300 YEARS YOUNG

On the 300th anniversary of Liechtenstein's formation, **Alex Baker** and **Alicia Dimitrova** give their take on asset protection in the principality

KEY POINTS

WHAT IS THE ISSUE?
Asset protection is a multi-layered discipline that requires the analysis of a number of different provisions that often function together.

WHAT DOES IT MEAN FOR ME?
Since its establishment 300 years ago, Liechtenstein has developed a wide trust structure and foundation offering for asset-protection purposes, supported by underlying laws and regulations.

WHAT CAN I TAKE AWAY?
An understanding of the legal framework supporting asset-protection structures in Liechtenstein.

IN 1719, the fiefdoms of Schellenberg and Vaduz were purchased by Prince Johann Adam Andreas of Liechtenstein and united to form the Principality of Liechtenstein, now a part of the European Economic Area. Today, the principality's supportive local legislation and established private-client sector make it a popular jurisdiction among global high-net-worth individuals (HNWIs) in which to create a trust, foundation or other legacy structure.

Some of the principal tools, methodologies and supporting legislation available to Liechtenstein private-client practitioners are outlined in this article.

CHECKS AND BALANCES

Global HNWIs often look for stable countries in which to set up their chosen legacy structure as a way to protect their assets, as part of an overarching succession plan. Successful structures geared toward asset protection will safeguard the beneficiaries' interests in the event of adverse court rulings, business risks, political upheaval or state expropriation in a client's home jurisdiction.

When a HNWI parts with dominion over the assets that they wish to structure into an irrevocable discretionary structure, it is of paramount importance that a professional service provider be tasked with looking after both the integrity of the structure and the protection of the underlying assets. It is highly advisable for HNWIs to ensure that checks and balances are built into the chosen structure, such as creating the role of protector with the power to remove and appoint trustees, or members of a foundation's council.

CODE OF CONDUCT

Article 18 of the Liechtenstein Institute of Professional Trustees and Fiduciaries' (LIPTF's) *Code of Conduct* mandates formal procedures for changing professional service providers in certain circumstances. This process allows, for example, settlors or founders (or indeed beneficiaries) wishing to terminate the business relationship with their structure's professional service provider to appeal directly to the executive board of the LIPTF 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 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 LIPTF will make its formal recommendation to the parties.

The possibility of facing disciplinary action from the LIPTF for failing to comply with its recommendations, potentially even culminating in the revocation of the trustee's licence, is in most instances sufficient to

secure the service provider's adherence to such recommendation.

ARBITRATION

Arbitration is a relatively simple process that offers an avenue for parties wishing to forego the often stressful and lengthy court process by tackling disputes out of court (thereby also reducing overall costs to their structure). As such, one of the 'boilerplate' clauses fiduciaries will often insert in trust deeds and foundation charters is an arbitration clause, which is supported by Liechtenstein law. Section 634(2) of the Liechtenstein *Code of Civil Procedure (Zivilprozessordnung)* explicitly declares arbitration clauses in articles of associations, statutes and trust deeds as being valid, thus offering another valuable safety net for practitioners and their clients.

For foreign trusts with a Liechtenstein trustee, the Liechtenstein *Persons and Companies Act (Personen- und Gesellschaftsrecht*) mandates that disputes between settlor, trustee and/or beneficiaries be referred to an arbitration tribunal. To meet prevailing international standards, the *Rules of Arbitration of the Liechtenstein Chamber of Commerce and Industry* reflect the *Model Law on International Commercial Arbitration* (1985) issued by the UN Commission on International Trade Law. Good practice also demands that constitutional documents of structures governed by Liechtenstein law include an arbitration clause.

CONFLICT OF LAWS

Whereas bankable assets are more easily safeguarded due to their mobile nature, immovable assets such as real estate may be at risk where the law of third-party countries might be applicable under local conflict-of-laws provisions. Nevertheless, Liechtenstein's *Law of 19 Sep 1996 (Private International Law) (Gesetz über das International Privatrecht)* finds choice-of-jurisdiction clauses to be conclusive and, in accordance with the Hague *Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition*, Liechtenstein courts will apply the trust's chosen law when ruling on preliminary issues relating to trusts (such as the validity and interpretation of a trust instrument).

Practitioners must, however, remain alert to the possibility that foreign legislation may conflict with a structure's applicable law in one of two ways:

- First, certain countries may not recognise the structure from a legal standpoint if its ring-fencing of private assets is deemed politically sensitive, or even simply unaccounted for in local legislation (even if done for legitimate purposes, such as asset protection as part of a wider succession plan).
- Second, a court in the country where the structure's assets are located may be petitioned to assert jurisdiction over a dispute and/or said assets, with the ensuing risk of an unfavourable ruling adversely impacting said assets.

Geographic diversification of wealth therefore plays an important role in protecting assets in international legacy structures.

'The tide is turning away from the historic offshore jurisdictions towards onshore jurisdictions such as Liechtenstein'

COURT PROCEEDINGS

Liechtenstein's *Code of Civil Procedure* and *Act on the Protection of Rights (Rechtssicherungsordnung)* 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 and succession laws.

FOREIGN JUDGMENTS

Only judgments by Austrian and Swiss courts are automatically recognised in Liechtenstein, meaning that rulings by any other foreign court must be litigated before the Liechtenstein courts. Moreover, Liechtenstein courts routinely demand pre-action deposits from foreign-resident claimants to ensure that any cost order made in favour of the defendant(s) 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 Liechtenstein structure is severely restricted. Creditors have one year from the date of a settlement to bring a claim before a Liechtenstein court, unless they are able to prove that the settlor's or 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 a maximum of five years preceding their claim.

FOREIGN INHERITANCE LAWS

Foreign forced-heirship laws are highly unlikely to be of any avail to heirs or estates of a deceased settlor or founder where the latter was not an ultimate beneficiary of, and had not reserved wide-ranging powers over, the structure in question (e.g. revocation or extensive amendment rights). Only claims regarding assets settled into the structure in the last two years of the settlor's or founder's life have a (remote) chance of being considered, and heirs or estates will be unsuccessful in challenging any settlements dating back further than this.

CONCLUSION

To create a watertight international wealth-management or legacy structure capable of protecting cross-jurisdictional holdings, professional advisors must make conscious decisions when choosing a structure's legal form and country of incorporation, tailoring it to the location-specific idiosyncrasies of its assets and involved parties. Legitimate asset protection must ultimately be achieved by combining various measures to create a robust succession plan.

In light of increased scrutiny from international bodies such as the OECD, the tide is turning away from the historic offshore jurisdictions towards onshore jurisdictions such as Liechtenstein. As the principality celebrates its 300th anniversary, it looks set to continue cultivating its ever-growing framework of trust and foundation-supportive legislation, leaving us only to say: 'Many happy returns!'

ALEX BAKER TEP AND **ALICIA DIMITROVA** ARE SENIOR ADVISORS AT GRIFFIN TRUST