register entry of Liechtenstein-based law firms and other professional offices**

Art. 945.7 PGR provides that: «Non-resident members of the management of a legal entity in accordance with Art. 180a.1 PGR may also arrange to register under their law firm or professional office in Liechtenstein instead of their residence abroad». The purpose of this provision is to enable such lawyers, accountants and trustees who are not resident in Liechtenstein to register the address of their law firm or other professional office in Liechtenstein rather than their place of residence abroad.

Apart from this exception, all other persons must indicate their place of residence for entry in the Public Register (Trade Register).

The street name and number of the residence must continue to be indicated, even though these particulars are no longer shown in the electronic register.

### **Effect of entry in the Public Register**

The date of entry in the Public Register will be that entered in the Land and Public Registry daybook upon receipt of the application (Art. 947.1 PGR).

The entry in the Public Register will not become effective vis-à-vis third parties until the working day following the announcement of the entry, in so far as announcement is a statutory requirement. This working day will also mark the start of a term, which commences with the announcement of the entry (Art. 947.2 PGR).

The foregoing remains subject to any special provisions of the law in accordance with which legal effects become binding vis-à-vis third parties or terms begin to run immediately upon entry in the Register (Art. 947.3 PGR).

The Law and the implementing ordinance determine whether a legal relationship arises upon the entry in the Public Register (Art. 950.1 PGR). Unless otherwise provided by Law and the implementing ordinance, the legal effects of a transaction become applicable to the parties concerned even without entry in the Public Register (Art. 950.2 PGR).

The legal effects of the appointment of a natural person or legal entity as a governing body with power of representation (e.g. liability of a person to act as a director) are produced vis-à-vis a registered legal entity even if the appoint-

ment is not entered in the Public Register (Art.950.3 PGR).

### **Inspection of the Public Register**

The Public Register is open to inspection, including the applications and supporting documentation. The information becomes public upon the delivery of the application or upon the delivery of documentation which may serve as support for the registration (Art. 953.1 and 953.2 PGR).

The Register may be inspected during ordinary office hours by anyone who can show a legitimate interest (Art. 953.3 PGR). Certain exceptions to this rule (e.g. with regard to companies limited by shares) are indicated below.

On request, extracts or copies of the Register entries and documents will be issued by the Land and Public Registry against payment of a fee (Art. 954.1 PGR)

With regard to the inspection, respectively copying, of the registration documents of a company limited by shares, a limited partnership with share capital or a limited liability company, copies may be given to an applicant who requests them in writing without proof of a legitimate interest. The copies must be certified unless the applicant renounces certification (Art. 953.4 PGR).

The right to inspect the Register and to obtain extracts, copies and certificates of documents and papers deposited in accordance with Art. 990 PGR is restricted to the depositor, to the persons duly authorised by the depositor and to universal legal successors (Art. 953.5 PGR).

Where the law stipulates that legal entities or the like are under an obligation to notify the Land and Public Registry, it is sufficient for them to deposit the documents which contain the facts and relations subject to disclosure (e.g. with the deposited foundation) (Art. 990.2 PGR).

It will be noted that share registers and by-laws do not need to be submitted to the Land and Public Registry.

### **Announcements**

Unless the Law or the implementing ordinance provide for the announcement of parts or extracts, the entries in the Public Register will be published by the Land and Public Registry in full and without delay in the official organs of publication (Art. 956.1 PGR).

If there is no mandatory legal requirement for announcement in the official organs of publication, the announcement may be made by posting on the court bulletin board or in whatever other form is declared to be admissible by government ordinance (Art. 956.3 PGR).

## More about the ATU

A form is available on the ATU website **www.atu.li** which you can use to order copies of our publications. It is also pos-

sible for you to download the ATU Bulletin directly from the site.

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