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The Trust in Liechtenstein Law

The Historical Development of the Trust

A trust arises out of the need to interpose a reliable person as trustee in order to effect certain legal transactions.

According to ancient Germanic legal custom a so called 'Salmann' was resorted to for those transactions in which the desired legal effect could not be achieved directly.

The transfer of real estate in the absence of the transferee could only be effected by means of the interposition of a 'Salmann' on behalf of the transferee.

The 'Salmann' effected the distribution of the estate of a deceased to designated heirs.

Inasmuch as only citizens could acquire property in most cities, property was transferred to a citizen who then acted as 'Salmann' on behalf of a non-citizen.

In Anglo-American law a trustee was used when the owner of property was unable to, or became incapable of carrying out the duties arising by virtue of his tenure. He would transfer the property to another who was to hold and administer the same for other designated persons. A classical case serves to illustrate this point. Crusaders transferred their feudal tenure to one who held the same for the benefit of the crusader's wife and children until his return from the crusades.

Feudal law did not permit a testamentary disposition over land so that in the event of the death of the owner, considerable rights reverted to the feudal lord. In order to defeat the claims of the feudal lord, the owner transferred his land to several persons, jointly and severally (*cestuis que* use). The same was necessary in order to prevent the reversionary rights from vesting in the feudal lord in the event that one of the trustees should die.

In order to avoid the effects of the Statute of Uses, which originates from 1535 and which was intended to protect the rights of the feudal lord, a second class of persons was accorded rights as against the cestuis que use, namely the cestuis que trust or beneficiaries. The Statute of Uses had no application to this second class of persons.

In the centuries that followed, the English trust proved to have a wide ranging application inasmuch as the courts of equity continually turned to this legal construction in order to mitigate the most rigid ramifications of common law.

It was only in the first half of the 19th century that the English legislator consolidated the plethora of case law and precedents into the Trustee Act of 1850. Many of the American states have also passed special laws codifying various forms of trusts, such as for example the states of Massachusetts and Oklahoma, which have adopted the business trust in their legal systems.

Notwithstanding the objective need to codify the trust law on the continent, only the Principality of Liechtenstein has, at least in part, undertaken such a codification. Continental lawyers have repeatedly attempted to draw analogies between the trust and other legal constructions such as the fiduciary, the gift, the principal and agency relationship, entailment as well as foundations. The trust is not identical to any of these constructions. The fiduciary, the gift and the principal and agency relationship arise purely by virtue of a contract between two contracting parties. Entailments are restricted in their application to succession law. The foundation is a juridical person and can thus be distinguished from the trust.

In contrast to the Anglo-American trust, Liechtenstein law adopted neither the rule against accumulations nor the rule against perpetuities so that it is possible to establish a trust having a perpetual existence.

Legal Notion and Characteristics of the Trust

The conceptual roots of the Liechtenstein trust do not spring from continental legal tradition. Liechtenstein law has adopted the Anglo-Saxon trust. The basic principles upon which the Liechtenstein trust reposes are to be found in the English statutes, jurisprudence and commentaries such as Godefroi's 'On Trusts and Trustees'.

The fourth part of the Liechtenstein Persons and Companies Law (hereinafter the PGR) deals with endowments and joint-property-ownership and in particular with trusts (the 'Salmannenrecht'-Article 897-932 PGR).

The basic requirements and the legal elements of the trust remain consistent. Within the framework of a relationship based upon trust, assets are transferred to the trustee with the obligation upon the trustee that, notwithstanding his legal title to the same, he is to hold and administer such property in his own name as the legal owner thereof for the benefit of one or several third persons (beneficiaries) or for a particular purpose.

The general legal concept namely the trust, has a wide range of applications which differ from one another in the manner in which they arise and function. This unprecedented flexibility is also characteristic of the English model which was nurtured in the courts of equity, which administered equity under the auspices of the English Lord Chancellor. Thus, by way of example, use can be made of the trust instead of the family foundation for the purpose of managing family estates for the benefit of members of certain families (Express Family Trust), thereby removing from individual family members the right to manage the trust property, in order to ensure a management of the property which will benefit the entire family. In this manner the safeguarding of the interests of an entire family for generations to come can be guaranteed.

Article 897 of the PGR defines the trust as follows:

'A trustee or "Salmann" within the intendment of this law is a natural person, firm or legal entity to whom another (the settlor) transfers movable or immovable property or a right (as trust property) of whatever kind with the obligation to administer or use such property in his own name as an independent legal owner for the benefit of one or several third persons (beneficiaries) with effect towards all other persons.'

Thus, a trust relationship arises when a natural or juridical person transfers to a trustee a right or assets as trust property in respect whereof the trustee holds an absolute legal title with effect towards all other persons (in the external relationship). The trustee may not however administrate or use the property for his benefit, but rather must hold the same for the benefit of one or more third persons. In the administration and use of the trust property, the trustee is bound by the intention of the settlor as stipulated in writing in the trust instrument (internal relationship). Once the trust has been settled both the trustee and the settlor are bound by the intention of the settlor as set forth in the relevant trust instrument.

The settlor may only subsequently alter the terms of the trust instrument and in particular his intentions as set forth therein, if such a variation is provided for in the said trust instrument.

A trust is not a juridical person.

In a trusteeship, three persons or groups of persons stand in direct relationship to one another, namely:

(1) the settlor or trustor;
(2) the trustee; and
(3) the beneficiary.

By virtue of the existence of a trust, the legal and beneficial (economic) titles to the trust property are divided between the trustee and the beneficiary. The trustee (legal owner) as holder of the trust property is bound to administer and to use same for the benefit of the beneficiary (beneficial owner). Although the beneficiary has no direct claim to the trust property he may require the trustee to administrate and use the trust property in accordance with the terms of the trust instrument and in particular, he may demand those benefits to which he is entitled to in accordance with the terms of the trust instrument.

The trust has been repeatedly rejected on the continent on the grounds that a dichotomous title is fundamentally incompatible with the continental law of property and the restrictions which the law places upon the possible titles to property. However the principles concerning the possible types of ownership in continental law, are relative. The legislator has taken into consideration the changing social conditions and has thus, considerably extended the law of property in order to accommodate such changes through for example the introduction of laws permitting the separate ownership of each storey in a building.

By virtue of the basic principle of freedom of contract, Liechtenstein law permits a wide range of possibilities in the structuring of a trust settlement. The principle of freedom of contract permits the parties to determine to a considerable extent their legal relationship. The limits to this autonomy are found in the mandatory provisions of the law which the parties cannot contract out of. However, the overwhelming majority of the legal provisions concerning trusts are dispositive law (permissive). Furthermore, the terms of the trust instrument may not be contrary to public order.

The trust instrument usually contains the following:

- name of the trust settlement;
- date upon which the trust was settled;
- duration of the trust;
- purpose of the trust;
- provisions concerning the variation or supplementation of the trust instrument;
- a provision as to whether or not the trust ought to be registered or, as an alternative, deposited at the Public Registry;
- provisions concerning the revocation, termination and the dissolution of the trust;
- provisions concerning the access of the interested parties to the trust records;
- the name of the settlor;

- a description of the trust property;
- instructions concerning the management and the use of the trust property;
- name and residence of the trustee and in the case of a corporate trustee, the company name and headquarters;
- powers of the trustee and other bodies as well as powers to distribute the trust property;
- provisions concerning the appointment and the removal of trustees;
- provisions concerning the retirement, the claim to be held harmless and indemnified, the remuneration, the right of retention and liability of the trustee;
- the duty of the trustee to render accounts;
- provisions concerning the appointment of beneficiaries and the revocation of such appointments;
- a detailed description of the beneficial interests and eventual distributions according to their nature, the amount and the point in time at which they are to vest or to be distributed;
- provisions concerning the appointment and the removal of additional supervisory bodies of the trust such as an advisory board or a protector;
- provisions concerning an advisory board;
- provisions concerning the transfer of trust property to other trusts;
- provisions concerning the transfer of the trust abroad; and
- provisions concerning the law governing the trust.

