

Law on the Amendment of the Persons and Companies Act

26 June 2008

I hereby grant My consent to the following Resolution taken by the Parliament:

I.

Amendment of Present Law

The Persons and Companies Act of 20 January 1926, Liechtenstein State Gazette 1926, No. 4, in the version currently in force, shall be amended as follows:

Art. 106, para. 2, item 3

Repealed

Art. 107, para. 4a

4a) Where the Act refers to non-profit making (comm on-benefit) or charitable purposes, this shall include such purposes the fulfilment of which is of benefit to the general public. In particular, there is deemed to be a benefit to the general public if the activity serves the common good in a charitable, religious, humanitarian, scientific, cultural, moral,

Translation from the authoritative German original. 2

sporting or ecological sense, even if only a specific category of persons benefits from the activity.

Art. 182, para. 2

2) It shall diligently manage and promote the enterprise of the legal entity and shall be liable for observing the principles of diligent management and representation. A member of the administration shall be deemed to act in harmony with these principles if in his commercial decision-making he is not governed by irrelevant interests and it must reasonably be assumed that he is acting for the good of the legal entity on the basis of appropriate information.

Art. 259, para. 2

Repealed

Heading above Art. 552

Second Section

The Foundations

Art. 552

The following rules apply to foundations:

A. In General

I. Definition and Purpose

§ 1

1. Description and Delimitation

1) A foundation within the meaning of this Section is a legally and

economically independent special-purpose fund which is formed as a legal entity (juristic person) through the unilateral declaration of will of the founder. The founder allocates the specifically designated foundation assets, stipulates the purpose of the foundation, entirely non-self-serving and specifically designated, and also stipulates the beneficiaries. 3

2) A foundation is only permitted to carry on business run along commercial lines if it directly serves the achievement of its common benefit purpose or if this is permitted on a special statutory basis. Insofar as the orderly investment and management of the foundation assets require, the setting-up of a commercial operation is permissible, even for private-benefit foundations.

3) If there is no case of para. 2), sentence 1, the foundation shall also not be permitted to be the shareholder with unlimited liability of a collective under personal law which runs a business along commercial lines.

§ 2

2. Foundation Purposes

1) Foundation purposes may include common-benefit or private benefit purposes.

2) A common-benefit foundation within the meaning of this Section is a foundation whose activity according to the declaration of establishment is entirely or predominantly intended to serve common benefit purposes in accordance with Art. 107, para. 4a, unless it is a family foundation.

3) A private-benefit foundation within the meaning of this Section is a foundation which according to the declaration of establishment is entirely or predominantly intended to serve private or personal purposes. Predominance is to be assessed according to the relationship between services provided to serve private-benefit purposes and those serving common-benefit purposes. If it is not certain that at any given time the foundation is entirely or predominantly intended to serve private-benefit purposes, it shall be treated as a common-benefit foundation.

4) The following in particular shall be regarded as private-benefit foundations:

1. pure family foundations; these are foundations whose assets exclusively serve the defrayal of costs of upbringing or education, provision for or support of members of one or more families or similar family interests;

2. mixed family foundations; these are foundations which predominantly pursue the purpose of a pure family foundation, but which supplementally also serve common-benefit or other private benefit purposes. 4

II. Foundation Participants

§ 3

1. Definition

The following are deemed to be participants in the foundation:

1. the founder;
2. the entitled beneficiaries;
3. the prospective beneficiaries;
4. the discretionary beneficiaries;
5. the ultimate beneficiaries;
6. the executive bodies of the foundation pursuant to §§ 11, 24, 27 and 28 as well as the members of these executive bodies.

§ 4

2. Founders

- 1) Founders may be one or more natural persons or legal entities. A foundation formed by way of last will and testament may only have one founder.
- 2) If a foundation has more than one founder, the rights to which the founder is entitled or which are reserved to the founder may only be exercised jointly by all founders, unless the declaration of establishment provides otherwise. If one of the founders ceases to hold office, in cases of doubt the above-cited rights shall lapse.
- 3) If the foundation is formed by an indirect representative, the principal (authoriser) shall be deemed to be the founder. If the latter also acts as indirect representative for a third party, the latter's principal (authoriser) shall be deemed to be the founder. In any event the indirect representative shall be under an obligation to notify the foundation council of the identity of the founder.

§ 5

3. Beneficiaries

- 1) The beneficiary is deemed to be the natural person or legal entity that with or without valuable consideration in fact, unconditionally or subject to certain prerequisites or conditions, for a limited or unlimited period, with or without restrictions, revocably or irrevocably, at any time during the legal existence of the foundation or on its termination derives or may derive an economic benefit from the foundation (beneficial interest).
- 2) Beneficiaries within the meaning of para. 1 are:
 1. the entitled beneficiaries (§ 6, para. 1);
 2. the prospective beneficiaries (§ 6, para. 2);
 3. the discretionary beneficiaries (§ 7); and
 4. the ultimate beneficiaries (§ 8).

