

Trust Enterprise

1. Definition

The trust enterprise is a legally independent entity formed on the basis of its statutes and administered by one or more trustees (as fiduciary owners). It is an entity operating under its own name, equipped with its own capital, which pursues economic or other purposes. Distinction is made between a trust enterprise with legal personality and one without legal personality, albeit the latter is of relatively little practical importance. In the case of trust enterprises with legal personality, the assets endowed to it become the property of the trust enterprise itself. The trustee, as one of its bodies, must administer the trust assets according to the terms of the statutes and in the interest of its beneficiaries.

2. Establishment

2.1. The issue of the Statutes

The statutes must contain the following:

- trust name, domicile, duration, purpose of the trust enterprise and express designation as either

a “trust enterprise”, “trust foundation,” “business trust” or other similar expression;

- the trust fund (a minimum of CHF/EUR/ USD 30'000., in the form of either cash or non-cash contributions). The individual trust assets must be detailed in the statutes themselves or in a signed and certified written index attached thereto;
- the number of trustees and their method of appointment including how the future appointment of trustees shall occur in the event of the existing trustees ceasing to act; and
- the form of notification to third persons.

In addition, the statutes may contain other provisions, for example the appointment of a supervisory body or an auditor or more detailed provisions regarding the beneficiaries.

2.2. Registration of the Trust Enterprise with the Commercial Register

At least one of the trustees or one of the persons involved in its formation has to apply for registration in the Commercial Register as Trust Register. The

trust enterprise comes into existence with its entry in the Commercial Register. Thus, registration has constitutive effect.

3. The Purpose of the Trust Enterprise

The purpose of the trust enterprise may be varied, so long as it is not illegal, immoral or subversive. For example, the purpose may be for inheritance or estate planning or for trading purposes with the trust assets.

It must be apparent from the purpose whether or not the trust enterprise undertakes a commercial business. The pursuit of a commercial business activity constitutes an independent and continuing activity aimed at obtaining income which, dependent on the nature and extent of the business, requires commercial operation and orderly accounting. If a trust enterprise undertakes commercial activities, it has the following obligations:

- the appointment of an audit body;
- to file accounts;
- to carry out accounting in accordance with commercial principles; and
- insofar as it is intended to carry out an operative business within Liechtenstein, it must obtain a trade license.

4. Organization

4.1. The Settlor

The settlor is the person providing or securing the initial contribution to the trust fund.

The settlor may be either a natural person or a legal person with residence/registered office either in Liechtenstein or abroad.

The powers of the settlor are primarily the issuing of the statutes as well as monitoring compliance with the statutes.

The settlor may reserve further powers for himself in the statutes.

4.2. Board of Trustees

The trustees, who are appointed in accordance with the trust instrument, constitute the board of trustees. They are jointly responsible for operating the trust enterprise and jointly represent it towards third parties, provided that nothing to the contrary is set out in the statutes. To that extent, provided that nothing else is stipulated, unanimity on all decisions is required. The trustees may delegate the operation of the trust enterprise to individual trustees or third parties.

In the case of charitable trust enterprises a resolution of the majority of the trustees is binding upon the minority.

The trustees must carry out their duties with all due care and attention. They are responsible for every culpable breach of duty.

Insofar as the trust enterprise does not conduct commercial activities within Liechtenstein, at least one of the trustees must be a Liechtenstein national or a national of an EEA-member state. In addition, such member of the board of trustees must be admitted as a Liechtenstein registered fiduciary.

4.3. Audit Authority

The appointment of an audit authority is mandatory when the trust enterprise carries out commercial activity. The audit authority is nominated by the settlor upon the founding of the trust enterprise, or may be subsequently appointed by the board of trustees.

5. The Legal Representative

The legal representative must be a Liechtenstein national or a national of an EEA-member state with permanent residence in Liechtenstein or a company domiciled in Liechtenstein. The legal representative must be registered in the Commercial Register.

The legal representative is legally obliged:

- to receive notices and communications of any nature including service of legal documents and similar from the Liechtenstein authorities; and
- to keep files in safe custody and to keep books of account, where and insofar as the domestic operation requires this.

6. Beneficiaries

A beneficiary is defined as a person who is entitled to receive now or at some time in the future a benefit from the trust enterprise in accordance with its statutes or its by-laws, either as a share in the income generated by the trust assets and/or the trust assets themselves.

Such beneficial entitlement may be qualified, limited, conditional, or dedicated for impersonal purposes. It may be revocable so long as such benefit was provided free of charge, on the grounds of the unworthiness of the beneficiary or in the event of a deterioration of the settlor's financial circumstances. Beneficiaries are usually named in the by-laws. The by-laws, unlike the statutes, must not be registered or deposited with the Commercial Register. Accordingly, they are not accessible to third parties. The by-laws ordinarily become legally binding once created.

If no beneficiaries are named in the statutes or in the by-laws, then the settlor is deemed to be the beneficiary.

It may be provided for in the statutes or in the by-laws, that upon the end of a person's entitlement, other persons may be appointed as their successors. Such persons are usually referred to as prospective beneficiaries (*Anwartschaftsberechtigte*). Ordinarily, they are subject to the same rights and obligations as beneficiaries. For example, they have a right to information from the trustee as well as a right to inspect the business records of the trust enterprise insofar as their interests are concerned.

7. Liquidation of the Trust Enterprise

The following are grounds for dissolution:

- bankruptcy on grounds of insolvency or over-indebtedness, as well as dissolution proceedings on grounds of the purpose being unlawful, immoral or subversive or on grounds of subversive activity and voidability proceedings on grounds of essential defects in the trust articles;
- provided that the trust deed does not determine otherwise, an unanimous consent is required from all trustees, beneficiaries (and possibly all the prospective beneficiaries) to make an application for dissolution and if, pursuant to the trust deed, the beneficial interest has been acquired without valuable consideration, the consent of the settlor or of his immediate successors is also required. For important reasons, this consent may be replaced by the consent of the Department of Justice;
- corresponding provisions in the statutes; or
- total depletion of the assets.

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