In no event may the deed contain provisions which would bind the trustee to follow the ongoing instructions of the settlor.

Subject to the limits set by the mandatory provisions of the law and public order, the terms of the trust instrument are paramount in determining the relationship between the settlor, the trustee and the beneficiaries. In the event that the trust instrument is silent with respect to the terms and the effect of the trust, same are to be governed by the provisions of Articles 897-932 PGR. Subsidiary thereto, the provisions pertaining to the trust enterprise in Article 932a), §§ 7-170 PGR shall apply. Furthermore, the construction and the application of the terms of the trust and any instruments ancillary thereto, are to follow in accordance with equitable principles.

According to the settled jurisprudence, the interpretation of contracts and other indentures is not to be based upon the literal meaning of the language used therein, but rather upon the actual intention of the parties. The contract, declarations of the parties and other indentures are to be so construed as to conform with such customs and usage as are observed in fair dealings. (*see* § 914 Civil Code, ABGB). In view thereof, it is irrelevant how the parties have designated the relationship whether as a trust or a fiduciary relationship. The intention of the parties which is to be interpreted, having a view to customs adhered to in fair dealings, is paramount. Which legal construction has been created in a particular case can only be determined in the light of all of the surrounding circumstances.

The Trust and the Fiduciary Legal Relationship

DEFINITION

The legal system of the Principality of Liechtenstein recognizes two types of trust relationships:

(1) The trusteeship (trust); and
(2) The fiduciary relationship (fiduzia).

These two relationships share the common characteristic, namely that the legal title to assets is transferred from the settlor to the trustee who exercises the rights to the same in his own name, however in the interests and for the benefit of another. If the trustee is bound to adhere to the instruction of the settlor as and when the settlor from time to time instructs, then no trust has been settled, but rather the relationship is that of a fiduciary.

By virtue of the very considerable freedom of contract, which is applicable to trust settlements as well as to the contracting of fiduciary relationships, the drafting possibilities for both types of arrangements are wide. Thus in individual instances, where arrangements have been made which closely resemble both institutions, the delineation between the two can become very difficult.

Essentially, the two institutions can be distinguished as follows:

LEGAL NATURE

The Liechtenstein trust exhibits foundation characteristics. Typically, a multilateral (triangular) relationship exists; namely between the settlor, the trustee and the beneficiary. With the acceptance by the trustee of the terms

of the trust instrument, the settlor is forever bound by the terms of the same and in particular by his intentions as expressed therein. The intention of the settlor as set forth in the trust instrument remains paramount notwithstanding that at a later date the same may be contrary to his best interests. The settlor may only modify the trust instrument, and in particular the intentions therein set forth, if provisions providing for the same are contained in the trust instrument. Each party to the trust may bring an application before the courts requiring the settlor to comply with the terms of the trust instrument and in particular to transfer the trust property to the trustee.

The trustee is personally responsible for the due performance of his functions and duties for the benefit of the beneficiaries. The role of the trustee is autonomous and one of direct responsibility.

The fiduciary relationship is, on the other hand based upon a bilateral contractual relationship, namely between the settlor and the fiduciary. Legal effects for the benefit of or incumbent upon third persons, only arise in exceptional cases. Agency law governs the internal relationship so that the fiduciary relationship exhibits characteristics of a contractual relationship. In contrast to a trust, there exists no immutable, stated intention of the settlor, which can only be modified in exceptional circumstances. The fiduciary must at all times take into consideration and follow the (current) wishes and observe the (current) interests of the settlor. The legal relationship between the fiduciary and the settlor is in essence based upon contract law.

The role of the fiduciary is far less independent and directly responsible than that of a trustee of a trust.

AGENCY LAW

A trust does not exist if according to the constitutive instrument, the trustee is bound to follow the ongoing instructions of the settlor. Such a relationship is always characterized as an agency relationship existing purely in the sense of contract law. According to the established practice of the courts, no right on the part of the settlor to continually give instructions exists, if the constitutive instrument requires the trustee to constantly consult with the settlor. Such an arrangement merely accords the settlor the right to be heard.

The fiduciary, however, is principally subject to the right of the settlor to continually instruct him. The right to instruct exists not only at the time of the establishment of the fiduciary relationship, but remains in existence and may be exercised continually for the entire duration of the relationship. In certain instances the fiduciary may even be obliged to procure instructions, or to depart from instructions, which he has previously received.

The role of the fiduciary is substantially more closely tied to that of the settlor. The fiduciary in the exercise of his function must at all times consider the current intentions and interests of the settlor whereas according to trust law the intention of the settlor as originally stated at the time of the creation of the trust remains immutable and develops an independent legal existence which is detached from the trustee, the settlor and the beneficiary.

DICHOTOMOUS TITLE TO PROPERTY

In trust law, it is principally correct to refer to the legal title of the trustee as separate from the beneficial ownership of the beneficiary in the trust property.

In the fiduciary legal relationship, the settlor remains the beneficial (economic) owner of the trust property, the legal title whereof is, as in the case of a trust, transferred to the fiduciary.

EXECUTION AND BANKRUPTCY

According to trust law, trust property is to be treated as a separate estate which is to be segregated from the private property of the trustee and administered as such (compare §§ 25 of the Law Concerning Trust Enterprises, hereinafter the TrUG), which is demonstrated by the fact that in summary, execution and bankruptcy proceedings, the trust property is to be treated as third party property. The trust property is to be separated from the private property of the trustee and in the event that the trustee retires, the same is to be transferred to the successor trustee or transferred officially to a court appointed trustee.

To the extent that it is not possible to immediately segregate the trust property *ex officio*, the court must undertake such a segregation as quickly as possible. A claim for the severance of trust property does not fail by reason of the fact that the asset in question has been alienated and replaced only by the consideration in species, which has become indistinguishably mingled with the private assets of the trustee. In the event that a severance of the trust property is not possible in the course of execution or bankruptcy proceedings, the claim for the delivery of the trust property has priority over the claims of all of the remaining creditors.

The classification of the trust property as property which is separate and distinct, being independent of the trustee and the settlor also manifests itself in the fact that pursuant to the provisions of the bankruptcy law, special bankruptcy proceedings may be opened with respect to trust property.

The law concerning the fiduciary relationship does not treat trust property as special property. Although for the purposes of execution and bankruptcy proceedings the trust property is not considered to be third party property, there are other, albeit somewhat less effective legal remedies available to the settlor. In order to protect the trust property from the claims of the fiduciary's creditors in the course of execution proceedings, the settlor can bring a type of severance claim.

Moreover, the settlor can demand the severance and delivery of the trust property in bankruptcy proceedings. Such a claim is not affected by reason of the opening of bankruptcy proceedings concerning the personal estate of the trustee. If the trust property has been alienated the settlor may demand payment to him of the consideration received therefore or, if the same has not yet been paid to the trustee, an assignment to him of the receivable with respect thereto.

If, however, the said consideration has become so mingled with the personal assets of the trustee as to be indistinguishable from the same, then the right of the settlor to demand severance and payment to him of the consideration received for the misappropriated trust property fails for want of the possibility to trace the same. The bankruptcy law does not provide for special bankruptcy proceedings in respect of the trust property.

THE DURATION OF THE TRUST

According to its basic concept the trust is settled for an indefinite period. To the extent that the constitutive instrument does not otherwise provide, the trust continues to exist notwithstanding the demise (in the event of a natural person), dissolution (in the event of a juridical person), or bankruptcy of the trustee. In the same way, a trust is principally irrevocable. In the event of the retirement of a trustee, a new trustee is to be appointed in his stead. According to established practice, the trust may be wound up provided always that the settlor, the trustee and the beneficiaries consent thereto.

As opposed thereto, the death, the dissolution or the bankruptcy of the fiduciary or the settlor principally terminate the fiduciary relationship. The fiduciary relationship may also be revoked by the settlor or terminated by reason of notice given by the fiduciary.

