INDUSTRIE- UND FINANZKONTOR

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Content

In need of new rules of the game

Not so long ago, the financial markets experienced a boom. The whole system seemed to be boundless! And now the gloom about times past has arrived. Dark clouds shadow the financial sky and apparently do not want to disappear. But what sense does it make to sing the blues? These times should be used in a constructive way – briefly retreating and reflecting about fundamental expectations and values. We need new rules of the game and an answer to the current question: "Where do we want to go?" The state sets the general conditions that are necessary in order to ensure fair and productive competition. However, permanent interference by governments with the market will certainly be counterproductive and only lead from one problem to another. The very rules of the game must be defined by the market participants. Therefore, optimum, complementary interaction between government and the market is necessary.

But let's take a short look back: Increasingly large companies emerged due to over-regulation. Thus, the typical entrepreneur was replaced with the manager and personal responsibility was reduced. Due to increasing national debts and an "easy money" policy, too much money flowed into the system. Loans were cheap and were granted irresponsibly. Within the banking system, Basel II did not really contribute to creating a balanced ratio between equity and debt. A complicated set of rules breached important principles!

But how can economic rules be redefined? Entrepreneurial responsibility must increasingly come to the fore and replace manager mentality. In the future, entrepreneurial thinking can prevent striking excesses such as in the loan business or in incentive systems. The banks' debt policy should be based on a level that is sustainable for the real economy. Sometimes it is also possible to develop an improved market/product quality through industry codes provided that such are reasonably designed with respect to their contents. In certain positions, more qualified staff with a sense for global structures and their interdependencies should be used in order to cope with the complexity of the market economy.

This is what the new rules of the game could look like. For the sake of a future-proof financial system!

Michael of Liechtenstein

The financial centre Liechtenstein

"There are two constants in Liechtenstein politics. First the insistence on "equal length of spears" in competition and secondly the consistency in the implementation of received obligations." This was the explanation of the head of the government of Liechtenstein in a press release for the closing statement of the financial minister's conference in Berlin on 23rd June 2009.

Regarding the implementation of received obligations, the government of Liechtenstein has now sent the administrative assistance law to the Liechtenstein parliament (legislative) for consultation, by which the terms of the Tax Information Exchange Agreement (TIEA) of December 2008 with the USA would be passed into law. With the administrative assistance law the specifications of the TIEA will be converted into national law. The TIEA stipulates that an information exchange can only take place through specified, clearly justified and concrete request from the requesting state (the USA) (→ no *fishing expeditions*), including a declaration that the requesting state has exhausted all possible steps to acquire information in their own territory.

On the other hand Liechtenstein is in treaty negotiations with certain EU and OECD-countries (e.g. Luxemburg, Germany, Great Britain) as well as other states following its declaration of 12th March 2009, regarding its readiness to apply the OECD standards for transparency and exchange of information in fiscal matters. Cleverly negotiated treaties will bring added value to the financial and economic centre of Liechtenstein, e.g. reduced or minimal withholding tax rates in cross border financial dealings or the recognition of Liechtenstein legal entities.

The financial minister's conference mentioned above discussed the interests of the large high-tax-countries which try to take a hard line with their citizens. It was decided that the results and measures should be suggested at a conference of the Global Forum of the OECD in September in Mexico.

The principle of an "equal length of spears", as commented in the NZZ on 24th June 2009, becomes skewed and opens the floodgates for protectionism by large states (and not only in fiscal matters). Unfortunately their policies do not seem to take into account the lessons learned from the world economic crisis in 1929. Instead of striving towards long term economic wellbeing they bring forward short term political populism. It shows in general that the word "haven" can have a negative connotation while the lack of shelter is given preference.

The new Liechtenstein Foundation Law

Liechtenstein Foundation Law had its origin in the enactment of the Liechtenstein Company Law (PGR) in 1926. Basically adopted from the Swiss Civil Code (ZGB), the Foundation Law embedded in the PGR had some specific liberal characteristics that allowed for a successful application of the Liechtenstein foundation.

In the course of the years, the practice under Foundation Law developed further. Due to reference provisions, mainly to the *Law on Trust Enterprises (TrUG)* also embedded in the PGR, it became somewhat confusing. After a proposed partial reform of the Foundation Law had been rejected in 2004, a total revision seemed to be the only practicable solution. On 26th June 2008, the Liechtenstein parliament (legislative) finally enacted the new Foundation Law, which came into effect on 1st April 2009.

Below we would like to give you a brief, concise overview of the most important changes included in the new Foundation Law:

New Foundation Law as a "self-contained body of laws": The purpose of the new Foundation Law was to eliminate the legal unclarities and legal uncertainties (which were due to reference provisions to the TrUG on the one hand and diverging court rulings on the other hand). The new Foundation Law is characterised by stringent systematics, a «self-contained nature» and defined control and supervision mechanisms.

