



A take on Asset Protection in Liechtenstein on its 300th anniversary

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Introduction

Checks and balances to pre-empt disputes

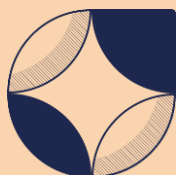
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1. Introduction

In 1719, two fiefdoms, Schellenberg and Vaduz, were purchased by Prince Johann Adam Andreas von Liechtenstein and united to form the Principality of Liechtenstein. The Principality of Liechtenstein is a country whose rich history translates into a stable political and economic environment. Supportive local legislation and an abundance of experienced practitioners with sound administration principles make the Principality of Liechtenstein a particularly favorable jurisdiction in which to create a trust, establishment or foundation (a "Wealth Structure").

SYNOPSIS

Liechtenstein combines 300 years of stability with modern, world-class asset protection laws.

Key features:

- For over 300 years, Liechtenstein has offered political and economic stability, supported by a robust legal framework and experienced fiduciary professionals.
- Trusts, establishments, and foundations are used to safeguard assets against, legal, political and economic risks while ensuring long-term succession planning.
- Effective Wealth Structures include independent protectors and professional trustees to preserve integrity and control, complemented by oversight mechanism under the Liechtenstein Trustee Association (LTA).
- Mediation and arbitration are strongly encouraged and legally supported, providing efficient alternatives to court proceedings under the Code of Civil Procedure.
- Liechtenstein's International Private Law and adherence to the Hague Convention ensure the recognition of governing laws and safeguard against foreign interference.
- Foreign judgements (outside Austria and Switzerland) are not automatically recognized; creditor and inheritance claims are strictly limited, providing exceptional asset security.
- As the world moves away from traditional offshore jurisdictions, Liechtenstein stands out as a reputable, OECD-compliant "mid-shore" jurisdiction offering legal certainty and fiscal competitiveness.

2. Checks and balances to pre-empt disputes

Wealth owners, whether they are forward-thinking or living in politically and / or economically unstable countries, are often keen to set aside a nest-egg for future generations and to look for stable countries in which to set up a Wealth Structure to protect their assets as part of an overarching succession plan. Successful Wealth Structures geared toward asset protection will safeguard the beneficiaries' interests in the event of adverse court rulings, business risks, political upheaval, state expropriation and personal vendettas that may be launched against wealth owners.

When a wealth owner parts with dominion over the assets which (s)he wishes to structure into an irrevocable discretionary Wealth Structure, it is of paramount importance that a professional service provider is tasked with looking after the integrity of the structure and protection of the underlying assets. It is highly advisable to build checks and balances into the Wealth Structure, such as creating the



role of protector with the power to remove and appoint trustees (or members of the board / foundation council as the case may be).

3. Mediation

Even in the absence of such safety mechanisms within the Wealth Structure, settlors and founders may be comforted by the knowledge that article 18 of the code of conduct of the Liechtenstein Trustee Association ("LTA") mandates formal procedures for changing professional service providers in certain circumstances. This process allows, for example, settlors / founders (or beneficiaries) wishing to terminate the business relationship with their Wealth Structure's professional service provider to appeal directly to the executive board of the LTA through their chosen new professional service provider if within 30 days, the outgoing and incoming service providers cannot reach a consensus on the transfer of the case.

After thoroughly assessing the situation, which will include considerations as to the reasons for the refusal to resign on the part of the outgoing professional service provider, the executive board of the LTA will make its formal recommendation to the parties. The distinct possibility of facing disciplinary action from the LTA for failing to comply with its recommendation, potentially even culminating in the revocation of the trustee's license, is, in most instances, sufficient to secure the service provider's adherence to such recommendation.

In terms of asset protection in the strictest sense of the term, one may note that there is a clear incentive for mediating parties to cooperate with the mediator without undue delays, as the respondent may not recover its mediation-related costs from the Wealth Structure's assets.

4. Arbitration

A relatively simple process, arbitration offers an avenue for parties wishing to forego the often stressful and lengthy court process by tackling disputes out of court (thereby reducing overall costs and resulting drain on the Wealth Structure's assets). It should therefore come as no surprise that one of the boilerplate clauses one might rightly expect to find in trust deeds and foundation charters is an arbitration clause. In fact, section 634(2) of the Liechtenstein Code of Civil Procedure explicitly declares arbitration clauses in articles of associations, statutes and trust deeds as being valid.

