

## Liechtenstein in two Economic Areas

On the first of May 1995 the Principality of Liechtenstein joined the European Economic Area (EEA) as the last of the 18 states to join the economic union which ties the EFTA states into the unified market of the European Union. At the same time however Liechtenstein is retaining its close relations to the non-EU-Country, Switzerland which is based upon a Customs Union, a Monetary Union as well as an agreement concerning post and telecommunications. This new direction in Liechtenstein's foreign politics has no effect upon the financial services sector because the important conditions for this sector are retained. Liechtenstein therefore continues to offer investors interesting investment possibilities.

The treaty concerning the European Economic Area entered into force on January 1st, 1994 with a one year's delay after the Swiss «EEA-No» on 6th December 1992 necessitated further negotiations and modifications.

With the EEA-Treaty a single European market was created in which 380 million persons live and in which goods, persons, services and capital can circulate freely. In order to permit this, the EEA-states agreed on a number of common principles. The most important are the prohibition concerning the discrimination of persons, services, goods and capital based upon their nationality or national origins as well as a European competition law. Moreover, the treaty creates a closer co-operation in areas such as research and development, education, social insurance, ecology and con-

sumer protection. On the other hand, agriculture and taxation are not the subject matter of the Treaty.

### Advantageous Geo-political Factors Remain Intact

By reason of its membership in the EEA, Liechtenstein will assume a great portion of the so called

«Acquis communautaire», that is established European law. However, none of the advantages of Liechtenstein as a financial services center are effected by the so called «Acquis». In particular the EEA does not call for

- administrative co-operation in taxation matters
- harmonisation of the tax systems or of marginal personal or corporate rates with those in effect in other European countries
- changes in the tax privileges of offshore companies
- changes in the bank secrecy laws
- abrogation of the absolute political neutrality of Liechtenstein

Most important is that amendments to the EEA-Treaty may only

### *Liechtenstein's Dance at Two Weddings*

*An old proverb common in Liechtenstein says that one cannot dance at two weddings simultaneously. The most recent European politics of the country seem to question the ancient adage. Liechtenstein is, since January 1, 1924 part of a customs and economic union with Switzerland, but on the other hand, the last of the German monarchies is since May 1, 1995, a member of the European Economic Area (EEA).*

*This anomaly, namely membership in two separate economic areas became necessary after the Swiss citizens rejected the EEA in December 1992 and the Liechtensteiners voted for the EEA-Treaty with a significant majority a week thereafter. Thus, tedious negotiations with Switzerland and the EEA partners were necessary in order to accommodate the tiny Principality in two areas, thereby allowing the long standing close partnership with Switzerland to continue and at the same time permitting the country to benefit from the European market.*

## The establishment, the foundation and the trust enterprise which are important for foreign investors are not effected by the adhesion to the EEA.

take place with the agreement of all the member states.

Thus a future modification of the treaty concerning tax privileges would also, for example require the consent of Luxembourg, one of the founding EEC states, the economy whereof is more dependent upon the financial services sector than is the case of Liechtenstein.

### Liberal Company Law Remains

Liechtenstein has a very liberal Persons and Companies Law which offers a wide choice of corporate forms. This wide range of corporate forms not only meets the needs of the Liechtenstein economy, but also those of foreign investors who incorporate foundations and companies for the purpose of investing.

The EEA-Treaty requires its member states to harmonise certain areas of company law. However only the joint-stock company, the company with limited liability (having no shares, but having members) as well as the partnership limited liability company are effected by the relevant EC directives. The provisions which must be incorporated into national law, effect for example accounting, financial statements, a prohibition concerning the accumulation of reserves as well as the prohibition concerning restrictions on the transfer of stock. The said

provisions protect creditors and shareholders. It is important to know in this regard that there is no prescription requiring the disclosure of the owner of the company.

Moreover, the corporate forms which are very important for foreign investors, namely the establishment, the foundation and the trust enterprise as well as the trust, are not subject to the directives.

### Bank Laws are Already to a Great Extent EEA Compatible

On January 1st, 1993 a modern bank law entered into force in which the relevant european di-

rectives were to a great extent incorporated. Liechtenstein has until January 1st, 1997 to incorporate the remaining provisions contained in the EC directives into its national laws.

At the core of the new law is more rigorous bank supervision. Bank secrecy is understood to be the confidentiality of the client's affairs which the bank is to protect. Not only the organs of the bank and the auditors are bound by bank secrecy, but also such Liechtenstein government agencies as are responsible for supervising the bank.

### **The Incorporation of European Law in Liechtenstein**

*In the EEA-Treaty the EFTA-states, namely Iceland, Liechtenstein and Norway committed themselves to incorporating such provisions of the so called «Acquis communautaire» in their national law as are necessary for the proper functioning of the EEA. The basis of the European law are orders, directives, decisions and recommendations of the European Council as well as jurisprudence of the European Court of Justice.*

- *Orders have immediate effect in each member state and take priority over the national laws.*
- *Directives are binding with respect to the object which they are to achieve. However they leave the member state the possibility to choose the form and the means of incorporating the same into their laws.*
- *Decisions of the Court of Justice are binding for the parties to the proceedings. It is however to be noted that the European Court of Justice tends to follow its own earlier decisions.*
- *Recommendations are not binding.*

*In the area of banks and financial services there exist practically only directives which give the member states a certain room to manoeuvre when incorporating the same into their laws. Thus, in this regard there is no uniform European law, but rather the national laws are coordinated.*

## In the EEA professional and bank secrecy as well as tax secrecy and the tax privileges for offshore companies will remain.