Distinction between "private-benefit" and "common-benefit" foundations: Unlike the old law, the new one only distinguishes between private-benefit (family foundations and foundations for other private-benefit purposes) and common-benefit foundations. The basic form of each foundation is relevant for its registration duty, the nature of its supervision and the scope of the information and disclosure rights of its beneficiaries. Although this distinction depends on the purpose of the foundation, the multi-purpose principle remains unchanged in the new law. It rather relates to the purpose specification. Mixed forms continue to be possible.

Deposit of a foundation notification for private-benefit foundations: In relation with private-benefit foundations, it is now only necessary to deposit a notification of formation with the Office of Land and Public Registration (GBOERA) instead of the articles of association as before. Apart from all necessary basic information about the foundation, this notification of formation also includes the confirmation that the "essentialia negotii" (→ unilateral declaration of intent, purpose specification, asset dedication, sometimes designation of beneficiaries) have been regulated. However, the notification of formation does not contain any detailed information about beneficiaries!

"Internal foundation governance" – Information and disclosure rights of beneficiaries: Under the principle of "internal foundation governance", the parties involved in a foundation are responsible for supervising a proper foundation management. Thus, private-benefit foundations should be supervised by the beneficiaries themselves (provided that no controlling body has been appointed). The new law therefore contains a new, clear definition of beneficiaries and the resulting allocation of certain information and disclosure rights. However, it is possible for the founder to reduce such information and disclosure rights to a minimum.

"External foundation governance" – The Foundation Supervisory Authority: All common-benefit foundations and certain private-benefit foundations that operate a business run in accordance with commercial principles on a special legal basis, must be subject to external supervision (→ Foundation Supervisory Authority). Such is primarily supposed to control whether the assets of a foundation are managed and applied in a manner consistent with the foundation purpose. Furthermore, it has to prevent abuse and take counter-measures in case of grievances. Private-benefit foundations are not subject to supervision by the Foundation Supervisory Authority but can voluntarily submit themselves to such.

Transitional provisions: In general, the principle "new law for new foundations, old law for old foundations" applies. However, certain substantive provisions must also be applied to old foundations. Such include, for example, the definition of common-benefit foundations, the definitions of participants and beneficiaries in a foundation, the information and disclosure rights of beneficiaries, the possible appointment of an optional controlling body, the principle of the notification of formation and amendment, the power to verify of the Foundation Supervisory Authority, the provisions on accounting and the audit authority and the provisions on the obligation to register (declaration of supervision).

Would you like to know more about the new Liechtenstein Foundation Law? Please do not hesitate to contact our customer consultants! In the next I&F-News we will analyse the role of beneficiaries in the new Liechtenstein Foundation Law.