§ 6

4. Beneficiary with a Legal Claim

- 1) An entitled beneficiary is a beneficiary who on the basis of the foundation deed, the supplementary foundation deed or the regulations has a legal claim to benefit, to a specified or specifiable extent, from the foundation assets or foundation income.

2) A prospective beneficiary is a beneficiary who after the occurrence of a condition precedent or at a specified time, in particular after the exclusion of a prior-ranking beneficiary, on the basis of the foundation deed, the supplementary foundation deed or a regulation has a legal claim to acquire an entitlement to a beneficial interest.

§ 7

5. Discretionary Beneficiary (Beneficiary without Legal Claim)

1) A discretionary beneficiary is a beneficiary who belongs to the category of beneficiaries specified by the founder and whose possible beneficial interest is placed within the discretion of the foundation council or another body appointed for this purpose. A person who only has an expectancy to such a future beneficial interest shall not be treated as a discretionary beneficiary.

2) A legal claim by the discretionary beneficiary to a specific benefit from the foundation assets or foundation income shall in any event not come into being until there is a valid resolution by the foundation council, or another executive body vested with this responsibility (§ 28), on an actual distribution to the relevant discretionary beneficiaries and such claim shall lapse on receipt of this distribution.

§ 8

6. Ultimate Beneficiary

1) An ultimate beneficiary is a beneficiary who in accordance with the foundation deed or supplementary foundation deed is intended to receive the remaining assets following the liquidation of the foundation.

2) If there is no designation of an ultimate beneficiary or no existence of the ultimate beneficiary, the remaining assets following the liquidation shall pass to the state.

3) If there is no specification of the appropriation of assets in the event of a revocation pursuant to § 30, para. 1, the founder himself shall be deemed to be the ultimate beneficiary irrespective of whether he previously had the status of a beneficiary.

III. Rights of the Beneficiaries to Information and Disclosure

§ 9

1. In General

1) Insofar as his rights are concerned, the beneficiary is entitled to inspect the foundation deed, the supplementary foundation deed and possible regulations.

2) In addition, insofar as his rights are concerned, he is entitled to the disclosure of information, reports and accounts. For this purpose he has the right to inspect the business records and documents and to produce copies, and also to examine and investigate all facts and circumstances, in particular the accounting, personally or through a representative.

However, this right must not be exercised with dishonest intent, in an abusive manner or in a manner in conflict with the interests of the

foundation or other beneficiaries. By way of exception, the right may also be denied for important reasons to protect the beneficiary.

3) The ultimate beneficiary shall not be entitled to these rights until after the dissolution of the foundation.

4) The rights of the beneficiary shall be asserted in special noncontentious civil proceedings.

5) The exceptions pursuant to §§ 10 to 12 are reserved.

§ 10

2. The Founder's Right of Revocation

1) If in the declaration of establishment the founder has reserved for himself the right to revoke the foundation (§ 30) and he is himself the ultimate beneficiary, the beneficiary shall not be entitled to the rights pursuant to § 9.

2) If the foundation has been formed by more than one beneficiary, these rights may be exercised by each individual founder who has reserved for himself the right of revocation.

§ 11

3. Setting-up of a Controlling Body

1) If in the declaration of establishment the founder has set up a controlling body for the foundation, the beneficiary may only demand disclosure of information concerning the purpose and organisation of the foundation, and concerning his own rights vis-à-vis the foundation, and may verify the accuracy of this information by inspecting the foundation deed, the supplementary foundation deed and the regulations.

2) The following may be set up as controlling body:

1. an audit authority, to which § 27 shall be applied mutatis mutandis;

2. one or more natural persons specified by name by the founder, who have sufficient specialist knowledge in the sphere of law and business to be able to perform their duties; or

3. the founder.

3) The controlling body must be independent of the foundation. § 27, para. 2 applies mutatis mutandis.

4) The controlling body shall be under an obligation to verify once a year whether the foundation assets are being managed and appropriated in accordance with their purposes. The foundation council shall submit a report on the outcome of this audit. If there is no reason for objection, it shall be sufficient to provide confirmation that the foundation assets have been managed and appropriated in accordance with the purpose of the foundation and in conformity with the provisions of the law and the foundation documents. If this is not the case, or while performing its duties the controlling body ascertains circumstances which jeopardize the existence of the foundation, it shall notify the beneficiaries and the court as soon as it is aware of these circumstances. The court shall if necessary take action in accordance with § 35.

5) If a controlling body has been set up, the beneficiary may demand

from the foundation and the controlling body the forwarding of the reports pursuant to para. 4.

6) If the beneficiary asserts his rights pursuant to § 9, the foundation shall be under an obligation to prove that there exists a controlling body which satisfies the requirements of para. 2 in conjunction with para. 3.

§ 12

4. Supervised Foundations

The beneficiary shall not be entitled to the rights pursuant to § 9 if the foundation is subject to the supervision of the foundation supervisory authority (§ 29).

§ 13

IV. Foundation Assets

1) The minimum capital of the foundation is 30,000 Swiss francs. It may also be contributed in euros or US dollars and shall then amount to 30,000 euros or 30,000 US dollars.