The fiduciary legal relationship maybe terminated by mutual agreement of the settlor and the fiduciary. The duration of the fiduciary legal relationship is thus, in principle, intended to be much shorter than in the case of the trust.

The Settlement of the Trust

Except in the case of an implied trust relationship, a trust is settled by:

(1) a written agreement between the settlor and the trustee whereby it is not necessary to mention the legal reason or motive for the settlement;
(2) a unilateral declaration on the part of the settlor, in which case a declaration of acceptance on the part of the trustee is necessary in order to create the trust; or
(3) last will and testament; in order to establish a trust relationship, the written declaration of acceptance on the part of the trustee is necessary as well.

Moreover, a trust only arises when in addition to the declaration of trust a transfer of property or other disposition with respect to the trust property is undertaken. A disposition with respect to property means the transfer of assets for the purpose of settling the trust property.

According to Liechtenstein law in order to create a trust, a threefold certainty must exist:

(1) certainty of intention;
(2) certainty of subject; and
(3) certainty of object.

Certainty of intention exists when it can be inferred from the circumstances that the parties intended to create a trust. The requirements concerning certainty of subject and certainty of object (beneficiaries and or purposes), are fulfilled if it is possible to ascertain the same whether at the time of the settlement or at a later date, from the terms of the trust instrument. Moreover, the requirements concerning certainty as to subject and certainty as to object are also fulfilled when in the constitutive instrument reference is made to an instrument which is to be drawn and executed on some later date, such as a deed of appointment.

In all cases, the trust is to be expressly defined as such and denominated in such a manner as to be readily identifiable by the trustee. A particular feature of the trust settled according to Liechtenstein law is that the law

requires the constitutive declaration of trust to be set forth in writing. It is undecided whether or not the written form is a constitutive requisite for the creation of a trust, or if the same merely has a declaratory effect. According to the prevailing opinion, two cases must be differentiated; the requirement that the trust declaration be in the written form has a declaratory effect if the settlor has previous to the declaration transferred the trust property to the trustee so that the written declaration of trust occurs subsequent to the actual settlement.

In such a case, a verbal or definite form of declaration will suffice to create the trust. Thus, the written trust instrument merely constitutes evidence of the settlement. If, on the other hand, the written declaration of trust is delivered to the trustee prior to the transfer of trust property, then the written form of trust declaration is a constitutive requirement for the effectiveness of the trust settlement. The applicable formalities pertaining to the transfer of property must be observed in order to effect the trust settlement.

Upon the settlement of a trust, the duration thereof is to exceed twelve months, the Public Registry must be notified with respect thereto within twelve months from the date of the settlement for the purpose of entry of same provided always that the trustee or, in the event of more than one trustee, at least one of the trustees is resident in, or has their head office in the Principality.

The application for entry in the Public Register must contain the following:

(1) the name of the trust settlement;
(2) the date of the trust settlement;
(3) the duration of the trust settlement; and
(4) the name, the given name and residence or the company name and head office of the trustee.

The application for registration in the Public Register must be accompanied by the confirmation given by the tax administration confirming the payment in advance of the annual taxes.

Moreover, an application must be made to amend the entry in the Public Register in the event of any change concerning each and every matter which is entered therein.

There is no obligation to register the trust settlement in the Public Registry if the trust instrument is deposited at the office of the Public Registry within a period of twelve months following the settlement. Any alterations to the original constitutive documents must likewise be deposited with the Public Registry. Third persons have no access whatsoever to documents which have been so deposited.

Provided that the trust property is registered in another public register such as the Land Register, the Patent Register or similar registers and the fact of the trust itself is noted in the same entries, the Registrar may waive the requirement to enter the trust in the Public Registry.

The Trust Property

Included in the trust property (trust fund or settlement) are all such assets as the settlor or the law concerning the same shall determine. Likewise included in the trust property are all assets acquired in the course of the administration of the trust and all assets acquired in substitution for the original trust assets.

Such assets, as are listed in the inventory concerning the trust settlement, are presumed to comprise part of the trust property.

Trust property maybe comprised of any and every kind of alienable property such as real estate, chattels, choses in action, copyrights, patents, licenses, know how, goodwill and assignable trademark rights.

Upon the settlement of the trust, the trust property shall constitute a separate, autonomous estate which shall be administered and applied according to the terms of the trust instrument and, supplementary thereto, in accordance with the law concerning trusts.

Assets may be transferred to the trust either upon the settlement thereof, or at later date by the settlor or by third persons. The law requires no minimum value concerning the trust property (as opposed to the case of the trust enterprise).

There are specific legal requirements concerning certain kinds of trust assets: Real estate or other rights which must be entered in the Land Register must be transferred to and entered in the name of the trustee in order that the terms of the settlement be binding upon third parties whether the transfer be with or without restriction upon the right of alienation; moreover, the trust relationship is to be noted with the entry.

Where an undertaking is registered in the Public Register under the corporate name or, where an asset forming part of the trust property is registered in another register, such as in a Patent Register or in a similar register, then, in the absence of a provision to the contrary in the trust instrument, the same undertaking or asset shall be expressly described as trust property in the Public Register or other register upon the application by participants of the trust.

The law provides for the tracing of trust assets. A third party may not acquire goods from a trustee knowing that same form part of the trust settlement and that the trustee has no right to dispose thereof. The settlor, a co-

trustee, a beneficiary or a receiver may jointly or severally bring a claim in favour of the trust property against such a third party for restitution or, in the nature of unjust enrichment. Such a claim will be allowed in a case where a third party acquires part of the trust property knowing that the trustee had no right to dispose of the same.

The Settlor

THE RIGHTS OF THE SETTLOR

The law provides for the rights of the settlor who may as he sees fit by means of a trust deed, contract, last will and testament or other instrument sever and endow for specific purposes parts of his estate. The settlor may determine the terms of the trust settlement as he sees fit and may formulate same generally or in detail.

In particular, the settlor may specify conditions according to which a beneficiary or a trustee shall be appointed and removed. The settlor may delegate to the trustee or another institution as he in his unfettered discretion sees fit, the power to appoint beneficiaries and the right to determine the nature as well as the extent of their beneficial interests.

Moreover, he may stipulate in the trust instrument that the trust may be revoked and the conditions with respect to such a revocation as well as terms respecting the modification and supplementation to the trust instrument. However, if the settlor sets forth conditions pursuant to which the trustee is bound by the ongoing instructions of the settlor, then no trust has been created, but rather a purely fiduciary legal relationship based on contract.

THE DUTIES OF THE SETTLOR

If the trustee accepts the trust instrument, the settlor is bound by the terms thereof. In particular he is obligated to separate from the remainder of his assets the trust property and to endow the same for the purposes of the trust.

In litigation pertaining to the trust property, the settlor may not be examined as a witness, but only in his capacity as a litigant. An eventual judgment is binding upon him and his legal successors.

The Trustee

THE APPOINTMENT OF THE TRUSTEE

The settlor may appoint one or several trustees (natural or juridical persons) by way of a bilateral or unilateral declaration, or by way of a last will and testament. If the appointment is made by last will and testament, or by means of a unilateral declaration, such as by way of a trust deed, then the office of the Public Register or the probate authorities shall, upon the request of the interested parties or in an *ex officio* capacity inform the trustee of the appointment provided always that the settlor has not already done so. If the trustee so notified does not accept the trust within a fortnight calculated from the day of the receipt of the notification, then he shall be presumed to have refused the appointment. The period hereinbefore prescribed may be prolonged.

The court must appoint a trustee (court appointed trustee) if the identity of the trustee cannot be determined, or if the trustee mentioned in the trust instrument refuses to accept the appointment and the trust instrument is silent as to the manner in which an alternative trustee is to be appointed, or as to how the trust property shall be used in such a case.

The Princely Liechtenstein Court of First Instance shall, upon hearing all of the parties, appoint a trustee and in so doing shall firstly consider the wishes of the settler and, in the absence of such wishes take into consideration the interests of the trust property. The existence of the trustee is desirable, but not essential to the concept of a trust. The existence of trust property which has been endowed for a specific purpose is the only essential element of a trust.

