

The Liechtenstein Trust

Introduction

Legal Basis and Definition

Governing Law

Creation of a Trust

Registration Requirements

Trustees

Professional Trustees

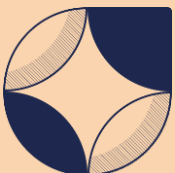
Trustee Rights and Investment Powers

Settlor Rights and Obligations

Arbitration and Dispute Resolution

Choice of Law and Recognition

Comparison with English Law



1. Introduction

Interestingly, Liechtenstein trust law does not define the trust itself but defines the trustee (Treuhänder). Under Art. 897 PGR, a trustee is a person, firm, or corporate entity to whom a settlor transfers property or rights to hold and administer in their own name for the benefit of one or more beneficiaries.

SYNOPSIS

The Liechtenstein trust uniquely blends civil law structure with common law flexibility, enabling global settlors to create revocable or irrevocable, personal or purpose trusts under Liechtenstein or foreign law. Governed by Arts. 897–932 PGR, it centers on the trustee, who legally holds and administers assets for beneficiaries or specified purposes.

Key features:

- Flexible formation by contract, declaration, or operation of law.
- Mandatory registration after 12 months (name, date, duration, trustee).
- Professional trustees require a license, insurance, and segregated accounts.
- Wide investment powers if granted by the trust deed.
- Beneficiary protection and court or arbitration recourse.
- Choice of law allows Liechtenstein trusts to serve cross-border purposes.
- Overall, the Liechtenstein trust offers a secure, discreet, and adaptable structure for asset protection, succession planning, and international wealth management.

2. Governing law

According to Art. 930 PGR, Liechtenstein law applies if the sole trustee is resident in Liechtenstein, if at least half of multiple trustees are resident there, if the trust property is located in Liechtenstein, or if the trust instrument specifies Liechtenstein law. Foreign trusts cannot claim a more favorable position than domestic trusts.

3. Creation of a trust

A Liechtenstein trust may be established:

1. By agreement between settlor and trustee;
2. By unilateral declaration of the settlor (inter vivos or testamentary) followed by written acceptance by the trustee; or
3. By operation of law (constructive trust under Art. 898 PGR).

Trusts are irrevocable unless the instrument provides otherwise. They may be for persons or purposes (including pure purpose trusts without identifiable beneficiaries), as long as they are legal, moral, and possible.

4. Registration

Trusts with a local trustee or governed by Liechtenstein law for over 12 months must be recorded in the public registry within the first year. Minimal required information includes the trust's name, creation date, duration, and trustee's name and address (Arts. 900 & 902 PGR). Changes must also be recorded.

5. Trustees

- Pre-2016, at least one trustee had to be Liechtenstein-resident (Art. 905 PGR). Now, a non-resident trustee may serve if a local representative is appointed.
- Trustees remain in office at least one year unless otherwise provided (Art. 908 PGR) and may be removed by court for failure to perform duties (Art. 929 PGR). Bankruptcy does not automatically terminate trusteeship unless the court orders removal (Art. 909 PGR).
- Liability is personal and unlimited, joint and several for co-trustees (Art. 924 PGR). Trustees may delegate powers but remain liable for acts of delegates (Arts. 919 & 924 PGR).
- Must be licensed under the Trustees Act, carry professional indemnity insurance of at least CHF 1 million, and act with due care, keeping inventories and annual accounts (Arts. 922–923 PGR). They must segregate trust property (Art. 922 PGR) and cannot use trust property for personal gain (Art. 925 PGR).

6. Trustee rights

Trustees are entitled to reimbursement of expenses, indemnification, and remuneration from trust assets unless otherwise specified (Arts. 920–921 PGR).

7. Investment powers

Statutory powers are limited (deposits with Liechtenstein banks or municipal bonds, Art. 913 PGR), but instruments usually grant broader powers.

8. Settlor rights and obligations

The settlor may enforce trustee duties, stipulate dismissal and appointment conditions, and exclude beneficiaries (Arts. 917–918 PGR). They are bound by the trust terms and may be liable to the trustee for liabilities if trust assets are insufficient (Arts. 916–919 PGR).

9. Beneficiaries

Can enforce compliance with the trust deed, unless discretionary, and may seek court assistance if entitled (Arts. 914 & 927 PGR). Creditors can attach trust assets only under limited circumstances.

10. Arbitration

Disputes may be submitted to arbitration. For registered Liechtenstein trusts governed by foreign law, disputes between settlor, trustee, and beneficiaries must be arbitrated. The LIPTF arbitration committee also oversees handover disputes between trustees.

11. Choice of law and recognition

Liechtenstein law can govern a trust regardless of the settlor, beneficiaries, or trust property location. Proper law is determined by the instrument, trustee residence, or trust situs (Art. 930 PGR). Foreign recognition may require expert advice.

12. Comparison with English law

- Liechtenstein trusts are codified civil law constructs influenced by common law but lack equity concepts, legal/equitable title distinction, and strict rules on perpetuities and accumulations.
- Trustee liability primarily owes to the settlor.
- Fewer restrictions exist on number of trustees and their appointment/removal.
- Valid creation is simpler, though the three certainties are required.
- No professional charging clause is needed; minimal registration of trust details is mandatory.

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