2) If there is an additional contribution of assets to the foundation by the founder after its legally valid formation, this shall be treated as a subsequent endowment.

3) If there is a contribution of assets to the foundation by a third party, this shall be treated as a donation. The donor shall not thereby acquire the status of a founder.

4) If the foundation does not become effective until the death of the founder or after the termination of a legal entity, with regard to the contributions of the founder it shall be deemed to have come into being before his death or before the termination of the legal entity.⁹

B. Formation and Coming into Being

I. In General

§ 14

1. Foundation Inter vivos

1) The foundation is formed through a declaration of establishment. This requires the written form and authentication of the signatures of the founders.

2) In the case of direct representation or indirect representation pursuant to § 4, para. 3, the signature of the representative shall be authenticated on the foundation deed.

3) For direct representation, the representative shall require a special power of attorney from the founder referring to this transaction.

4) Comm on-benefit foundations and private-benefit foundations carrying on business run along commercial lines on the basis of special law, shall be entered in the Public Registry and shall thereby acquire the right of legal personality.

5) Other private-benefit foundations may be entered in the Public Registry. However, there is no legal obligation to do so.

§ 15

2. Foundation Mortis Causa

- 1) The foundation may also be formed by way of last will and testament or contract of inheritance in accordance with the applicable formal rules.
- 2) The entry of a foundation or the deposition of a notification of formation of a foundation formed by way of last will and testament cannot be undertaken until after the death of the founder or, in the case of a contract of inheritance, unless the founder stipulates otherwise, after the death of one of the founders.
- 3) § 14, paras. 4 and 5 shall apply mutatis mutandis. 10

II. Foundation Documents

§ 16

1. Foundation Deed (Articles)

- 1) The foundation deed shall in any event include:
 1. the intention of the founder to form the foundation;
 2. the name or corporate name and domicile of the foundation;
 3. the dedication of specific assets, which must amount to at least the statutory minimum capital;
 4. the purpose of the foundation, including the designation of tangible beneficiaries, or beneficiaries identifiable on the basis of objective criteria, or of the category of beneficiaries, unless the foundation is a common-benefit foundation or the beneficiaries are evident from the purpose of the foundation, or unless there is instead express reference to a supplementary foundation deed regulating this;
 5. the date of formation of the foundation;
 6. the duration of the foundation, if this is limited;
 7. regulations on the appointment, dismissal, term of office and nature of the management (adoption of resolutions) and power of representation (authority to sign) of the foundation council;
 8. a provision concerning the appropriation of the assets in the event of the dissolution of the foundation, with the application mutatis mutandis of item 4. above;
 9. the last name, first name and place of residence or corporate name and domicile of the founder or, in the case of indirect representation (§ 4, para. 3), the last name, first name and place of residence or corporate name and domicile of the representative. In this connection, there shall be express mention of the activity as indirect representative.
- 2) Insofar as the following contents are regulated, these shall likewise be recorded in the foundation deed:
 1. the indication that a supplementary foundation deed has been drawn up or may be drawn up;
 2. the indication that regulations have been issued or may be issued;
 3. the indication that other executive bodies have been formed or may be formed; further particulars of the composition, appointment,

dissal, term of office as well as duties may be stated in the supplementary foundation deed or in regulations;11

4. the reservation of the right of revocation of the foundation or amendment of the foundation documents by the founder;
5. the reservation of the right to amend of the foundation deed or supplementary foundation deed by the foundation council or by another executive body pursuant to §§ 31 to 34;
6. the exclusion of enforcement pursuant to § 36, para. 1;
7. the reservation of the right of conversion (§ 41);
8. the provision that the foundation, although a private-benefit foundation, is subject to supervision (§ 29, para. 1, sentence 2).

3) The provisions in accordance with para. 1, items 1, 3 and 4 are deemed to be material within the meaning of the voidability proceedings § 17

2. Supplementary Foundation Deed (Internal Regulations)

The founder may draw up a supplementary foundation deed if he has reserved for himself the right to do so (§ 16, para. 2, item 1). This may include those integral parts of the declaration of establishment which do not have to be recorded in the foundation deed.

§ 18

3. Regulations

For the further execution of the foundation deed or the supplementary foundation deed, the founder, the foundation council or another executive body of the foundation may issue internal directives in the form of regulations (§ 16, para. 2, item 2) if the right to do so has been reserved in the foundation deed. Regulations issued by the founder take precedence over those of the foundation council or another executive body of the foundation.

§ 19

III. Entry in the Public Registry

1) If the foundation is subject to the obligation to register, each member of the foundation council shall, irrespective of his power of representation, be under an obligation to make an application for the foundation to be entered in the Public Registry. The application shall be submitted in writing together with the original or certified copy of the foundation deed. The foundation council shall confirm that the statutory minimum capital is at the free disposal of the foundation. The representative also has authority to make the application.

2) If the entry is made although there is no obligation to register (§ 14, para. 5), the foundation council must in any event confirm that the tangible beneficiaries, or beneficiaries identifiable on the basis of objective criteria, or of the category of beneficiaries, have been designated by the founder, unless this is evident from the notified purpose of the foundation.