Natural or juridical persons maybe appointed as trustees irrespective of their residence or nationality. However, at least one trustee must be a Liechtenstein national having his residence in Liechtenstein or (in the case of a juridical person) having its head office in Liechtenstein and, in addition thereto, be admitted as an attorney-at-law, a legal agent, a trustee or auditor or alternatively, have a commercial qualification which has been recognized by the government.

In addition to the trustee, the settlor may appoint an advisory board, a protector or other functionaries. Functionaries are generally those persons who, in place of the trustee are authorized to appoint beneficiaries or to determine the nature and the extent of the beneficial interests. The advisory board or protector may be given the authority to advise, or to control, or to make decisions concerning the trust settlement.

In this way, the decisions of the trustee may be made conditional upon the consent of the advisory board (protector). The settlor may also in his unfettered discretion delegate to the advisory board (protector) the power to appoint beneficiaries as well as the discretion to determine the nature and the extent of the beneficial interests.

TRUSTEE'S POWERS

The position of the trustee in relation to the trust property must - in order to do justice as to the concept of a trust - always be one of considerable power and authority. This is as a rule, derived from the terms of the trust instrument itself.

To the extent that the trust instrument does not otherwise determine, the trustee can and must forthwith upon the execution of the trust instrument demand from the settlor the compliance with the terms thereof. The trustee has the right to dispose of the trust property and to exercise all rights in connection therewith in the same manner as an independent holder thereof.

He can act in his own name in the same way as a proprietor, creditor or functionary of a legal entity. The trustee may represent the trust property before all public authorities and in all proceedings in his own name, as party litigant, participant, intervener or one summoned before the court etc.; He may exercise the rights arising from the trust property in accordance with the terms of the trust instrument, suchexercise shall be binding on third parties.

The trustee may advance an appropriate share of the trust property to the beneficiaries. He may delegate to third parties all management duties provided always that he is bound to personally fulfil those duties which depend upon the exercise of his personal judgment and discretion.

If the trustee is uncertain as to whether or not a certain management action is permissible or reasonable, or if a co-trustee refuses to consent to same, the trustee may bring summary proceedings before the Princely Liechtenstein Court of First Instance in order to receive binding instructions. In adjudicating upon such a matter, the court can avail itself of the services of experts. The trustee has the right to apply for a discharge (exemption from legal responsibility) with respect to the functions exercised by him.

The law accords the trustee a claim to:

(1) indemnity with respect to any disadvantage to him personally which arises from the administration of the trust property;
(2) a release from any obligation which he has entered into or which results from acts undertaken in the interests of the trust property;
(3) interest on expenses paid by the trustee on behalf of the trust from the date of the payment of same; and
(4) reasonable remuneration for his services (trustee fees).

The trustee may bring his claim firstly against the settlor and in the event that same remains unsatisfied against those beneficiaries who are entitled to the trust property or to the income thereof. The trustee may however claim directly from the trust property or as an alternative, sue the trust property, the settlor and the beneficiaries as co-defendants.

DUTIES OF THE TRUSTEE

The considerable control which the trustee has over the trust property is coupled with the duties of the trustee concerning the same. The law obligates the trustee:

(1) to adhere to the terms of trust instrument;
(2) to hold and to administrate the trust property with the care of a prudent businessman; inasmuch as the trust property is not his private estate, but rather constitutes a separate estate, according to judicial precedent the duty of care to be exercised by the trustee goes above and beyond the care which one might expect him to exercise in the conduct of his personal affairs; it follows therefrom that the trustee may not expose the trust property to the same risks as he might take where his private estate is concerned;
(3) to insure the trust property against risks insofar as such insurance is usual or appears to be reasonable;
(4) not to dispose of the trust property in any manner whatsoever which may infringe upon the special purpose of the trust or could frustrate the same;
(5) in the event that the trustee deals with deposited funds on a commercial basis, he is required to segregate the trust property from the remainder of his assets;
(6) to keep special records pertaining to his various trusteeships;
(7) to establish an inventory of the assets of the trust and to revise the same annually; and

(8) to render accounts annually and, at any time whatsoever to provide information to the settlor, the beneficiaries or the audit authorities concerning the same; beyond this, trust settlements enjoy the advantage that they are not required to submit annual financial statements (balance sheet as well as income statement), nor any type of declaration to the tax authorities.

If an enterprise which is required to keep proper books and records is the subject matter of the trust, then the trustee must observe the requirements concerning enterprises with respect to the rendering of accounts.

Co-trustees must manage the trust collectively and unanimously save and except for urgent matters which may be taken up by one trustee when a delay in order to consult with the others would pose a risk to the trust.

LIABILITY OF THE TRUSTEE

If the trustee commits a breach of trust by acting contrary to the legal provisions concerning trusts or in violation of the pertinent terms of the trust instrument, then he shall be personally liable to the settlor and to the beneficiaries in accordance with the basic principles of contract law and the liability shall extend to all of his private assets. The trustee is also vicariously liable for the acts and omissions of those to whom he has delegated the conduct of the business of the trust provided always that the trustee shall have the right to demand indemnity from such third parties.

Co-trustees are jointly and severally liable for damage arising out of a breach of trust and without any restriction whatsoever, unless they are able to prove that they exercised the duty of care to be observed by a prudent businessman in supervising the activities of their co-trustees.

Notwithstanding that the trustee may, in particular claim reimbursement for the expenses incurred by him on behalf of the trust as well as reasonable trustee fees, he is not entitled to reap any type of benefit whatsoever from the trust. He may only transact legal business for his own account within the framework of the trust relationship provided that the same is restricted to the proper administration of the trust. The trustee shall be liable to the settlor and the beneficiaries for any other transaction which cannot be voided without prejudice to the right to demand indemnity from *mala fide* third parties.

Generally, the trust instrument describes the function of the trustee, his rights and duties in such a manner that the trustee can receive no benefit whatsoever save and except for trustee remuneration and the reimbursement of his expenses arising from the trusteeship.

THE RETIREMENT OF THE TRUSTEE

In the absence of other provisions, the trustee shall be entitled to retire at the end of each calendar year by giving three months prior written notice. Notwithstanding the same, he is required to carry out his functions as trustee for at least one administrative year. The notice of retirement shall be given to the Public Registrar if neither a settlor, nor a co-trustee, nor a beneficiary with a vested interest shall then exist. The Registrar shall inform the successor trustee concerning the notice of retirement or, alternatively, the Registrar shall inform the Princely Liechtenstein Court of First Instance, the said court must then appoint a successor trustee in the event that the legal succession to the trusteeship has not otherwise been provided for. Each and every beneficiary shall be entitled to inform the said court that a successor trustee is to be appointed.

To the extent that the trust instrument does not provide for the appointment of a successor trustee, each heir of the trustee and in the event that the trustee lacks legal capacity, his representative, shall have the obligation to inform the Princely Liechtenstein Court of First Instance with respect to the retirement of the trustee.

In the event that the trustee is a partnership or a corporation, then the partners, the administration or the trustee in bankruptcy must give the Princely Liechtenstein Court of First Instance notice of the termination of the trusteeship. Moreover, each beneficiary is entitled to inform the said court for the purpose of appointing a successor trustee.

A bankrupt trustee must not retire from his function provided that the trust property remains unexposed and a court does not require the removal of the trustee. A judge may upon application appoint a co-trustee. In the event of the bankruptcy of the trustee, the trust property is regarded as a separate estate. Thus, this provision makes it possible for the trusteeship to survive notwithstanding the bankruptcy of the trustee.

The Protector

The settlor may in his discretion, include terms in the trust instrument for the appointment of a protector, or he may himself appoint as protector. The protector may be one or more natural or juridical persons. The protector is not necessary for the existence of the trust, but rather optional. The considerable freedom of contract which the settlor has makes it possible to delineate the powers of the protector within the limits of the law. The protector

can be given an advisory, or a supervisory or a decision making function. In practice, in addition to the trustee, a protector with the following powers is usually appointed:

(1) advising the trustee;
(2) supervising the administrative activities of the trustee;
(3) joint management of the trust with the trustee;
(4) the appointment and the removal of the trustee;
(5) the appointment of the beneficiaries and determining the nature and the extent of their beneficial interest; and
(6) instructing the trustee.