### **Who is in the EEA?**

*The EEA consists of 18 member states being on the one hand the member states of the European Union and on the other hand, the three EFTA states, namely Iceland, Liechtenstein and Norway.*

*The supreme political forum is the Council of Ministers in which each member state is represented with one vote. This system gives diminutive states such as Liechtenstein and Luxembourg political decision making authority far greater in proportion to their population as compared to the larger countries. Thus, Liechtenstein can strengthen its position in Europe and so secure its economic future. A mere 20'000 Liechtensteiners have veto rights which can have a significant impact upon the economic policy formulated for a 380 Million person single market.*

### **Bank Secrecy Remains Intact**

In the EEA with respect to the supervision of banks, the «home country control» principle rules. This means that the national supervisory authority where the bank has its headquarters is to supervise the bank in its own country as well as the branches in other countries. Information which is gathered for the purpose of supervising the banks may only be used for this purpose and may not be passed along to any other agency or authority. Thus bank secrecy remains intact in Liechtenstein.

### **Money Laundering and Insider Trading**

Within the framework of the harmonisation of EEA laws, Liechtenstein will be passing criminal law provisions concerning money laundering and insider trading. The preparatory work has gone so far that in the near future the proposed laws will be presented to parliament.

Moreover, a law is now being prepared concerning the professional duty of care concerning the receipt of moneys which effects not only banks, but also finance companies, investment trusts, attorneys, fiduciaries and trust companies.

However the laws only codify what has for many years been the practice in Liechtenstein and will bring no material changes to the bank or professional secrecy laws. However, because the long standing code of conduct is now being incorporated into law, the reputation of Liechtenstein as a financial services sector will be strengthened.

### **More Competition in the Financial Services Sector**

In the EEA there are no Germans, Liechtensteinians or Italians, rather only Europeans. Thus there are no English solicitors, French avocats or German Rechtsanwälte, rather only European lawyers. The right to

the free circulation of persons and services and the right to establish oneself as a professional in any European country allows each European citizen the right to take up residence in any country and to work and practice a profession according to the conditions applicable to the nationals of the

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## Liechtenstein will continue as an attractive offshore center for foreign investors.

said country. Moreover, crossborder services may be freely provided.

Liechtenstein has by reason of its diminutive proportions and the rather high percentage of foreigners resident in the country, received special consideration from the EEA council which will allow it to prevent massive immigration in the future.

Notwithstanding the same, within the financial services sector one must expect fierce competition in the next years. Foreign banks may establish branches in Liechtenstein and foreign lawyers and fiduciaries can establish themselves in Liech-

tenstein to the extent that they comply with national provisions concerning the exercise of their profession.

### The Offshore-Center Liechtenstein has a Future

The opening of the markets will force resident banks, attorneys and fiduciaries to improve the quality and efficiency of their services in the future in order to withstand increased competition. For the foreign investor however, Liechtenstein will become more attractive.

The future of Liechtenstein as an offshore-center will remain unchallenged in the EEA.

## F.L.BULLETIN

*The Liechtenstein government expects an additional impulse from the adhesion to the EEA which will boost the financial services sector. This sector is becoming increasingly more important for the economy as well as for the state treasury. As the government described in a brochure, circulated prior to the EEA referendum, the government anticipates the opening of interesting and lucrative possibilities in the area of investment trusts, private insurance and telecommunication services. Enabling legislation is now being prepared.*

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*The total balance sum of all the Liechtenstein banks rose in 1994 by 6,6 percent to 23,5 billion Swiss francs. The net profit rose to 193,6 million Swiss francs, being a new record (181,3 million Swiss francs in the previous year). As at the end of the year, the five banks employed 1296 persons in Liechtenstein. This figure corresponds to 6 percent of all persons employed in Liechtenstein.*

\*

*Liechtenstein has entered into a Double-Tax Treaty with Switzerland in order to avoid the double taxation of commuters and retired persons. Accordingly, the income of Liechtenstein commuters as well as pensions, annuities and lump sum annuities will only be taxed in the country of residence of the recipient. The treaty was necessary after Switzerland passed a new federal law concerning direct federal taxes on January 1, 1995.*

### Summary of Services

- International Tax Planning;
- Estate Planning, Portfolio Counselling and Management; Structuring and Administration of Asset-Protection Trusts and Vehicles;
- Incorporation, Domiciling and Administration of Liechtenstein and Foreign Companies.
- Counselling in Business, Commercial, Fiscal and Financial Matters. International Business Transactions
- Intellectual Property, Licensing and Franchising;
- Bookkeeping and Auditing
- Civil, Criminal and Administrative Litigation;
- Legal Opinions.

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