



**Author:**

Manfred Gassner, Client Advisor, ATU

## Limited liability company (GmbH)

### Utilisation

The limited liability company is a company with its own legal personality and one or more partners. The limited liability company is suitable for all economic purposes, in particular for international trading operations and as an umbrella organisation (holding company) for subsidiaries. Because of the lower capital requirement (share capital), the limited liability company is particularly suited for smaller and medium-sized companies and sole proprietorships. Liability for each partner is limited to a specific amount, but units are not treated as shares unless specified otherwise in the articles of incorporation. Other organisational structures (e.g. foundation, trust) are more common for settling private estates and for pure wealth management/asset protection.

### Name and language

Any name can be chosen for a limited liability company, but a query has to be lodged with the Liechtenstein Office of Justice (AJU), Commercial Register Department, to find out if the name is still available and may be used. Invented names and descriptive names are allowed, provided that they do not contradict the purpose, as well as personal names if this is the name of a partner of the company. The names of countries or places anywhere in the world may not form part of the company name.

The company name must either include the words "Limited liability company", the abbreviations LLC or the corresponding foreign-language term.

### Formation

It takes an average of five to ten days to set up a limited liability company if all required documents are ready. Only one founder is needed to form a limited liability company, and this founder can be a natural person or a legal entity. The formation of a limited liability company must be confirmed by public deed. The simplified formation procedure can be selected if a limited liability company consists of a maximum of three partners and just one manager, in which case no public deed is required. In addition, no provisions may be agreed that deviate from the law.

## Share capital and initial contribution

The share capital pursuant to the articles of incorporation must be at least CHF 10,000. It can also be determined in euro or US dollars, in which case the amount must be at least EUR 10,000 or USD 10,000.

The minimum capital must be fully paid in or contributed upon formation of the company. A Liechtenstein, Swiss or other recognised bank must issue a confirmation that the capital has been paid in.

There is no ceiling to the amount of the share capital, but the initial contribution by each partner, which cannot be reclaimed, must be at least CHF 50. The company can be formed by cash subscription or by non-cash capital contribution.

The capital is freely available to the company once it has been entered into the Commercial Register.

## Purpose

Possible purposes include, for example:

### a) Commercial purpose

Trading in industrial goods and consumer goods as well as related financing transactions, provision of services and advice, purchase and sale of investments in other companies in Liechtenstein and abroad and of real estate as well as related financing transactions, acquisition and marketing of patents, brands and licences, intermediary activities and assumption of representations.

### b) Purpose of a holding company

Holding and ongoing management of investments in other companies and all related ancillary services such as group executive management, management of patents and licences, coordination and financing of existing subsidiaries and subsidiaries to be newly formed in Liechtenstein and abroad.

### c) Purpose of a private asset structure (PAS)

Investment and management of the company's own assets, in particular cash and cash equivalents, bank custody accounts, financial instruments, precious metals, securities, rights and other tangible assets as well as works of art. It is permitted to acquire and hold financial participations for the exclusive purpose of asset investment and to acquire and hold real estate for the company's own purposes.

This purpose excludes any economic activities.

## Partners and general meeting of partners

The general meeting of partners is the highest governing body of the limited liability company.

Its powers include:

- Electing the manager and auditors;
- Approving the annual report;
- Granting discharge to the manager and the auditors;
- Passing resolutions about amendments to the articles of incorporation and other matters that are reserved for the authority of the general meeting of partners by the articles of incorporation.

Unless determined otherwise by the articles of incorporation, all partners are jointly responsible for the management and representation of the company vis-à-vis external parties. The tasks of management and representation can also be delegated to one or more partners or a third party by partners' resolution or the articles of incorporation.

The partners are entered into the Commercial Register and, since August 2019, their names are also published in the new register of beneficial owners.

## **Manager**

Subject to delegation, the manager handles the business of the limited liability company. The management of the company can be delegated to one or more persons. The managers can but do not have to be partners.

At least one member of the team authorised to manage and represent the limited liability company has to be a citizen of a contracting state of the Agreement on the European Economic Area (EEA), a person granted equal status under a state treaty or a legal entity and must have a licence pursuant to the Trustee Act. Persons with equal status are persons holding authorisation in accordance with the Act on the Supervision of Persons pursuant to Art. 180a of the Persons and Companies Act (PGR).

Persons pursuant to Art. 180a PGR are employed as their principal occupation by a domestic employer licensed to engage in trustee activities. They have to be able to submit a certificate of training pursuant to the Trustee Act and must have worked for a trust company as their principal occupation for at least one year.

With regard to access to the trustee profession, the principle of reciprocity grants Swiss citizens with a residence permit for Liechtenstein equal status to Liechtenstein citizens in accordance with the laws of the Swiss cantons.

The obligation pursuant to Art. 180a PGR does not apply to legal entities that must have a manager or are supervised by the government, a municipality or another government authority under the Trade Act or another special law.

## **Articles of incorporation**

The articles of incorporation of a limited liability company must contain the legally required information and provisions. The model protocol provided by the Office of Justice must be used for the simplified formation of a limited liability company. The model protocol consists of the deed of establishment and the articles of incorporation and must have the legally required contents. The founders' signatures on the articles of incorporation (i.e. the signatures on the last page of the model protocol) must also be certified.

## **Application for entry in the Commercial Register**

The application consists of the application letter and certified enclosures. The application letter and enclosures must contain the information required for entry in the Commercial Register. The signatures on the application letter must also be certified.

## **Accounting**

The limited liability company has to keep proper accounts, regardless whether it engages in business of a commercial nature or not. The annual financial statements comprise the balance sheet, the income statement and the notes to the financial statements. The annual report consists of the annual financial statements and, if required, the management report; it has to be drawn up within six months of the end of a financial year.