Thus, the settlor has a number of interesting possibilities when structuring the trusteeship. He can insure the constant supervision of the administration of trust property through a person of his particular confidence. In this way, the settlor has additional possibilities in order to insure that his intentions are carried out.

The office of a protector is often made use of in Liechtenstein trusts for tax purposes. Inasmuch as according to the tax laws of most western jurisdictions, the trust shares the same residence for tax purposes as the trustee and in the event of more than one trustee there may be competing opinions as to where the trust is resident and thus to be taxed, many settlors wishing to shelter the income from the trust in Liechtenstein appoint a person of their confidence as protector *in lieu* of a co-trustee.

Such a protector may have all of the administrative powers of the trustee, but is never the legal owner of the trust property and thus never required to report the income of the trust. Thus the settlor may enjoy all of the tax advantages of settling a trust in Liechtenstein without the disadvantages which may arise from the fact that he must entrust his property to a professional Liechtenstein trustee with whom he has no personal relationship.

The powers of the protector can be so extensive as to leave the trustee little or no discretion whatsoever in the administration of the trust. This is the case when each decision of the trustee requires the consent of the protector. The protector can be accorded a function comparable to that of, or even more powerful than that of the supreme functionary of a legal entity. The powers of the protector are particularly considerable when he may in his sole discretion appoint and remove trustees as well as provide for his own succession.

The discretion of the trustee may be limited to a certain degree in that he may only act in certain important matters with the consent of the protector.

Those persons who enjoy the confidence of the settlor are usually taken into consideration as protectors. The settlor may appoint himself as protector provided that trustee is not bound by the continuous instructions of the protector and thus of the settlor. If this is the case, then a fiduciary legal relationship has been created as opposed to a trust having been settled.

The Beneficiary

Beneficiaries are those persons, who according to the trust instrument, are to benefit from the trust either at present or in the future, and whether or not they may bring any claim against the trust property. According to Liechtenstein trust law, the following persons are to be considered beneficiaries if according to the terms of the trust instrument;

(1) they have a right in law to claim their beneficial interest (vested beneficiaries);
(2) they are according to law the legal successors of those persons entitled to benefit from the trust property (remainderman); and
(3) though not directly entitled as beneficiaries, they have been appointed by the competent persons as for example, beneficiaries of a trust which has been established in favour of third persons who have not been named, but rather in which case the trust is to benefit a certain class (artists, scientists) or beneficial interests in the case of pure purpose trusts.

Beneficiaries may be natural or juridical persons. They are designated in the trust instrument by the settlor or in the alternative, the trust instrument may contain conditions with respect to their appointment. The power of appointment may be exercised by the trustee, an advisory board or the protector. To the extent that the trust instrument provides for the same, such persons may in their unfettered discretion exercise the power of appointment provided always that in so doing, they are bound by the terms of the trust instrument.

The unfettered discretion of the said persons may extend to the designation of the beneficiaries as well as the determination of the nature and the extent of their beneficial interests. The power of appointment however,

cannot go so far as to provide for the exercise of a power of appointment which is bound by no guidelines whatsoever so that the persons exercising the power of appointment may appoint themselves. In such a case, no trust has been settled, but rather a transfer of all the rights inherent in the trust property has occurred. In such a case the trustee may dispose of the trust property in the same manner as an owner of the legal and beneficial interests thereof, without being bound by any of the duties of the trustee.

The terms of the trust instrument are paramount in governing the beneficial interest. Supplementary thereto, the legal position of the beneficiary is exhaustively provided for in the Law of 10 April 1928, concerning the Trust Enterprise (TrUG). The provisions of this law apply by analogy to trusteeships.

Various possibilities exist in structuring the beneficial interest. The same may be made conditional, or for a limited period (life estate), subject to the fulfilment of certain requirements or subject to certain limitations, it may be alienable or inalienable, transferable or non-transferable, inheritable or non-inheritable etc. The beneficial interest may be limited to the income of the trust or include a share in the capital thereof.

The beneficiary shall be entitled to require that the terms and conditions of the trust deed be complied with. If according to the terms of the trust instrument the beneficiary has a legal claim to the beneficial interest (a vested claim) then he may demand that the same be paid to him; if however, the appointment of the beneficiary as well as the designation of the nature and the extent of his beneficial interest, lies in the unfettered discretion of the trustee, then the beneficiary may only require the trustee to exercise his discretion in accordance with the intentions of the settlor.

Any beneficiary who is entitled to bring a claim against the trustee and who considers that he has been prejudiced through a disposition or administrative action of the trustee, may, in the event that no other provisions are contained in the trust instrument, in summary proceedings before the Princely Liechtenstein Court of First Instance require that the necessary steps be taken in order to restore his rights. In such a case, the beneficiaries may under circumstances have the right to receive information concerning the status of the trust property as well as the investment thereof and be given access to all of the business records and other documents concerning the same.

The rights of the beneficiaries may only be enforced to the extent that they are not exercised for an improper purpose or in an abusive manner or to the detriment of the trust or the beneficiaries. The trustee may be made accountable to the beneficiary for the administration of the trust.

The settlor may be a beneficiary of the trust. However he may not be the sole beneficiary. If no other beneficiaries or trust purposes are mentioned in the trust instrument, a legal presumption arises that the settlor is himself the beneficiary. Provided that nothing is stipulated to the contrary in the trust instrument, a beneficial interest shall be inheritable and thus after the death of the settlor, same shall devolve upon his heirs-at-law, provided always that he has not in another instrument whether by way of an *inter vivos* disposition or *causa mortis*, regulated the legal succession to the beneficial interest.

The acquisition of a beneficial interest may also be tied to the payment of consideration; for example the payment of premiums on a continual basis. Certificates evidencing a right to trust property may be given in the form of securities to the beneficiaries. Such certificates entitle the holders thereof to the benefit of the trust property such as for example a share of the income and, or liquidation surplus. A trust certificate is transferable as in the case of registered shares. The trustee must keep a register concerning the securities issued by him. The trust certificate should refer to the trust instrument, the trust law, the trustee and the beneficiaries on the face thereof.

The Creditors

THE CREDITORS OF THE SETTLOR

The creditors or the legal successors of the settlor may challenge and set aside the settlement thus acquiring the right to seek the satisfaction of their claims out of the trust property, if grounds exist which would prohibit the settlement i.e. as set forth in the succession law, the gift law or the law concerning the avoidance of transactions. The applicable law is always the law which applies to the particular assets which have been transferred. In calculating the forced share to which an heir is entitled by law, such transfers by way of gift which predate the demise of the deceased by more than two years shall, according to § 785, sub. § 2, of the Civil Code, not be taken into consideration and such transfers may not be challenged.

THE CREDITORS OF THE TRUST PROPERTY

The trustee is personally liable without any limit whatsoever for the debts incurred by him on behalf of the trust property to the extent that the trust property is insufficient to satisfy the same and, in the event of co-trustees, they shall be jointly and severally personally liable with respect to the same provided always that the trustees shall have the right to demand indemnity from the settlor and, to the extent that the conditions for an

avoidance exist, or an unjust enrichment in favour of the beneficiaries has occurred, the trustees may demand indemnity from the beneficiaries.

Liability on the part of a trustee and a corresponding right of indemnity only exist to the extent that it cannot be proven that the creditor did not expect satisfaction beyond the trust fund.

Bankruptcy proceedings may be held with respect to the trust property. The creditors of the trust property may within the framework of such bankruptcy proceedings look to the trustee in the event of a deficiency to the extent that the law does not otherwise provide.

