



B. Foundations

- I. The Concepts of Foundations
- II. Swiss Foundations
- III. Liechtenstein Foundations**
- IV. Introduction to Estate Planning via Foundations from a Swiss Perspective

III. Liechtenstein Foundations

1. The new foundation law

- 1926: Enactment of the Liechtenstein foundation law
- 1 April 2009: Entry into force of a totally revised new foundation law
- Recent numbers show that the Liechtenstein foundation sector has shrunked sharply over the last years because of the international tax and location debate (<http://www.stifa.li/zahlen-fakten>)



STIFA ▾ STIFTUNGSGRÜNDUNG ▾ STIFTUNGSMANAGEMENT ▾ STIFTUNGSPLATZ ▾ PHILANTHROPIE ▾ 

Zahlen & Fakten

Per 31.12.2022:

Nicht eingetragene Stiftungen: 7'982
Eingetragene Stiftungen: 1'759

- Davon Neugründungen: 65
- Davon Gemeinnützige Stiftungen: 1'375

Rechtseinheiten insgesamt: 24'061
Quelle: Rechenschaftsbericht der Regierung 2022, S. 429
und S. 432

Per 31.12.2021:

Nicht eingetragene Stiftungen: 8'233
Eingetragene Stiftungen: 1'742

- Davon Neugründungen: 59
- Davon Gemeinnützige Stiftungen: 1'353

Rechtseinheiten insgesamt: 24'328
Quelle: Rechenschaftsbericht der Regierung 2021, S. 389
und S. 392

Per 31.12.2020:

Nicht eingetragene Stiftungen: 8'693
Eingetragene Stiftungen: 1'759

- Davon Neugründungen: 53
- Davon Gemeinnützige Stiftungen: 1'362

Rechtseinheiten insgesamt: 25'173
Quelle: Rechenschaftsbericht der Regierung 2020, S. 143
und S. 147



III. Liechtenstein Foundations

2. Reform goals/overview of new regulations

- Enactment of a «holistic» foundation law
 - Elimination of general reference to trust company law (TrUG)
 - New §§ 1–41 under a new art. 552 PGR
- Strengthening of founder's responsibility
 - Founder itself stipulates *essentialia negotii* in the foundation act
 - Clarifying of founder's rights: Non-transferable (by way of contract or inheritance)
 - Codification of fiduciary foundation establishment in § 4 para. 3 PGR: Founder's rights with the economic founder as the principal (*cf.* § 30 para. 3)



III. Liechtenstein Foundations

2. Reform goals/overview of new regulations

- New regulation of foundation governance
 - External governance: New supervisory authority (STIFA)
 - Internal governance: Codification of controlling rights for beneficiaries
- Assurance of a smooth transition into the new law
 - In principle: «Old law applies to old foundations», with exceptions in art. 1 para. 4 of the transitional provisions (especially with regard to the revised governance)
 - Restructuring of old defective foundations



III. Liechtenstein Foundations

3. The concept of a Liechtenstein foundation

- Classification and definition
 - Definition of a foundation: Assets endowed with legal personality and dedicated to a special purpose in accordance with the founder's will
 - Personified special-purpose assets, without owners or members
 - Institutional nature
 - Managed by foundation organs which execute the founder's will
 - Oriented towards the Swiss CC
 - Decision for a functional private foundation concept already in 1926



III. Liechtenstein Foundations

4. Foundation Purpose

- Principle of founder's freedom
 - Founder's freedom is an essential element of the foundation concept
 - Private foundation model which places private autonomy above the dogmatic limits of the classic foundation concept
- Determining the foundation's purpose:
 - Founder in principle free to define a purpose
 - But sufficient determination necessary: It has to indicate how the foundation's assets are used and how the beneficiaries of the foundation are determined (*cf.* OGH of 17 July 2003)
 - Determination of the foundation's purpose is an *essentialie negotii* and a personal duty of the founder himself (*cf.* § 16 para. 1 no. 4 PGR)