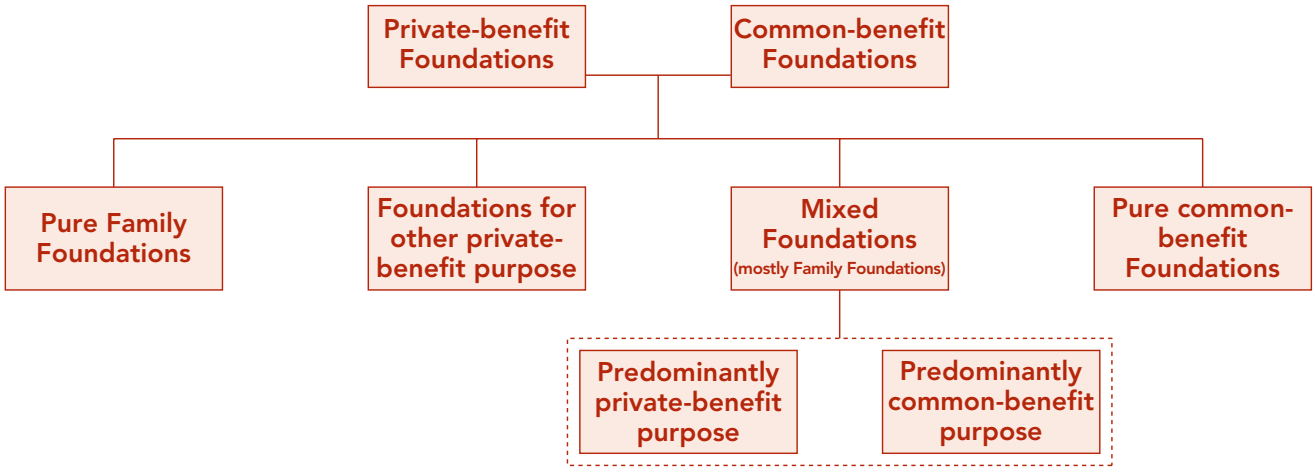
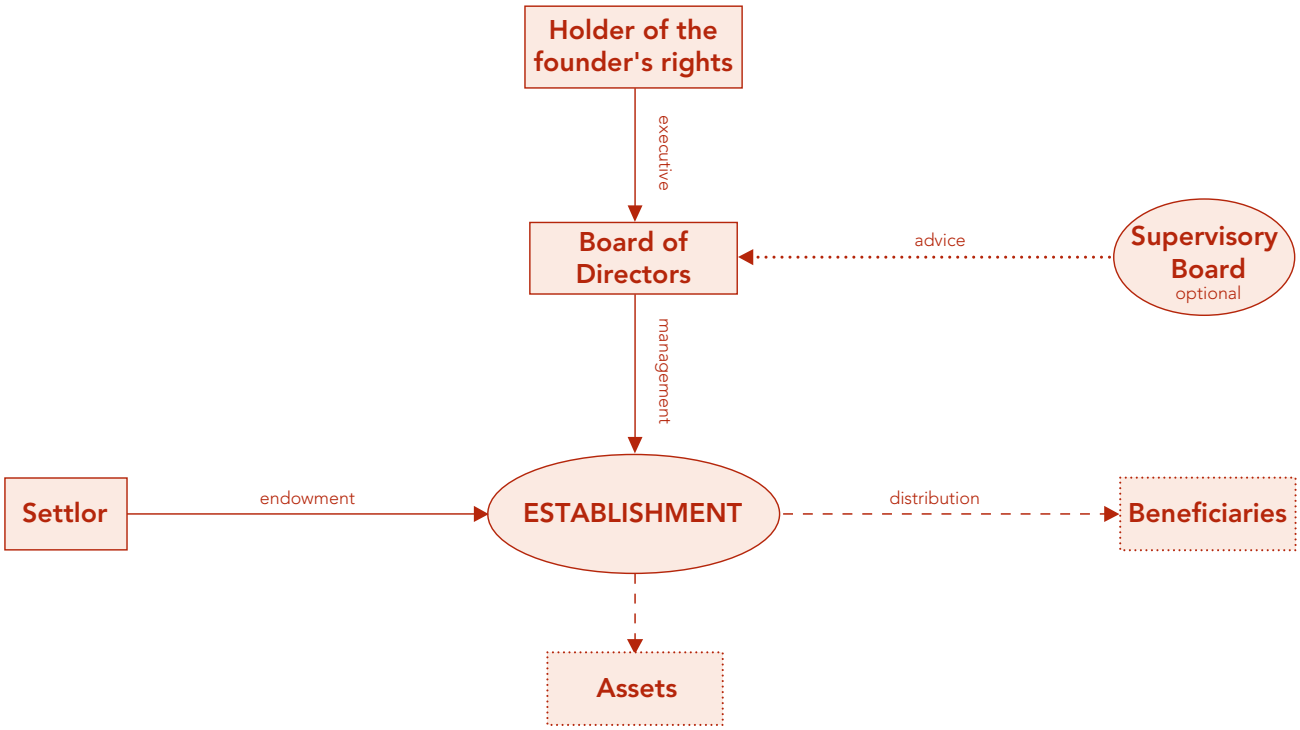


Chart: Foundation types (by foundation purpose).

The Liechtenstein Establishment



The Liechtenstein establishment *(Anstalt)* is an independent legal entity under private law and must not be confused with the public-law institutions of the same name in other countries. The flexibility of the Liechtenstein *Anstalt* allows for a similar organisation as with foundations or corporations.

The minimum capital of an *Anstalt* is CHF 30'000 and is usually not divided into shares. Unlike corporations, an *Anstalt* does not have parties involved but only a so-called *holder of the founder's rights*. Such *holder of the founder's rights* usually forms the highest body of the *Anstalt* and determines the supervisory board and its authority to sign, enacts by-laws, appoints beneficiaries and specifies the scope of their benefits. Thus, the *holder of the founder's rights* has similar power as the shareholders' meeting of a stock corporation. The founding rights can be assigned but not pledged or encumbered.

Unlike e.g. a foundation, the *Anstalt* must be recorded with the public register in order to be legally incorporated. The register entry contains, for example, information about the date of registration, the Anstalt's name, its domicile and purpose. What cannot be seen from it, however, is information about the founder, the *holder of the founder's rights* or the beneficiaries.

The purpose must specify whether an *Anstalt* operates a business run in accordance with commercial principles. If such business is operated, an auditor must be indicated and annual balance sheets and profit and loss accounts must be submitted. If, for example, an *Anstalt* exclusively holds shares or manages assets, it does not constitute a business run in accordance with commercial principles. In such case, an annual statement of assets from which the assets position of the *Anstalt* can be seen will be sufficient.

The highest body is responsible to appoint beneficiaries, the procedure for which is specified in by-laws. The persons and/or institutions defined in such by-laws acquire a certain or definable economic benefit in the assets and/or profit of the *Anstalt*. The by-laws are not submitted to the Office of Land and Public Registration (GBOERA). If no third parties are indicated as the beneficiaries, the legislator assumes that the *holder of the founder's rights* or, in absence of such *holder of the founder's rights*, the founder himself is the beneficiary.

Thanks to its flexibility, the *Anstalt* offers various possible applications that ensure optimum succession planning, asset retention, asset protection, economic efficiency and entrepreneurship.

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