THE CREDITORS OF THE TRUSTEE

The trust property is treated as a separate estate in summary proceedings, in execution proceedings, and in the event of the bankruptcy of the trustee. In this way, the settlor and the beneficiaries are protected from the claims of third parties against the trust property. The creditors of the trustee may only claim against the trust property to the extent that the trustee has personal claims against same for the reimbursement of his expenses and payment of trustee fees. The assets comprising the trust estate are to be severed from the personal estate of the trustee and in the event that the trustee retires from office, the same are to be transferred to the successor trustee or to a trustee to be appointed by the court.

To the extent that it is not possible to separate the trust assets as soon as possible, the Princely Liechtenstein Court of First Instance must undertake such a severance as soon as possible.

In the event that the separation of the trust assets from the personal assets of the trustee is not possible in the course of the execution or bankruptcy proceedings, then a claim for the severance and delivery of the trust assets shall have priority over the claims of all other creditors.

The settlor, his successor, the co-trustees, or the beneficiaries may bring the claim for the separation of the trust assets or a claim *in lieu* thereof either jointly or severally against the trustees or against the trustee in bankruptcy; the same are also entitled to access to all books and records concerning the trust.

The bankruptcy of the trustee principally does not terminate the trust.

THE CREDITORS OF THE BENEFICIARIES

The creditors of the beneficiaries may only claim against the trust property by way of execution proceedings or by way of bankruptcy proceedings to the extent that the beneficiaries themselves may claim against the same trust property.

The settlor may stipulate in the trust instrument that a beneficial interest which has been acquired for no consideration, may not be withdrawn from a beneficiary by way of execution, or bankruptcy proceedings. If the trust instrument so provides, then the creditors of the beneficiary shall not be able to look to his beneficial interest in a trust for the satisfaction of their claim.

The Supervisory Board

The Princely Liechtenstein Court of First Instance is the supervisory authority with respect to all trusts which have been entered into the Public Register (permanent supervision). However, in the following particular cases, the trusts are not supervised by the court:

(1) family trusts;
(2) trusts in respect whereof the trust instrument excludes a supervisory authority; or
(3) where the courts exclude the function of the supervisory authority.

The terms of the trust instrument may designate a supervisory authority and may completely exclude the supervisory competence of the Princely Liechtenstein Court of First Instance.

If the trust instrument designates the Princely Liechtenstein Court of First Instance as the supervisory authority, then the said court may from time to time investigate the status and the administration of the trust property. If the trustee does not properly fulfil his duties, the Princely Liechtenstein Court of First Instance may remove him from his office and appoint a successor trustee. The Princely Liechtenstein Court of First Instance may, in its capacity as supervisory authority instruct the trustee, undertake administrative action, appoint a supervisory authority for the purposes of supervising the trustee, order an official audit or require the rendering of accounts with respect to the trust property.

The Princely Liechtenstein Court of First Instance is obligated to maintain a record of the trusts which it supervises.

In all cases, irrespective of whether or not the trust settlement is entered in the Public Register or merely deposited and irrespective of whether or not the Princely Liechtenstein Court of First Instance is, as a result of the law or the trust instrument appointed as supervisory authority, the participants of the trust may apply to the said court if the trustee fails to fulfil his duties (selective supervision).

In this manner, the terms of the trust instrument may be enforced by the courts upon the application of the participants. The Princely Liechtenstein Court of First Instance may order measures to protect the interests of the beneficiaries, in particular it may remove the trustee from his office and appoint a successor trustee.

The trustee may apply to the court for binding instructions or an opinion concerning the admissibility of any contemplated administrative action.

International Law and a Trust Settlement according to Foreign Law

The Liechtenstein law is to be applied to trust settlements in the following cases: - when this is expressly stipulated in the trust instrument, or when the trustee resides in the Principality of Liechtenstein and in the case of more than one trustee when at least half of the trustees reside in the Principality of Liechtenstein and when the trust property is situated in the Principality of Liechtenstein.

It is possible to settle trusts which are to be governed by foreign law in the Principality of Liechtenstein. Thus, the settlor has the possibility of settling a trust which is to be administered according to his personal law, but which nevertheless enjoys the tax advantages which the domicile of the trust in Liechtenstein accords. In such a case the relationship between the trustee, the settlor and the beneficiaries is to be governed by foreign law, which foreign law must be mentioned in detail in the trust instrument.

The relationship between the trust and third parties shall nevertheless be governed by Liechtenstein law. In the event of a dispute between the settlor, the trustee and the beneficiaries concerning a trust settled according to foreign law, the same must be determined by a court of arbitration. The trust instrument must contain the necessary provisions concerning the prerequisite court of arbitration. Moreover, a trust which is to be domiciled in Liechtenstein must be settled in Liechtenstein. The trustee must have his residence, or in the event that the trustee is a juridical person, its corporate headquarters in the Principality of Liechtenstein. In the event of more than one trustee, the majority of the trustees must have their residence in Liechtenstein.

Thus, notwithstanding the application of foreign law, a trust with a domicile in Liechtenstein exists and as such is subject to tax in Liechtenstein. Trusts which have been settled according to foreign law enjoy no better status than trusts established according to Liechtenstein law.

The Termination of the Trust

General Reasons for Termination

The trust terminates in accordance with the relevant provisions in the trust instrument and also in the event that the trust property is exhausted without any further trust being established to replace the terminated trust relationship. Moreover, the trust may be terminated by the Princely Liechtenstein Court of First Instance in summary proceedings and in particular in the following cases, namely, when the purpose for which the trust was settled has become unattainable, when the trust can no longer fulfil its functions for lack of sufficient assets or when the duration of the trust as stipulated by the settlor has expired.

In addition thereto, the trust may be terminated when all of the beneficiaries, the settlor and the trustee agree thereto. Moreover, a trust settlement may be challenged and consequently avoided if certain requisite conditions exist concerning the improper execution of the trust instrument, or the same may also be challenged and avoided pursuant to the provisions in the law of succession, the law concerning the transfer by way of gift and the law concerning the avoidance of transactions.

Upon the termination of a trust, the trust property reverts to the settlor in the absence of other provisions contained in the trust instrument.

Reasons for Termination concerning the Person of the Settlor and Revocation

A trust is generally speaking irrevocable.

The settlor cannot rescind the settlement nor may he revoke the same unless such a rescission or revocation has been specifically provided for and is permissible in accordance with the terms of the trust instrument. Testamentary trusts may be revoked at any time prior to the death of the settlor.

The death or the bankruptcy of the settlor does not terminate the trust unless there is a provision to this effect in the trust instrument.

Reasons for Termination Concerning the Person of the Trustee

The death or the legal incapacity of the trustee in principle does not affect the trust settlement.

The bankrupt trustee does not cease to be a trustee, provided that the trust property is not exposed to any particular risks and the presiding judge does not otherwise order.

The Rendering of Accounts

The trustee unlike in the case of legal entities, has neither an obligation to render annual financial statements concerning the trust property (balance and income statements) for the purpose of submitting the same to the tax authorities nor must he confirm to the Public Registrar that a statement of assets has been prepared and that the trust has during the past year not carried on any type of commercial activity (declaration).

However, the trustee is obligated to provide the participants of the trust with a statement of the trust assets and to revise the same annually. Moreover, the trustee is obligated to render accounts annually and to provide information upon request at any time to the settlor, or to the beneficiaries or to the auditing authority.

Taxes and Duties

Formation Fees

At the time of the formation of the trust, a formation fee becomes due. The formation fee is calculated as 2 per mille of the trust fund but at least CHF 200.

Registration and Deposit Fees

Generally, a fee of CHF 300 must be paid for the registration of the trust or the deposit of the trust instrument with the Public Registry. In addition, legalization fees totalling approximately CHF 30 to 150 – depending on the number of trustees – must be paid.

Profit Tax

Inasmuch as the trustee holds the legal title to the trust property and the trust property has been transferred away from the settlor, it is the trustee who must pay the profit tax with respect to the trust property. To the extent that the trust property is located abroad, the trustee is not required to pay any profit tax with respect thereto. In such a case the trust receives the same tax treatment as Private Asset Structures (PAS): It is only subject to a minimum profit tax of CHF 1,800 p.a. and is not assessed for taxation. In cases in which the trust assets generate inland earnings the trust becomes subject to a profit tax of 12.5 % for the inland earnings and must be assessed for taxation.

