

Asset protection in Liechtenstein

We all think about how to protect our assets. The need for asset protection is greatest in those countries where there is relatively little political stability, the economy is unstable or where conditions for holding or transferring assets are poor or unfavourable. In addition, personal circumstances, e.g. a complicated family structure, can be a reason for seeking asset protection. The concepts and products available for asset protection are similar all over the world. Most countries that allow offshore asset investment are suitable for asset protection and offer different advantages, although these differences are usually marginal. Apart from technical and legal questions, the qualities of the location itself are an important factor in choosing the right jurisdiction. Outlined below are the most important advantages offered by Liechtenstein as a suitable location for asset protection.

Political and historical stability

The Principality of Liechtenstein is an independent country with a population of approximately 36,000. It has an area of 160 square kilometres, and is situated in the centre of Europe. Liechtenstein has been a sovereign state since 1806 and, despite its small size, a member of the United Nations since 1990 and of the World Trade Organization since 1995. Its mixed constitution enables power to be shared between a democratically elected parliament and the monarch, thus guaranteeing political stability. Liechtenstein's princely family has shaped the country's history since 1699. Although located in the heart of Europe, there has not been a war in Liechtenstein for over 200 years. Thus it is a unique island of security and stability in Europe. This makes it an excellent starting point for persons looking to place their assets.

One country – two economic areas

Due to the EEA Agreement and the customs and monetary union with Switzerland, Liechtenstein is simultaneously integrated into the European Economic Area and the Swiss economy – a unique combination in Europe.

Furthermore, with the Swiss franc, Liechtenstein has an exceptionally stable and secure currency.

Liberal corporate law

The Principality of Liechtenstein is one of the oldest jurisdictions in which offshore asset investment has been both encouraged and liberally regulated. Article 34 of the Liechtenstein Constitution expressly protects private property. Laws governing companies and the protection of privacy have been in force since 1926, and have laid the foundations for a long tradition of asset protection for clients from all over the world. For example, prior to World War Two, Jewish families used Liechtenstein structures to protect their assets from the reach of the Nazis.

Liechtenstein's corporate law is very liberal. In addition to the legal forms known worldwide such as companies limited by shares, private companies, foundations and trusts, it also has special legal forms such as the establishment and the registered trust. Without a doubt, the Liechtenstein legal forms do not feature among the low-cost products of the offshore world; however, their high prices are certainly justified by their high quality, long tradition and the large degree of trustworthiness of those offering them.

Bank and professional secrecy

The famous bank secrecy known to Switzerland and Liechtenstein has its origins in tax legislation from 1923; it was integrated into the Banking Act in 1965. In addition, other professionals in Liechtenstein are subject to strict professional secrecy duties, in particular lawyers and trustees as well as insurers and licensed auditors.

The duties of confidentiality of financial intermediaries in Liechtenstein have over the years been relaxed in order to improve cooperation in the fight against money laundering. Moreover, in keeping with a worldwide trend, bank secrecy has been increasingly reduced in the area of tax fraud, and even more so in tax evasion. In spite of this, it is true to say that as far as the core aspects of asset protection are concerned, i.e. in civil law or in relations between private individuals, Liechtenstein's strict bank and professional secrecy laws continue to serve an important protective function.

Foundations and trusts

Liechtenstein's foundation law, which was enacted in 1926 and revised in 2009, grants founders the freedom to form non-profit and private foundations. The establishment of a mixed foundation is also possible. Private family foundations are particularly suitable vehicles for succession planning and asset protection, providing special protection against the attacks of creditors. The main distinctions between a foundation and a trust are that a foundation is a legal entity with power to act and that the members of its governing bodies can in comparison to those of a trust be replaced relatively easily.

Liechtenstein law has also recognised the common-law trust since 1926, and has successfully incorporated it into its body of civil law. Accordingly, Liechtenstein has a law of trusts that combines the advantages of the typical English trust with the administrative advantages of the civil-law system. This provides clients with an institution that is easier to understand and more predictable. Nearly all recognised forms of trust are available under Liechtenstein law since its trust law allows settlors a large degree of freedom in defining their trust structures.

Avoidance of forced-heirship rights

Liechtenstein's private international law rules enable testators to establish a Liechtenstein structure, usually a foundation or a trust, to effectively avoid foreign forced-heirship rules. For this to work, testators must expressly choose for their transfers to a foundation or trust to be governed by Liechtenstein law. After a period of two years, the client's relatives who are entitled to forced-heirship rights will no longer be able to challenge the asset transfers to the Liechtenstein structure. This allows clients from countries with forced-heirship regimes to use a Liechtenstein structure to leave parts of their assets to whoever they please.

Advantageous procedural law

Liechtenstein law also offers clients seeking asset protection important procedural advantages, which will not be explored in detail here. Basically, it can be said that it is much more difficult to bring a civil-law or contractual claim against a client seeking asset protection in Liechtenstein than in other jurisdictions. Another interesting point is the fact that the loser in a Liechtenstein lawsuit is obliged to pay all of the legal costs. In cases which are highly complex or have uncertain outcomes, this means that the opponent is faced with a high litigation risk. Punitive damages are not available in Liechtenstein.

Non-recognition of foreign judgments

One particularly important aspect of asset protection in Liechtenstein is the fact that to a large extent Liechtenstein does not recognise foreign judgments. Liechtenstein has to date not signed the Lugano Convention. It only has agreements with Switzerland and Austria that provide for direct enforcement in Liechtenstein of certain judgments handed down in these neighbouring countries.

For example, a foreign creditor with a legally enforceable foreign judgment is only permitted to institute what are known as “legal commencement proceedings” in Liechtenstein against a client; the client is, however, entitled to enter a defence to such proceedings. If he does so, his creditor will be compelled to bring what is known as an “action to dismiss” in Liechtenstein with the result that the case must be reheard from the beginning there.

In this event, all of the evidence presented in the original foreign proceedings will have to be submitted again in Liechtenstein. This, combined with the threatened legal costs and the amount of time involved in conducting legal proceedings, acts as an additional barrier to attacks from creditors and other opponents with financial interests in assets held in Liechtenstein structures.

Taxes and asset protection

Lack of clarity as far as the tax situation is concerned is often the weakest aspect of asset-protection solutions. Clients are well advised to agree with their tax advisers on a structure that will not make them a target for tax; otherwise their assets will be vulnerable and the protection they have set in place will be undermined.

Liechtenstein’s new 2011 Tax Act is extremely competitive at the international level. In addition, it complies with OECD and EU requirements. It provides for a net corporate income tax rate of only 12.5%, which allows for numerous exceptions, and a minimum corporate income tax of only CHF 1,200 for all legal entities. This serves as the basis for using holding companies as a recognised but inexpensive tax solution, while at the same time being able to profit from the advantages of Liechtenstein asset protection. Furthermore, private asset structures, such as certain foundations or trusts, are exempt from the duty to file a tax return.

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