For foreign-law trusts with a Liechtenstein trustee, Liechtenstein Persons and Companies Act mandates that disputes between settlor, trustee and / or beneficiaries be referred to a Liechtenstein arbitration court, whose rules meet international standards as they reflect the model law on International Commercial Arbitration issued by the United Nations Commission on International Trade Law . Good practice also demands that constitutional documents of Wealth Structures governed by Liechtenstein law include an arbitration clause.

5. Conflict of law

Bankable assets are most easily safeguarded, provided the Wealth Structure cooperates with reputable banking institutions capable of understanding the workings and objectives of Wealth Structures. Whilst compliance departments are becoming ever more demanding, Liechtenstein's banks are renowned for their familiarity with Wealth Structures, both as legal constructs and as planning vehicles, enabling international clients to place a portion of their assets in secure banking institutions.



Other types of assets may be more at risk where the law of third-party countries might be applicable. However, Liechtenstein's International Private Law finds jurisdiction clauses to be conclusive and, in accordance with the Hague Convention on the Law Applicable to Trusts and on their Recognition, the Princely courts will apply the trust's chosen law when ruling on preliminary issues relating to trust (such as the validity and interpretation of a trust instrument).

Nevertheless, one must remain alert to the persistent possibility that foreign legislation may conflict with a Wealth Structure's applicable law in one of two ways:

- Firstly, certain countries may not recognize the structure from a legal standpoint if the use of Wealth Structures ring-fencing private assets for legitimate purposes (such as asset protection as part of a wider succession plan) is deemed politically sensitive, when not outright undesirable, or even simply unaccounted for in local legislation.
- Secondly, a court in the country where a Wealth Structure's assets are located may be petitioned to assert jurisdiction over a dispute and/or said assets, with the ensuing risk of an unfavorable ruling adversely impacting said assets.

6. Liechtenstein's asset protection laws in court proceedings

Liechtenstein's Civil Code and its Legal Remedy Code contain propitious statutory provisions specifically addressing the issues of the recognition (vel non) of foreign judgments, protection from creditors and the exclusion of foreign inheritance laws.

- Foreign judgments: Only judgments by Austrian and Swiss courts are automatically recognized in Liechtenstein, meaning that rulings by any other foreign court must be litigated before Princely courts. Moreover, would-be claimants may be disheartened to learn that the courts routinely demands pre-action deposits from foreign-resident claimants to ensure that any cost order made in the defendant(s) favor may be enforced (not least because losing parties will be ordered to pay both the court costs and the winning parties' legal expenses).
- Creditors: The right for creditors to challenge settlements of assets into a Wealth Structure in Liechtenstein is drastically restricted. Indeed, creditors have one year from the date of a settlement to bring a claim, unless they are able to prove that the settlor's / founder's intention was to defraud the creditors (or place them at a disadvantage vis-à-vis other creditors) in which case creditors will be allowed to contest those settlements that were made in the period of maximum five years preceding their claim.
- Foreign inheritance laws: Foreign forced heirship laws are highly unlikely to be of any avail to heirs / estate of deceased settlor / founder where the latter was not an ultimate beneficiary of, and had not reserved wide-ranging powers over the Wealth Structure (such as revocation or extensive amendment rights). Indeed, only claims regarding assets settled into the Wealth Structure in the last two years of the settlor / founder's life have a (remote) chance of being considered, and heirs / estate will be unsuccessful in challenging any older settlements.

7. Conclusion

In order to create a watertight international Wealth Structure capable of protecting cross-jurisdictional holdings, professional advisors must make conscious decisions when choosing a Wealth Structure's legal form and country of incorporation, tailoring it to the assets' location-specific idiosyncrasies.

With the tide turning away from the historic "offshore" jurisdictions (increasingly frowned upon by international bodies such as the OECD) towards "mid-shore" jurisdictions, such as Liechtenstein. On its 300th anniversary, Liechtenstein looks set to continue cultivating its ever-growing framework of double

tax treaties and OECD-approved competitive tax policies, and that leaves us to say “Many happy returns”!

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