

Asset protection through Liechtenstein foundations

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Liechtenstein law offers private individuals and companies a wide range of options for asset protection. The Liechtenstein family foundation is particularly well suited to reduce liability risks, protect family assets from outside access and avoid financial losses in the event of claims to compulsory portions and marital compensation.

TRANSFER OF ASSETS TO A LIECHTENSTEIN FAMILY FOUNDATION

The desired asset protection is usually achieved by the founder transferring his assets to a Liechtenstein family foundation. The transfer can be made either as a gift or in return for payment, for example with deferral of the purchase price via a seller's loan. The latter option is particularly attractive if the founder wishes to benefit from a tax-free inflow of funds in the form of repayment by the foundation. By transferring the assets to the foundation, the founder reduces his liability base in his home country. The aim is to protect the assets from being accessed too quickly by alleged creditors. Liechtenstein law also offers a higher level of protection against creditors in the event of inheritance or liability. Claims to a compulsory portion are excluded after a short period of time (1.). The gift can only be contested within one year (2.). In addition, enforcing judgments obtained in Germany in Liechtenstein requires a great deal of effort on the part of the creditor (3.). With the right structure, protection against enforcement can also be extended to the beneficiaries of the foundation (4.).

1. SHORT DEADLINE FOR COMPULSORY PORTION SUPPLEMENT CLAIM

If the deceased has donated assets to a foundation, the beneficiary of the compulsory portion may demand the amount by which the compulsory portion would have increased if the donated assets had remained in the estate. Beneficiaries of the compulsory portion include descendants (e.g. children, grandchildren), but also the spouse and parents. The supplementary claim is primarily directed against the heir. If the Liechtenstein foundation is appointed as heir, the asset protection applies primarily in the event of enforcement (see 3. below). If, on the other hand, a

descendant, spouse or parent is appointed as heir, they may refuse the supplement to the extent that they retain their own compulsory portion (including the supplement). In this case, the claim for the remaining amount is then directed against the foundation.

However, the supplementary claim diminishes annually. Only within the first year before the inheritance, the donation is taken into account in full. Thereafter, it is reduced by 10% per year. After ten years, it is no longer taken into account. Liechtenstein law, on the other hand, only allows the foundation to be held liable for gifts made up to two years before the testator's death. The founder's gift to a Liechtenstein foundation is therefore no longer added to the estate after two years, rather than after ten years. Claims for supplements are then excluded.

2. SHORT PERIOD FOR CONTESTING GIFTS

German law allows creditors or insolvency administrators to contest gifts made by the debtor in the last four years. This enables them to bring asset transfers that have already taken place back into liability. Foundations that have received additional or subsequent donations may thus become the target of claims for repayment by creditors or insolvency administrators. In the worst case, the foundation must return the donations, which then fall back into the estate. In this respect, too, Liechtenstein law offers significantly improved asset protection compared to the situation under German law, with a contestation period of only one year. In addition, there is a high level of protection for charitable foundations. This is because dispositions made by the founder for charitable purposes are exempt from contestation to an appropriate extent.

3. OBSTACLES TO ENFORCING CLAIMS

Even if claims against the Liechtenstein foundation are ultimately upheld by a German court, creditors can only enforce them in Liechtenstein with considerable effort. A foreign judgment is only enforceable in Liechtenstein if this is provided for in international agreements. The Principality of Liechtenstein decided against joining the Lugano Convention, which regulates the international jurisdiction and enforceability of court decisions of other European states. Liechtenstein has only concluded bilateral enforcement agreements with its two neighbouring states, Austria and Switzerland. However, direct enforcement of court decisions from Germany or other EU countries is not possible in Liechtenstein.

Creditors with a German judgment are therefore referred to the regular Liechtenstein legal system, including the local courts of appeal. A potential creditor could, on the basis of a German judgment, seek a so-called payment order procedure, which, in the event of inaction on the part of the Liechtenstein debtor, could lead to a Liechtenstein enforcement order being obtained more quickly. However, in line with the German order for payment procedure, even a brief statement of rejection by the debtor in the Liechtenstein order for payment procedure means that the procedure automatically becomes a regular Liechtenstein legal action for the creditor. The legal action is then lengthy and involves a considerable cost risk for the claimant in terms of court fees and opposing counsel's fees. In addition, creditors need their own Liechtenstein lawyer in addition to their existing German advisors. The debtor also has the option of appealing against the decisions and thus bringing the enforcement to a halt in the meantime. In many cases, it is likely to be virtually impossible to obtain a judgment or other enforcement order in Liechtenstein within the short one-year limitation period. The same applies if the creditor first attempts to have a German judgment recognised in Austria or Switzerland in order to then be able to enforce it in Liechtenstein. Here, too, complex legalisation procedures must be followed. These de facto obstacles to enforcement may become relevant, for example, if claims for equalisation of gains arise in the course of divorce proceedings. Under German law, gifts made no more than ten years before the end of the community of accrued gains

do not reduce the equalisation claim. Unlike in inheritance law, gifts are not continuously reduced when calculating the equalisation of gains. This can lead to substantial equalisation claims even up to 10 years after the gift was made. It is precisely here that the asset protection described above through enforcement protection can be decisive.

4. PROTECTION FROM ENFORCEMENT ALSO FOR BENEFICIARIES OF THE FOUNDATION

Particularly interesting: With a Liechtenstein family foundation, the founder can also extend enforcement protection to the beneficiaries. This is because Liechtenstein foundation law allows the founder to stipulate in the foundation's statutes that even if the beneficiaries would normally be entitled to a fixed distribution claim against the foundation, their creditors are prohibited from enforcing their claims. Even if it has not yet been clarified in detail whether foreign enforcement provisions are also restricted by this, this structuring option at least strengthens the protection against enforcement for beneficiaries in Liechtenstein itself. Beneficiaries can obtain further protection by structuring the foundation as a 'discretionary foundation'. In this case, beneficiaries are not granted a fixed annual or monthly distribution amount in advance; instead, the timing and amount of the distributions are left to the discretion of the foundation board or another body. The beneficiaries therefore have no permanent claim that could be enforced. Instead, a discretionary beneficiary is only entitled to a distribution within the framework of the guidelines laid down by the founder if the beneficiary applies for a specific distribution and the foundation board has approved it. If the beneficiary fears enforcement by creditors, they can therefore protect their assets by temporarily refraining from applying for distributions.

ASSET PROTECTION AND SUCCESSION PLANNING IN LIECHTENSTEIN

Even this brief overview shows that Liechtenstein is and remains an attractive location for asset protection. At the same time, Liechtenstein foundation law enables

flexible and autonomous succession planning like hardly any other legal system. It should also not be underestimated that the country has stood for political stability for decades. Due to its non-membership of the EU, the location has also retained its independence from European tax and fiscal policy.