3) The entry shall contain the following information:

1. name or corporate name of the foundation;
2. domicile of the foundation;
3. purpose of the foundation;
4. date of formation of the foundation;
5. duration of the foundation, if this is limited;
6. organisation and representation, stating the last name, first name, date of birth, nationality and place of residence or registered office, or the corporate name and domicile of the members of the foundation council as well as the form of the signatory's power;
7. the last name, first name, date of birth, nationality and place of residence or registered office of the legal attorney, or the corporate name and domicile of the audit authority;
8. the last name, first name, date of birth, nationality and place of residence or registered office of the legal attorney, or corporate name and domicile of the representative.

4) The entry can also, if necessary, be made on the basis of the foundation deed by order of the judge in special non-contentious civil proceedings:

- a) on the application of foundation participants;
- b) on notification from the Office of Land and Public Registration or the probate authority; or
- c) ex officio.

5) If there is an amendment to the purpose of a foundation not entered in the Public Registry such that an obligation to register arises, the members of the foundation council shall be under an obligation to make an application within 30 days for the foundation to be entered in the Public Registry in accordance with paras. 1 and 3. Para. 4 shall apply mutatis mutandis.

6) Notification of the entry shall be made within the meaning of Art. 957, para. 1, item 1.

IV. Notification of Formation

§ 20

1. Deposition of Notification of Formation

1) If the foundation is not subject to an obligation to register, for the purpose of monitoring the obligation to register and prevention of foundations with an illegal or immoral purpose as well for preventing the circumvention of possibly required supervision, each member of the foundation council shall be under an obligation to deposit, within 30 days following formation, notification of formation at the Office of Land and Public Registration. The representative also has authority to make the deposition. The accuracy of the information pursuant to para. 2 shall be certified in writing by an attorney at law admitted in Liechtenstein, trustee or holder of an entitlement in accordance with Art. 180a.

2) The notification of formation shall contain the following

information:

1. name of the foundation;
2. domicile of the foundation;
3. purpose of the foundation;
4. date of formation of the foundation;
5. duration of the foundation, if this is limited;
6. the last name, first name, date of birth, nationality and place of residence or registered office of the legal attorney or the corporate name of the members of the foundation council as well as the form of the signatory's power;
7. the last name, first name, date of birth, nationality and place of residence or registered office of the legal attorney, or the corporate name and domicile of the legal representative;
8. confirmation that the tangible beneficiaries, or beneficiaries identifiable on the basis of objective criteria, or of the category of beneficiaries, have been designated by the founder, unless this is evident from the notified purpose of the foundation;
9. confirmation that the foundation is not entirely or predominantly intended to serve common-benefit purposes;
10. indication of whether pursuant to a provision of the foundation deed the foundation is subject to supervision; as well as
11. confirmation that the statutory minimum capital is at the free disposal of the foundation.

3) On each amendment of a circumstance contained in the notification of formation and on the existence of a reason for dissolution pursuant to § 39, para. 1, the members of the foundation council shall be under an obligation, within 30 days, to deposit a notification of amendment at the Office of Land and Public Registration. The representative also has authority to make the deposition. The accuracy of the information in the notification of amendment shall be certified in writing by an attorney at law admitted in Liechtenstein, trustee or holder of an entitlement in accordance with Art. 180a.

4) On the application of the foundation the Office of Land and Public Registration shall, following each legally executed notification, issue an official confirmation of the deposition of the notification of formation. It shall not issue an official confirmation of deposition if:

1. the notified purpose is illegal or immoral; or
2. it is evident from the notification that the foundation is subject to an obligation to register.

§ 21

2. Authority to Examine and Measures

1) A foundation supervisory authority the Office of Land and Public Registration is entitled to verify the accuracy of the deposited notifications of formation and amendment. For this purpose it may

dem and information from the foundation and through the controlling body or, if no such body has been set up, through an authorised third party, inspect the foundation documents, insofar as this is necessary for verification purposes.

2) Duplicates and copies are only permitted to be drawn up if the verification indicates that the notification of formation or amendment is inaccurate.

3) If the verification shows that the foundation is pursuing an illegal or immoral purpose, it shall be dissolved, subject to application of the general rules concerning the legal entities. The provisions concerning the amendment of the purpose, which has subsequently become impermissible, are reserved (§§ 31 and 33). If it becomes evident that the foundation is subject to an obligation to register, the entry shall be made by the Office of Land and Public Registration with the application of § 19, para. 4. If the verification shows that the foundation is subject to supervision pursuant to § 29, the foundation supervisory authority shall if necessary take the appropriate measures.

4) If the courts, the Office of the Public Prosecutor or an administrative authority become aware that the notification of formation or amendment has not been submitted or that the submitted notification of formation or amendment is inaccurate in content, a report shall be drawn up and forwarded to the foundation supervisory authority.

