



GRIFFIN
TRUST AG

Guidance Notes

The Liechtenstein Establishment



1. Introduction

The Liechtenstein Establishment (“Anstalt” in German) is a form of corporation unique to Liechtenstein and offers an extremely flexible planning scope for both private and commercial purposes.

2. What is an Establishment

As defined by the law, the Establishment is a legally distinct and organised enterprise with commercial or other objects which is registered in the public register.

The Establishment has its own legal personality and must have an establishment fund which represents its capital. The minimum fund or capital is CHF/EUR/USD 30,000 which may consist of cash or other personal or real property. The liability of an Establishment is limited to its fund.

An Establishment can be formed by founders being individuals or legal persons including bodies corporate not entered in the public register. The founder may be resident anywhere in the world. In practice, however, the function of a founder is usually performed by a Liechtenstein fiduciary on behalf of the provider of assets. Only one founder is required.

The constitution of an Establishment must at least contain provisions as to:

- the name of the Establishment designating it as an Establishment (and/or Anstalt);
- its registered office;
- the objects of the Establishment;
- a valuation of the Establishment’s fund (if it consists of assets other than cash) and how the assets are to be transferred to the Establishment;
- the organs of the establishment and their respective powers;
- accounting rules and the use of the Establishment’s profits;
- notices.

Upon application for registration of the Establishment, the constitution together with the proof of payment of the minimum fund (if cash) or an expert’s valuation of the fund (if other than cash) and a list of the board members has to be filed at the public registry.

The board of directors of the Establishment (the “Establishment Board”) consists of a minimum of one person and at least one member of the Establishment Board must either be a Liechtenstein trustee or a person with similar status. The names of the Establishment Board are recorded in the Commercial Registry (but not those of the founder or beneficiaries).



3. Founder's rights or no founder's rights

From the organisational point of view two types of establishment are available.

a. The Establishment Organized Similar to a Stock Corporation

Commonly the supreme organ of the Establishment is the holder of the founder's rights. His rights correspond to the rights of the members in general meetings of a company limited by shares. In addition the holder of the founder's rights often retains the power to appoint beneficiaries of the Establishment. The founder's rights do not, however, necessarily represent any capital contribution to the Establishment's fund.

Founder's rights may be assigned and are inheritable but they must not be pledged or otherwise encumbered. They may be treated as securities, if the constitution of the Establishment expressly so provides.

The supreme body of the Establishment is the assembly of the Founder's Rights holders.

This type of Establishment is often used as either a commercially active entity or as a holding vehicle. It does, however, lack the benefits of asset protection and succession planning.

b. The Establishment Organized Similar to a Foundation

Establishments are commonly used for succession planning purposes, whereby the founder gives up his founder's rights and requires the Establishment Board to manage the assets for the benefit of beneficiaries and/or to carry out purposes. The constitution of an Establishment appoints Establishment Board to be the supreme organ of the company. In this case the Establishment closely resembles a Foundation but without the same restrictions as to carrying on commercial activities.

The client gives the Establishment Board certain guidelines, as he would with a Foundation, with respect to how management should carry out its functions but the Establishment Board is the sole body of the Establishment, unless an audit authority has also been appointed.

The beneficiaries of an Establishment are usually nominated in the by-laws of the Establishment but, if no beneficiaries are appointed, the holder of the founder's rights is deemed to be the beneficial owner.



5. Fixed Interest vs. Discretionary Interest

It is possible to structure an Establishment with “fixed interests” or as a “discretionary” Establishment. A fixed interest Establishment is generally one in which one or more beneficiaries have a fixed entitlement to an ascertainable part of the income or principal of the Establishment. More common in the context of long term preservation of capital and income, however, is the use of a discretionary Establishment, where the beneficiaries have no absolute current right to the assets of the trust, with any distribution to them being made only at the discretion of the Establishment Board – this is also a key factor in any asset protection structure. Where the Establishment Board is given discretion regarding, say, the allocation of assets among beneficiaries or the timing of distributions, the Establishment articles can be accompanied by bylaws which set out the founder’s intentions regarding the future disposition of the assets. Ideally, this discretion should facilitate the founder’s/beneficiary’s asset protection objectives but it does require an Establishment Board in which the founder has confidence.