Taxation of the Beneficiaries

Such beneficiaries as are resident abroad are not required to pay any tax with respect to the beneficial interest received from them in Liechtenstein. The same applies with respect to the distribution of the trust property upon the termination of the trust, i.e. there is no source tax on dividends and payments to beneficiaries

The Trust Enterprise according to Liechtenstein Law

THE CONCEPT AND THE LEGAL NATURE OF THE TRUST ENTERPRISE

Pursuant to the provisions of Article 932(a) of the Liechtenstein Persons and Companies Law, a further type of enterprise was introduced in the Law of 10 April 1928 (LGBl 1928, No. 6 TrUG) in the form of the trust enterprise which is based upon the business trust (Massachusetts trust).

The institution known as the trust enterprise is very comprehensively regulated in 170 paragraphs.

The law defines a trust enterprise as an undertaking managed or operated by one or several trustees as fiduciary owners on the basis of articles set forth in a trust deed under its own name or a company name, such trust enterprise is legally autonomous and pursues commercial or other objectives, is endowed with its own assets and for which the law has specific provisions concerning the liability of the same.

A trust enterprise may pursue commercial purposes either as its main object or exclusively or ancillary to other objects or as an alternative, it may have non-commercial objects. The law considers as a typical object of the trust enterprise: the investment of capital, the distribution of profits, the merging of businesses by the transfer of shares to the trust or for sale. The law also recognizes the formation of a trust enterprise for the purposes of maintaining a certain family or for charitable or community purposes.

A trust enterprise with or without a distinct juridical personality can be established. If the trust enterprise possesses a separate juridical personality it is the legal owner of the entire trust property. The trustee merely fulfils a function as an administrative body of the trust enterprise. He manages the enterprise in accordance with the terms set forth in the articles to the trust deed.

Inasmuch as only trust enterprises possessing a juridical personality are relevant in practice in Liechtenstein, the following commentary is limited to such enterprises.

The trust enterprise is formed by the settlor by means of an executed and authenticated trust instrument in which the settlor declares the formation of the trust enterprise and which must contain the following:

(1) the name of the trust enterprise, the seat, duration, the purpose of the trust enterprise, the subject matter of the enterprise and the trust enterprise must be expressly defined as such or as a business trust or the like;
(2) the trust fund as well as the components thereof (cash or commodity deposits) with the confirmation that the information concerning the same is accurate;
(3) the number of trustees and the manner according to which same are to be appointed as well as directives concerning the conditions for the appointment of successor trustees;
(4) in the case of a trust enterprise which is to undertake commercial activities, the manner in which an auditing authority is to be appointed; and
(5) the manner in which publication is to take place.

Moreover, the trust deed and the articles thereto may contain further provisions, in particular provisions pertaining to organizational matters, the appointment of a supervisory or auditing authority or provisions concerning the beneficial interest. Such provisions may also be contained in a by-law to the trust deed or in the articles thereto.

Natural or juridical persons, nationals, aliens, residents or non-residents may establish a trust enterprise.

The trust enterprise is constituted through the entry of the same in the Public Register. The entry is thus a constitutive prerequisite for the creation of the distinct juridical personality. The company name usually contains the designation ‘reg. Trust’.

The application for entry in the Public Registry must contain the following:

(1) company name, headquarters, duration, objects, or the subject matter of the enterprise;
(2) the amount of the trust fund and the composition thereof (cash or deposits in kind);
(3) certified copy of the trust deed;
(4) particulars concerning the name, the given name, the profession and the residence or company name and corporate headquarters of those trustees who shall exercise the trust powers; and
(5) the manner in which publication is to take place.

The following particulars concerning a trust enterprise may be extrapolated from the Public Register:

(1) date of the entry;
(2) date of the trust instrument;
(3) name of the trust enterprise, headquarters, duration and objects of the trust enterprise;
(4) particulars concerning the trust fund and the composition thereof;
(5) the members of the Board of Trustees and their respective signing powers; and

(6) the manner of publication and the legal representative for service.

No further particulars concerning the trust enterprise may be gleaned from the Public Register; the identity of the settlor and the beneficiaries as well as other circumstances concerning the trust enterprise are thus kept confidential. Each subsequent change concerning any matter which must be entered into the Public Register, or notice thereof, must be reported to the Public Registrar's office as it becomes relevant by the managing trustees.

CAPITAL OF THE TRUST ENTERPRISE (TRUST FUND)

The trust fund must have a minimum value of CHF 30,000 which may be transferred from the settlor to the trust enterprise either in cash or in kind. Proof of payment of the said capital must be presented to the Public Registry forthwith upon the formation of the trust enterprise. Such proof is to be a confirmation from a Liechtenstein or Swiss Bank that the value of the trust fund has been fully paid up. In the case of transfers in kind, an appraisal certificate issued by an expert concerning the value of such payment in kind must be presented.

The trust fund is the capital of the trust enterprise. The term trust property, on the other hand refers to the entire property held by the trust enterprise.

LIABILITY OF THE TRUST ENTERPRISE

Creditors of the trust enterprise may only look to the trust fund and the other assets held by the trust enterprise. The settlor is only required to make such payments as are called for on his part pursuant to the terms of the trust instrument. In any event he is required to transfer to the trust fund the payments in cash or kind hereinbefore referred to. He may, however, only enter into liabilities on behalf of the trust enterprise if he is expressly authorized to do so. Apart from the matters hereinbefore outlined, there is principally no further personal liability on the part of any of the participants of the trust enterprise.

The trust instrument may however provide that individual participants may be personally liable for the debts of the trust enterprise.

The trust articles may also to a certain extent limit the liability of the trust enterprise. The liability of a trust enterprise which does not carry on any type of commercial activity or exercise any other type of trade, can be made conditional upon obtaining the consent of a particular body or a third person. The liability may furthermore be limited in that a private creditor shall only be entitled to seek satisfaction from such assets as do not belong to the trust fund or exclusively out of the income of the trust enterprise or, alternatively, neither out of the trust property, nor out of the income for so long as the trust enterprise has not been liquidated. Such limitations must be entered in the Public Register.

The Participants of the Trust Enterprise

To the extent that the trust instrument does not otherwise provide, the participants of the trust enterprise are the settlor, the trustees and the beneficiaries. The trust instrument may contain provisions which vary from the law and which govern the legal position of the participants, the relationship of the participants to one another or individual groups of the participants.

THE SETTLOR

Generally speaking the settlor is the person who by means of the trust instrument declares the formation of the trust enterprise and who transfers assets to the trust enterprise at the time of its formation or assures such a transfer. The settlor determines the future application of the assets which have been transferred to the trust enterprise by means of provisions set forth in the trust articles which contain terms concerning the administration and the application of the trust property and the profits arising therefrom. The settlor may ensure that the terms of the trust deed are adhered to and may reserve powers to himself in questions concerning the organization or the management of the business of the trust enterprise.

The trust instrument may only be modified to the extent that the settlor has provided for such modification in the same. Otherwise the trust deed may only be changed in compelling circumstances with the consent of all interested participants and with the permission of the Public Registrar.

THE TRUSTEE AND THE BOARD OF TRUSTEES

The trustee is the administrative body of the trust enterprise. He is responsible for managing and representing the trust enterprise. Two or more trustees shall together form the board of trustees. At least one trustee must be a national and resident of the Principality of Liechtenstein or a juridical person incorporated pursuant to the laws of the Principality of Liechtenstein and moreover, must be admitted as an attorney-at-law, a legal agent, a trustee, an auditor or possess a commercial qualification recognized by the government. The duties of the trustees are set forth and are to be exercised within the framework of the law and the trust instrument. Moreover, the same are to be carried out in observance of the provisions concerning the duties of the trustee of a trust. In particular, in the conduct of the business of the trust enterprise, the trustee and his agents shall exercise the care to be expected of a prudent businessman when conducting his own affairs and they shall be liable for any willful or negligent violation of their duties.