5) The Government may, by way of Executive Order, issue more detailed provisions concerning the exercise of the capacity to examine as well as the setting and imposition of fees by the foundation supervisory authority.

C. Revocation of the Declaration of Establishment

§ 22

I. By the Founder

A revocation of the declaration of establishment is only permissible:

1. if the foundation has not yet been entered in the Public Registry, where entry is required for the formation of the foundation;
2. if an entry of the foundation is not required and this is intended to become legally effective during the lifetime of the founder, up until authentication of his signature in the foundation deed;
3. in the case of foundations formed by way of last will and testament or contract of inheritance, in accordance with the relevantly applicable rules under the law of inheritance.

§ 23

II. Exclusion of Heirs

1) In the case of foundations formed by way of last will and testament or contract of inheritance, the heirs themselves acquire no right to revoke the declaration of establishment after the death of the testator and the founder, even if the foundation has not yet been registered in the Public Registry.

2) The heirs likewise have no right of revocation if the founder, in the case of the foundation inter vivos, has drawn up the foundation deed but has died prior to the entry in the Public Registry.

D. Organisation

I. Foundation Council

§ 24

1. In General

1) The foundation council manages the business of the foundation and represents it. It is responsible for the fulfilment of the purpose of the foundation, in compliance with the provisions in the foundation documents.

2) The foundation council shall be composed of at least two members. Legal entities can be a member of the foundation council.

3) Unless otherwise provided in the foundation deed, the appointment of the foundation council shall be effective for a period of office of three years, whereby a reappointment is permissible and the members can perform their activity for or without reappointment.

4) The provisions drawn up for the members of the foundation council also apply to possible representatives.

5) The members of the foundation council shall sign in such manner that they append their signature to the name of the foundation.

6) If members of the foundation council act without reappointment, liability for minor negligence may be excluded in the declaration of establishment, unless the creditors of the foundation are adversely affected thereby.¹⁷

2. Special Obligations

§ 25

a) Asset Management

1) The foundation council shall manage the foundation assets in compliance with the founder's intention, in conformity with the purpose of the foundation and in accordance with the principles of good management

2) The founder may lay down specific and binding management criteria in the foundation deed, supplementary foundation deed or in a regulation.

§ 26

b) Accounting

Foundations carrying on business run along commercial lines are subject to the general rules on accounting. In the case of all other foundations the foundation council shall, in respect of the management and appropriation of the foundation assets and taking into consideration the principles of orderly book-keeping, maintain appropriate records of the financial circumstances of the foundation and keep documentary evidence presenting a comprehensible account of the course of business

and management of the foundation assets. In addition, the foundation council shall maintain a schedule of assets showing the asset position and the asset investments. Art. 1059 shall apply mutatis mutandis.

§ 27

II. Audit Authority

1) For each foundation subject to the supervision of the foundation supervisory authority pursuant to § 29 the court shall in special noncontentious civil proceedings appoint an audit authority in accordance with Art. 191a, para. 1. In these proceedings the foundation supervisory authority shall have the status of a party.

2) The audit authority must be independent of the foundation. It is under an obligation to notify the court and the foundation supervisory authority of reasons which rule out its independence. The foundation supervisory authority may demand from the audit authority the certification and evidence necessary for the assessment of independence. The following persons in particular shall be excluded as audit authority:

1. members of another executive body of the foundation;
2. persons with an employment relationship to the foundation;
3. persons with close family connections with members of executive bodies of the foundation; or
4. persons who are beneficiaries of the foundation.

3) The founder may submit two proposals for the audit authority, stating his preference. If the founder has not taken advantage of this right, the foundation council may refer such a proposal to the court. Subject to para. 2, the court shall as a rule appoint the preferentially proposed audit authority.

4) As executive body of the foundation, the audit authority shall be under an obligation to verify once a year whether the foundation assets are being managed and appropriated in accordance with their purposes. It shall submit to the foundation council and the foundation supervisory authority a report on the outcome of this audit. If there is no reason for objection, it shall be sufficient to provide confirmation that the assets have been managed and appropriated in accordance with the purpose of the foundation and in conformity with the provisions of the law and the foundation documents. If while performing its duties the audit authority ascertains circumstances which jeopardize the existence of the foundation, it shall also report on this. The foundation supervisory authority may demand from the audit authority disclosure of all facts of which it has become aware during the course of its audit.

5) In the case of common-benefit foundations, the foundation supervisory authority may on request dispense with the appointment of an audit authority if the foundation only manages minor-value assets or if this seems expedient for other reasons. The Government shall by way of Executive Order lay down the prerequisites for exemption from the obligation to appoint an audit authority.

§ 28

III. Additional Executive Bodies

1) The founder may designate additional executive bodies, in particular to specify a beneficiary from the category of beneficiaries, to specify the time, level and condition of a distribution, to manage the assets, to advise and assist the foundation council, to monitor the administration of the foundation in order to safeguard the purpose of the foundation, to reserve consents or issue instructions, as well as to safeguard the interests of the foundation participants. These executive bodies shall have no power of representation.

2) § 24, para. 6 shall apply *mutatis mutandis*.