7. Establishment Bylaws

In the context of discretionary Establishments, Bylaws to a Establishment are similar to what the detailed administrative and dispositive provisions are to a trust. They generally provide the Establishment Board with the founder’s wishes, guidance and recommendations as to the exercise of the Establishment Board’s dispositive and administrative powers and provides the Establishment Board with a reference to the founder’s intentions in setting up the Establishment. This is a document which is not binding on the Establishment Board and is not lodged with the commercial register but should merely assist the Establishment Board in determining the founder’s wishes in respect of distributions during and after his lifetime, provisions as to how the Establishment Board should proceed in the event of the founder’s and any beneficiary’s incapacity as well as the Establishment’s overall investment policy.

6. Protector

The founder may appoint a Control Body (a “Protector”) which supervises the Establishment Board. The Protector can be a trusted person of the founder to give the founder comfort and make it easier for him to give away control over the assets to a Establishment and its board (in case no founder’s rights are retained). The founder’s representatives can be appointed as Protector, for instance lawyers, bankers or a trusted friend. It is also not necessary to record the name of the Protector in the Commercial Registry.

Appointing a Protector (or a protector committee) to the Establishment provides for additional checks and balances between the establishment board, the founder and the beneficiaries in that certain powers (positive or negative) may be exercised by the Protector. A Protector is generally considered to be bound by the same fiduciary duties as the Establishment Board, depending on the powers given to him. The rights and powers of a Protector may vary in each circumstance but can contain *e.g.* the following powers:

- right to information regarding the assets of the Establishment (*e.g.* insight into the accounts)
- direct power or consent to appoint and remove of Establishment Board
- direct power or consent to add and remove beneficiaries
- and others as applicable



4. *For what purposes can an Establishment be used?*

The Establishment can be used for all conceivable purposes as long as they are lawful and not contrary to public policy. Unlike a Foundation, the Establishment itself may undertake business activities. Particular purposes for private clients include the following:

- ***Succession planning***
 - Liechtenstein law allows for complete freedom in choosing the beneficiaries and the conditions on which they are to receive benefits. This allows the structuring of benefits to subsequent generations in a responsible and sustainable manner.
 - Ownership of assets in an Establishment protects those assets from fragmentation on the death of the wealth owner. This is particularly important in relation to privately owned businesses.
- ***Asset Protection***
 - An Establishment can legally guard against risks arising from claims often as a consequence of the death of the settlor, insolvency, divorce, family members looking for part of the pie or excluded beneficiaries arguing that they ought to benefit, amongst others. Asset protection looks to keep assets beyond reach of claimants who do not have a legitimate claim and ensures security of receipt for beneficiaries of genuine succession planning structures (see Griffin Trust Guidance Note on Asset Protection).
- ***Acting as a Private Trust Establishment (PTE)***
 - It is not uncommon for wealthy families to set up their own private entity to act as trustee of their family trusts. Traditionally, this is achieved by incorporating a Private Trust Company (PTC) which in turn is held by a non-charitable purpose trust (in order to perpetuate the shareholding).
 - A PTE, however, offers a more streamlined approach to the structuring of a Private Trust structure as it effectively replaces the need to set up a PTC as well as the non-charitable purpose trust holding the shares in the PTC.
 - Family members can serve on the board of the PTE or act as protector as means of retaining a minimum level of control without comprising the robustness of the structure from an asset protection perspective.
- ***Acting as a holding vehicle for a Private Trust Company***
 - Rather than using non-charitable purpose trusts to hold the shares in a PTC (as mentioned above), an Establishment may be set-up for the purpose of holding the shares in the PTC.
 - The articles and by-laws of the Establishment can be drafted to include said purpose, but also to benefit beneficiaries, on the happening of certain events.