To the extent that neither the law nor the trust instrument otherwise provides, the trustees shall be entitled to manage the business jointly. Decisions and resolutions of the board of trustees are thus in principle to be made unanimously. In the case of trust enterprises having charitable or public purposes, the resolution of the board of trustees may, in the absence of a specific provision, also be taken through a majority of the members. The trustees shall have the power to undertake all acts within the framework of the trust instrument and the law which are necessary to achieve the objects of the trust enterprise or which serve the subject matter of the trust. Such trustees as do not manage the business of the trust enterprise shall nevertheless be liable for damages arising from the supervision through the managing trustees.

Those trustees who are charged with managing the business of the trust enterprise are, in their dealings with the trust enterprise and with participants of the trust enterprise, to observe the law, the stipulations contained in the trust instrument and all relevant resolutions or other instructions given by competent authorities. In the event of a breach of trust, that is to say in the event of a willful or negligent non-observance of their duties, such trustees as are charged with the conduct of the business of the trust shall be liable for all damages arising from such a breach.

To the extent that the law, the trust instrument, or the actual circumstances do not otherwise provide, the trustees are obligated, upon the demand of one of the beneficiaries, to give a fair report over all of the matters and circumstances concerning the trust enterprise and in particular, concerning the status and the investment of the trust property and at appropriate intervals to render a report and accounting. The aforesaid rights of the beneficiary may only be disregarded when the same are exercised with fraudulent intention or the exercise of the same is abusive, or when the exercise of the same is detrimental to the interests of the trust enterprise or the other beneficiaries, or when same are exercised in breach of trust. Trustees have identical rights concerning their co-trustees. Detailed provisions, in particular concerning the conduct of the business, may be contained in the trust instrument or in by-laws and regulations thereto.

THE AUDITING AUTHORITY

A trust enterprise which carries on commercial activities or the objects whereof permit the pursuit of commercial or trade activities, must appoint an auditing authority. In other cases the appointment of an auditing authority is optional.

Members of the auditing authority may not at the same time be managing trustees of the trust enterprise. The auditing authority shall, in particular be responsible for the audit of annual financial statements consisting of the balance sheet and the income statements in order to ensure that the same have been prepared in conformity with the recognized accounting principles.

THE BENEFICIARIES

Beneficiaries are those persons, who according to the provisions of the trust instrument or any document executed and subsidiary thereto, are to receive a present or future advantage from the trust enterprise such as a share of the income or the capital thereof. The settlor can be the beneficiary of the trust enterprise.

The beneficiaries are either named in the trust instrument by the settlor or the settlor can provide stipulations concerning the appointment of beneficiaries at a later date. The settlor may delegate to the trustees or another functionary the power to appoint beneficiaries as well as the power to determine the nature and the extent of their respective beneficial interests. The said functionary may exercise the power of appointment in its unfettered discretion provided always that it must adhere to the intentions of the settlor as set forth in the trust instrument.

The beneficial interest may be made conditional, limited in time, alienable or inalienable, for valuable consideration or without any consideration and so on. The beneficial interest can also take the form of a claim which is enforceable in law.

To the extent that no other beneficiaries have been named, the settlor or his legal successors shall be presumed to be beneficiaries.

The Legal Representative

The legal representative is the representative for service upon the trust enterprise. The Public Registrar must be notified of the particulars concerning the legal representative for the purpose of noting a corresponding entry in the Public Register.

Other Bodies

In addition to the bodies required by law, the trust instrument may also contemplate further institutions. Thus, for example an advisory board, a protector, either of which may have an advisory, a controlling or a decision-making power, a supervisory board or other such institutions may be called for in the trust instrument.

Termination of the Trust Enterprise

The trust enterprise shall cease to exist upon its bankruptcy or should it be liquidated due to its unlawful or immoral objects or due to an essential defect in the trust instrument.

To the extent that the same is contemplated in the trust instrument, the rescission or revocation of the trust enterprise by the settlor is permissible. In addition thereto the trust instrument may contain provisions concerning the liquidation of the trust enterprise. Thus for example the trust enterprise can be constituted for a definite period of time. The trust instrument may also provide that the trust enterprise may not be liquidated for a particular period of time.

To the extent that the trust instrument does not otherwise provide, the trust enterprise may, with the consent of one or all of the trustees, all of the beneficiaries and remaindermen and in the event that the beneficial interests are given for no consideration, with the consent of the settlor or his direct successors at law, be dissolved. The consent of the settlor or his direct legal representative can be dispensed with by the Public Registrar in compelling circumstances.

The dissolution of the trust enterprise shall be in accordance with the provisions concerning liquidation proceedings. Liquidation proceedings essentially serve to conclude pending transactions, to satisfy the debts of the trust enterprise, to liquidate the assets and to distribute the liquidation surplus among the beneficiaries. In order to protect the interests of the creditors no distribution of the liquidation surplus may occur prior to six months after the call for creditors. To the extent that the trust instrument does not otherwise provide, the trust property shall revert to the settlor. As a rule, the managing trustees act as liquidators provided that neither the trust instrument nor the Public Registrar otherwise requires.

In the event that his retirement from his functions as trustee could jeopardize the interests of the trust property, the trustee or his agent are obligated to continue the business of the trust enterprise until either the settlor, his heirs or a representative, or the Princely Liechtenstein Court of First Instance have taken the necessary measures to ensure the orderly conduct of the business of the trust enterprise.

The Rendering of Accounts

Such trust enterprises as carry on a commercial activity or the constitutive documents whereof contemplate the conduct of a trade or business, have the duty to maintain a proper inventory, to prepare balances and income statements and to maintain proper business books and records. The annual audited financial statements are to be submitted to the tax authorities within six months of the close of each business year.

Such enterprises as do not pursue commercial activities and the objects whereof do not contemplate the conduct of a business or a trade must prepare an annual statement of their assets and liabilities. A declaration which has been signed by the Liechtenstein trustee and which confirms that as of the end of the past financial year a statement of assets and liabilities has been prepared and that the trust enterprise has in the past financial year not conducted a trade or pursued commercial activities must be submitted within six months after the close of each financial year to the Public Registrar.

Taxes and Duties

FORMATION FEES AND DUTIES

At the time of the formation of the trust enterprise, a formation fee becomes due if the trust enterprise is subject to profit tax without limitation and if its actual administration is located in Liechtenstein. The tax rate is calculated as 1% of the statutory trust enterprise fund. The first CHF 1,000,000 of the statutory trust enterprise fund are exempt from the formation fee. The tax will be reduced to 0.5% for the amount exceeding CHF 5,000,000 of the statutory trust enterprise fund and to 0.3% for the amount exceeding CHF 10,000,000 of the statutory trust enterprise fund.

REGISTRATION FEES

A registration fee of CHF 700 is levied upon the registration in the Public Register of a trust enterprise having a juridical personality. To the extent that the trust enterprise fund exceeds CHF 200,000, the registration fee is increased by 0.2 per mille of the sum exceeding this amount, up to a limit of CHF 10,000.
In all cases, legalization fees totalling approximately CHF 100 to 200 are payable.

PROFIT TAX

Trust enterprises are subject to a flat rate profit tax of 12.5% with a minimum of CHF 1,800. If the trust enterprise qualifies as a Private Asset Structure (PAS) it is only subject to the minimum profit tax of CHF 1,800. Profits, dividends or profits from sales, at home and abroad, are not subject to profit tax.

TAXATION OF BENEFICIARIES AND PROPRIETORS

Such beneficiaries as are resident or domiciled abroad pay no taxes in Liechtenstein with respect to the benefits which they receive from the trust property. The same applies with respect to the transfer to the beneficiaries of the liquidation surplus upon the termination of the trust enterprise, i.e. there is no source tax on dividends and payments to beneficiaries and proprietors.

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