§ 29

E. Supervision

1) Comm on-benefit foundations shall be subject to the supervision of the foundation supervisory authority. The same applies to private benefit foundations which are subject to supervision pursuant to a provision in the foundation deed.

2) The foundation supervisory authority is the Office of Land and Public Registration.

3) The foundation supervisory authority shall ex officio ensure that the foundation assets are managed and appropriated in accordance with their purposes. It shall for this purpose be entitled to demand information from the foundation and, through the audit authority, to inspect the books and documents of the foundation. If the appointment of an audit authority has been dispensed with pursuant to § 27, para. 5, the foundation supervisory authority shall as a rule itself exercise the right of inspection. In addition, it may obtain information from other administrative authorities and the courts and may through special noncontentious civil proceedings apply to the judge for the required orders, such as the control and dismissal of the executive bodies of the foundation, carrying out of special audits or cancellation of resolutions of executive bodies of the foundation.

4) Furthermore, to oppose asset management and appropriation by the executive bodies of the foundation conflicting with the purpose of the foundation, each foundation participant may through special noncontentious civil proceedings apply to the judge for an order for the required measures in accordance with para. 3. If there is a strong suspicion of a punishable act by an executive body of the foundation, the judge may also intervene ex officio, particularly on the basis of a communication from the Office of the Public Prosecutor. In such proceedings the foundation supervisory authority shall have the status of a party.

5) Unknown beneficiaries shall be ascertained by way of public citation proceedings on the application of the foundation supervisory authority. 20

6) The Government may, by way of Executive Order, issue more detailed provisions concerning the activity of the foundation supervisory authority as well as the setting and imposition of fees by the foundation supervisory authority.

F. Amendment

§ 30

I. Rights of the Founder to Revoke or Amend the Foundation Documents

- 1) The founder may in the foundation deed reserve for himself the right to revoke the foundation or to amend the declaration of establishment. These rights cannot be assigned or bequeathed. Should one of these rights be exercised by a direct representative, this shall require a special power of attorney referring to this transaction.
- 2) If the founder is a legal entity, it cannot reserve for itself the rights in accordance with para. 1.
- 3) If the rights in accordance with para. 1 are exercised by an indirect representative (§ 4, para. 3), the legal consequences shall revert directly to the founder.

II. Rights of the Executive Bodies of the Foundation

§ 31

1. Amendment of the Purpose

- 1) An amendment of the purpose of the foundation by the foundation council or another executive body shall only be allowed if the purpose has become unachievable, impossible or irrational or if circumstances have changed to the extent that the purpose has acquired a quite different significance or effect, so that the foundation is estranged from the intention of the founder.
- 2) The amendment must comply with the presumed intention of the founder and the power to amend must be expressly reserved to the foundation council or to another executive body of the foundation in the foundation deed.²¹

§ 32

2. Amendment of Other Contents

An amendment of other contents of the foundation deed or the supplementary foundation deed, such as in particular the organisation of the foundation, is possible by the foundation council or another executive body if and insofar as the power of amendment is expressly reserved in the foundation deed to the foundation council or to another executive body of the foundation. The foundation council shall, safeguarding the purpose of the foundation, exercise the right to amend if there is a substantially justified reason to do so.

III. Rights of the Judge

1. Supervised Foundations

§ 33

a) Amendment of the Purpose

- 1) If a foundation is subject to the supervision of the foundation

supervisory authority, the latter may through special non-contentious civil proceedings apply to the judge for the amendment of the purpose of the foundation if:

1. the purpose has become unachievable, impossible or irrational or if circumstances have changed to the extent that the purpose has acquired a quite different significance or effect, so that the foundation is estranged from the intention of the founder; and

2. the foundation deed has not entrusted the foundation council or another executive body of the foundation with the amendment of the purpose.

2) The amendment must comply with the presumed intention of the founder.

3) The foundation participants shall also be entitled to submit an application; in this case the foundation supervisory authority shall have the status of a party. 22

§ 34

b) Amendment of other Contents

1) If a foundation is subject to the supervision of the foundation supervisory authority, the latter may through special non-contentious civil proceedings apply to the judge for the amendment of other contents of the foundation deed or the supplementary foundation deed, such as in particular the organisation of the foundation, if

1. this is expedient to safeguard the purpose of the foundation, in particular to safeguard the continuing existence of the foundation and to safeguard the foundation assets; and

2. the foundation deed has not entrusted the foundation council or another executive body of the foundation with the amendment of the other contents.

2) The foundation participants shall also be entitled to submit an application; in this case the foundation supervisory authority shall have the status of a party.

§ 35

2.0 other Foundations

1) In the case of foundations not subject to the supervision of the foundation supervisory authority the judge may, on the application of a foundation participant and, in urgent cases, if necessary on the basis of a communication from the foundation supervisory authority (§ 21, para. 3) or from the Office of the Public Prosecutor, also ex officio in special non-contentious civil proceedings exercise the powers pursuant to §§ 33 and 34, and pronounce the orders required pursuant to § 29, para. 3.