III. Liechtenstein Foundations

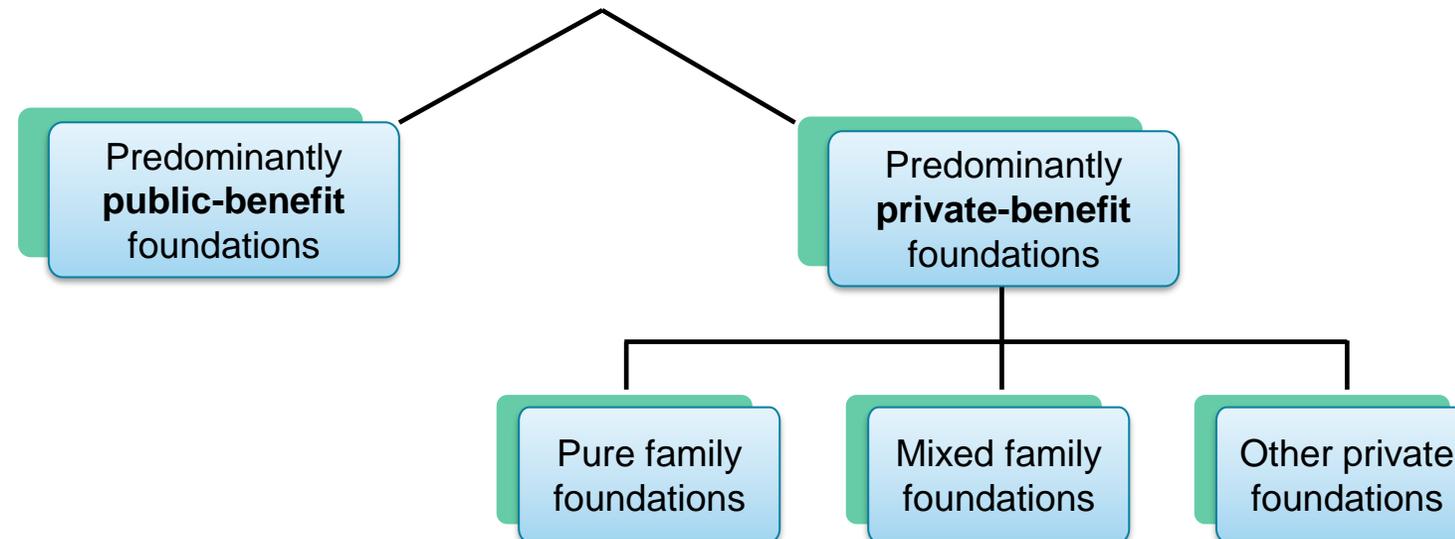
4. Foundation Purpose

- Types of purposes
 - Public-benefit and private-benefit purposes
 - Third-party interests and self-beneficial purposes
 - «Foundation in favour of the founder» possible
 - Unconditional family foundations
 - Establishment and governance differ depending on the type of purpose (charitable or not)
- Types of foundations
 - Pure or mixed family foundations (§ 2 para. 4 no. 1 and 2 PGR)
 - Maintenance foundation permitted, but if maintenance purpose is predominant: No family foundations; effect: No enforcement privilege according to § 36 para. 1 PGR in view of beneficiaries' claims

III. Liechtenstein Foundations

4. Foundation Purpose

- Types of foundations





III. Liechtenstein Foundations

5. Characteristics of the Liechtenstein foundation

- Separation and solidification principle with exceptions (private foundation model)
- Extensive founder's rights (*cf.* § 30 para. 1–3 PGR)
 - Right to revoke the foundation
 - Right to freely change the foundation's purpose
 - Consequences of founder's rights
 - Sham foundation or «piercing the veil»?
 - Can influence the time of «transfer of assets» within family, inheritance or insolvency law
 - Seizure of founder's rights?
 - Effects on international tax recognition



III. Liechtenstein Foundations

5. Characteristics of the Liechtenstein foundation

- Fiduciary establishment
 - § 4 para. 3 PGR: «If the foundation is established by an indirect representative, the principal (grantor of power) shall be deemed to be the founder. If the latter also acts as an indirect representative for a third party, the latter's principal (grantor of power) shall be deemed to be the founder. In any case, the indirect representative is obliged to disclose the person of the founder to the foundation board.»
 - Fiduciary establishment and founder's rights (§ 30 para. 3 PGR): «If the rights under para. 1 are exercised by an indirect representative (§ 4 para. 3 PGR), the legal effects shall accrue directly to the founder.»



III. Liechtenstein Foundations

6. Foundation governance

- Foundation board: Not fewer than two members
- Liability: Codification of the Business Judgement Rule (art. 182 para. 2 PGR)
- Auditor
- Rights of beneficiaries
 - Different classes of beneficiaries
 - Enforceable claims only for actual beneficiaries according to § 6 PGR
 - Control rights according to § 9 *et seq.* PGR
 - Application rights as foundation participants according to § 3 PGR (*cf.* §§ 29 para. 4, 33 para. 3, 34 para. 2, 35 para. 1 PGR)



III. Liechtenstein Foundations

6. Foundation governance

- Charitable foundations
 - External governance: STIFA as supervisory authority (§ 29 PGR)
 - Internal governance: mandatory auditor (§ 27 PGR)
- Private foundations
 - In principle no external supervisory authority (exception: Voluntary subject to supervision, *cf.* § 29 para. 1 pp. 2 PGR)
 - Internal governance by beneficiary rights according to § 9 *et seq.* PGR
 - Exceptions to § 9 (§§ 10–12 PGR)
 - No control rights of the beneficiaries in case of a founder's right of revocation (§ 10 PGR) or a supervised foundation (§ 12 PGR)
 - Limited control rights of the beneficiaries in case of implantation of a private control organ (§ 11 PGR)



III. Liechtenstein Foundations

7. Establishment of a «protected cell company» (PCC)

- Art. 243 *et seq.* PGR came into force on 1 January 2015
- Legal person consisting of a core and one or more segments (cells)
- Segments:
 - Allocation of specific assets (art. 243 para 2 PGR)
 - Submission under a specific field of activity (art. 243 para. 3 PGR)
 - No legal person itself
 - Limitation of liability towards third-parties (art. 243 *et seq.* PGR)



III. Liechtenstein Foundations

7. Establishment of a «protected cell company» (PCC)

- Segmented association (protected cell company, PCC)
 - Conditions (art. 243 para. 1 PGR)
 - Mandatory or voluntary entry into commercial register
 - Pursuit of one of the purposes prescribed by law (no. 1–4)
 - Conversion (also possible for foundations), if conditions according to art. 243 para. 1 PGR are fulfilled and provided in by-laws (art. 243a para. 1 PGR)
 - Importance in particular with family assets