Where these have to be drawn up by law, the annual financial statements and the annual report have to be prepared in German and report the financial situation in Swiss francs, euros or US dollars.

The government can issue ordinances to allow foreign-language documents (English is already permitted).

Accountable legal entities that do not engage in business of a commercial nature who are required by law to prepare annual financial statements and an annual report can draw up the financial statements and report in English, French, Italian, Spanish or Portuguese only and in any freely convertible foreign currency.

### **Duty of disclosure and filing of balance sheet**

The legal representatives of the limited liability company are obliged to file the properly approved annual financial statements and auditors' report with the Office of Justice within twelve months of the reporting date at the latest. Following the filing of the balance sheets, the Office of Justice publishes the location where these documents can be inspected in the official newspapers. Under EEA legal provisions, companies are also obliged to publish their balance sheets in the Business Registers Interconnection System (BRIS) that was introduced in 2017 and connects the business registers of all EU and EEA member states. The new provisions apply from the 2019 financial year.

In addition to the aforementioned obligation to file the balance sheet with the Office of Justice, the audited annual financial statements also have to be filed with the Liechtenstein Tax Administration within six months of the end of every financial year.

### **Auditors**

Auditors recognised by the Financial Market Authority of Liechtenstein (FMA) must be appointed for the limited liability company.

The annual financial statements and the consolidated financial statements of medium-sized and large EU-harmonised (partnerships) companies must be audited by an auditor or auditing company in accordance with the Auditors and Auditing Companies Act (WPG). If companies that are not subject to the auditing obligation according to the above paragraph have to prepare annual financial statements pursuant to the provisions of the PGR, an auditor or an auditing company has to perform a review.

If the law also requires these companies to prepare an annual report, the auditor or auditing company has to assess whether the annual report is in line with the annual financial statements or not.

The review can also be carried out by trustees and legal entities (trust companies) with a trustee licence. Certain restrictions apply to small companies with public bond obligations or units listed on the stock exchange as well as public interest entities.

### **Representative**

Domestic legal entities and branches of foreign legal entities have to appoint a citizen of an EEA member state (incl. the EU) who permanently resides in Liechtenstein to represent the legal entity vis-à-vis the authorities.

Alternatively, the representative can be a domestic legal entity, which for its part appoints a natural person as representative.

The obligation to appoint a representative can be cancelled with the consent of the authorities if the other officers of the legal entity as replacement for the representative provide adequate assurance or a domestic delivery address has been provided. The Office of Justice (AJU) as the competent authority usually cancels the obligation to appoint a representative if the legal entity is a company with a branch that is engaged in actual business operations in Liechtenstein. In justified cases, the Office of Justice (AJU) also issues approval for a domestic delivery address.

The representative is the official postal address and link with the authorities.

## **Formation**

The limited liability company comes into existence upon its entry into the Commercial Register.

## **Liquidation**

The highest governing body decides about the dissolution and liquidation of the limited liability company. The limited liability company can be deleted at the earliest six months after the publication of the third invitation to creditors to register their debts, provided that there are no other obligations.

## **Relocation / conversion**

A limited liability company can be relocated to/from/inside Liechtenstein.

It is possible to convert a limited liability company without prior liquidation into a cooperative without liability of the cooperative members or a cooperative with limited liability or the obligation to provide additional funding, a company limited by shares, an establishment, a private limited company, a general partnership with limited liability or a limited partnership by way of a public deed.

## **Taxes**

Economically active legal entities that are taxable in Liechtenstein are subject to income tax and property gains tax (whereby property gains earned abroad are not taxed). No capital tax is levied. A uniform income tax rate of 12.5% of the net income/profit is levied, regardless of the earnings and distribution intensity. Dividend income and investment earnings are exempt from tax, regardless of the holding period and voting/capital share. This is subject to anti-abuse provisions that, under certain conditions, do not allow exemption.

Interest income is also reduced by what is known as an equity tax deduction. Fair interest on the modified equity equalling the target earnings is considered to be a business-related expense. This considerably reduces the taxable interest income for companies with a high level of equity financing.

Legal entities are generally obliged to pay income tax if Liechtenstein is the place of their registered office or active management (unlimited tax liability) or if there is a branch office in Liechtenstein (limited tax liability). Income earned by foreign branches is therefore not included in the taxable net profit, while losses suffered by foreign branches in Liechtenstein can be set off provided they have not already been accounted for. If the place where the company is actively managed is located abroad, the company qualifies as a foreign branch office. The place of active management is deemed to be the place where the strategic management decisions that define the company in question are taken.

The minimum income tax is CHF 1,800 per year.

Private asset structures (PAS) only pay the minimum income tax of CHF 1,800 in advance and do not have to file any tax returns. They may not engage in any economic activity, whereby the term "economic activity" is interpreted very broadly. In practice, this refers to legal entities that manage their own wealth (e.g. securities portfolio with a bank).

Dividends, interest and licence payments are not subject to withholding tax or tax at source in Liechtenstein.

The Swiss provisions on stamp duty also apply in Liechtenstein.

### **Double taxation agreements**

Liechtenstein has entered into double taxation agreements (DTA) with many countries. A limited liability company can always invoke a DTA if it engages in a commercial activity. However, a limited liability company with PAS status may not call for tax relief under a DTA.

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*If you need any further information, you may contact the author of this article, Manfred Gassner, at Allgemeines Treuunternehmen. This ATU Info is intended for general information purposes only and does not replace legal advice.*

#### **Allgemeines Treuunternehmen**

Aeulestrasse 5 · P.O. Box 83 · 9490 Vaduz · Liechtenstein · T +423 237 34 34 · F +423 237 34 60 · info@atu.li · www.atu