There is deemed to be an urgent case in particular if there is a strong suspicion of a punishable act by an executive body of the foundation.

2) Unknown beneficiaries may on application be ascertained by the judge in public citation proceedings.

§ 36

G .P rovisionsunder the L aw ofE nforcem ent

1) In the case of family foundations, the founder may provide that the creditors of beneficiaries shall not be permitted to deprive these beneficiaries of their entitlement to a beneficial interest or prospective beneficial interest acquired without valuable consideration, or individual claims arising from such an interest, by way of safeguarding proceedings, compulsory enforcement or bankruptcy. In the case of mixed family foundations, such a directive can only be issued insofar as the entitlement concerned serves the purposes of the family foundation.

2) If a creditor of the foundation can obtain no satisfaction from the foundation assets, and the founder has not yet fully provided the allocated assets, the foundation council shall be under an obligation to provide the creditor with the information he requires to take legal action. In the event of bankruptcy of the foundation, this applies *mutatis mutandis* with regard to the administrator of the estate.

§ 37

H .L iability

1) With regard to the creditors of the foundation, only the foundation assets serve as security for the debts of the foundation. There is no obligation to put up further security.

2) The foundation council is only permitted to make distributions to beneficiaries to fulfil the purpose of the foundation if claims by creditors of the foundation are not thereby curtailed.

§ 38

I .C hallenge

1) The contribution of assets to the foundation may be challenged by the heirs or the creditors in the same manner as a gift.

2) The founder and his heirs may challenge the foundation on account of deficiencies of intention in the same manner as the rules concerning deficiencies in the conclusion of a contract, even after the registration of the foundation.

K .D issolution and T erm ination

§ 39

I .G roundsfor D issolution

1) The foundation shall be dissolved if:

1. bankruptcy proceedings have been initiated in respect of the foundation assets;
2. the resolution, whereby the initiation of bankruptcy proceedings has been rejected due to the probable insufficiency of assets to cover the costs of the bankruptcy proceedings, has achieved legal force;
3. the court has ordered dissolution;
4. the foundation council has adopted a legally valid resolution on dissolution.

2) The foundation council shall adopt a resolution on dissolution as

soon as:

1. it has received a legally admissible revocation by the founder;
 2. the purpose of the foundation has been achieved or is no longer achievable;
 3. the duration envisaged in the foundation deed has expired;
 4. other grounds for dissolution are stated in the foundation deed.
- 3) The resolution on dissolution in accordance with para. 2 shall be adopted unanimously unless otherwise provided in the foundation deed. In the case of foundations subject to the supervision of the foundation supervisory authority, the foundation council shall notify the supervisory authority of the resolution on dissolution.
- 4) If no resolution in accordance with para. 2 is adopted despite the existence of a ground for dissolution, in the case of foundations not subject to the supervision of the foundation supervisory authority the judge shall, on the application of foundation participants, dissolve the foundation in special non-contentious civil proceedings; in the case of other foundations, application for dissolution may also be made by the foundation supervisory authority.
- 5) If a resolution on dissolution is adopted in accordance with para. 2 although there is no ground for dissolution, in the case of foundations not subject to the supervision of the foundation supervisory authority the judge shall, on the application of foundation participants, quash the foundation council's resolution on dissolution in special non-contentious civil proceedings; in the case of other foundations, the foundation supervisory authority shall also be entitled to apply.
- 6) If the foundation carries on business run along commercial lines without complying with the prerequisites pursuant to § 1, para. 2, the judge shall, on the application of a foundation participant or ex officio, adjudicate on the dissolution of the foundation if the foundation has not complied with a legally binding restraining order within a reasonable time limit.

§ 40

II. Liquidation and Termination

- 1) The general provisions on the legal entity shall apply to the liquidation and termination of the foundation.
- 2) The provisions concerning the public notice to creditors shall not apply to foundations not entered in the Public Registry.
- 3) On the termination of a foundation, the Office of Land and Public Registration shall issue a certificate of cancellation in the form of an extract from the Public Registry in the case of registered foundations, or an official confirmation in the case of unregistered foundations.
- 4) If the foundation is subject to the supervision of the foundation supervisory authority, the foundation council shall notify the foundation supervisory authority of the termination of the foundation. If the

foundation is entered in the Public Registry, an extract from the Public Registry shall also be submitted. The legal representative also has authority to notify.

5) Subsequently emerging assets shall be apportioned in accordance with the principles concerning subsequent liquidation (Art.139). In the case of foundations subject to the supervision of the foundation supervisory authority, the foundation council shall inform the authority without delay about subsequently emerging assets. The legal representative also has authority to notify.

§ 41

L .C onversion

Subject to the mandatory preservation of the essence of the foundation in general and the intention of the founder in particular, a private-benefit foundation can be converted, without being wound up or liquidated, into an establishment (Anstalt) organised in accordance with the law on foundations, or a trust enterprise with legal personality organised in accordance with the law on foundations, by way of a deed drawn up in due form, if the conversion:

1. is contingent upon the laying down of the prerequisites in the foundation deed; and
2. is conducive to the realisation of the purpose of the foundation.

Arts. 553 to 570

Repealed

Art. 955a, para. 1

1) Inspection, extracts, copies or certificates of files and documents deposited pursuant to Art. 990, as well as of notices and documentary evidence of foundations and trusts not entered in the Public Registry or of notifications of formation or amendment of foundations not entered in the Public Register, may only be demanded by depositors and the person authorised for this purpose, as well as by universal successors. The right is reserved to disclose to domestic criminal prosecution authorities, the Financial Intelligence Unit (FIU) and the Financial Market Authority (FMA) the identity of the representative or the person authorised to accept service. The Government shall issue more detailed provisions by way of Executive Order.

§ 66c SchIT (Final Heading)

5. Obligations of Foundations concerning Application to Register, Deposition and Declaration

1) On information from the foundation supervisory authority, the Court of Justice of Liechtenstein may in special non-contentious civil proceedings impose a fine of up to 10,000 Swiss francs on any person who as a member of the foundation council:

1. fails to apply for registration of a foundation in the Public Registry contrary to Art. 552, § 19, para. 5; or
2. fails to deposit at the Office of Land and Public Registration a

notification of formation contrary to Art. 552, § 20, para. 1 in conjunction with para. 2 or a notification of amendment contrary to Art. 552, § 20, para. 3.

2) The fine in accordance with para. 1 may be repeatedly imposed until a lawful status is produced.

3) Any person who intentionally makes a declaration incorrect in substance pursuant to Art. 552 § 20, para. 1 in conjunction with para. 2 or pursuant to Art. 552, § 20, para. 3, shall be sentenced by the Court of Justice of Liechtenstein to pay a fine of up to 50,000 Swiss francs on account of a misdemeanor, and in the event of non-collectibility to a term of imprisonment of up to six months. If the perpetrator acts negligently, he shall be sentenced by the Court of Justice of Liechtenstein to pay a fine of up to 20,000 Swiss francs on account of a misdemeanor, and in the event of non-collectibility to a term of imprisonment of up to three months.

4) Any person who as an attorney at law, trustee or holder of an entitlement in accordance with Art. 180a intentionally or negligently provides an incorrect confirmation of the information pursuant to Art. 552, § 20, para. 1 in conjunction with para. 2 or pursuant to Art. 552, § 20, para. 3 shall likewise be punished in accordance with para. 3.

5) The right to take disciplinary measures is reserved.

II.

Transitional Provisions

Art. 1

Application of the New Law to Existing Foundations

1) Unless otherwise provided below, previous law shall apply to foundations existing at the time of entry into force of this Law.

2) If a change of circumstance, which pursuant to Art. 552, § 20, para.

3 is to be reported to the Office of Land and Public Registration, initially occurs after the entry into force of this Law, the members of the foundation council shall submit a report containing the information in accordance with Art. 552, § 20, para. 2. With regard to the obligation and authority to report, as well as the confirmation of the particulars, Art. 552, § 20, para. 1 shall be applied *mutatis mutandis*, and with regard to the verification of accuracy § 21 shall be applied *mutatis mutandis*. Art. 552, § 20, para. 3 shall apply to all subsequent amendments.

3) If a report is submitted in accordance with para. 2, or if such a report had already been submitted, the foundation can be requested to surrender the foundation deed and the other documents which pursuant to Art. 554 have, in their hitherto applicable versions, been deposited at the Office of Land and Public Registration.

4) Art. 107, para. 4a and Art. 552, §§ 3, 5 to 12, 21, 26, 27, 29 and 31

to 35 shall also apply to foundations which were formed prior to the entry into force of this Law. The members of the foundation council

shall, w ithin six m onths after the entry into force of this L aw and enclosing an extract from the P ublic R egistry, report to the foundation supervisory authority foundations w hich pursuant to A rt. 552, § 29 are subject to the supervision of the foundation supervisory authority. T he founder shall be entitled to set up a controlling body in accordance w ith A rt. 552, § 11, para. 2 in conjunction w ith para. 3, even if he has not reserved this right for him self. If the foundation has been form ed by an indirect representative (A rt. 552, § 4, para. 3), the principal (authorisor) shall be deem ed to be the founder; A rt. 552, § 30, para. 3 shall be applied m utatis m utandis. If the founder is deceased or is w ithout legal capacity to contract, a controlling body can be set up by the foundation council pursuant to A rt. 552 § 11, para. 2, item 1 in conjunction w ith para. 3. T he controlling body m ust be set up w ithin six m onths follow ing the entry into force of this L aw . In the case of com m on-benefit foundations (A rt. 552, § 2) and private-benefit foundations w hich on a special statutory basis carry on business run along com m ercial lines and are not entered in the P ublic R egistry, every m em ber of the foundation council shall be under an obligation to apply for registration in the P ublic R egistry w ithin six m onths follow ing the entry into force of this L aw ; A rt. 552, § 19 shall apply m utatis m utandis.

5) If a controlling body is set up pursuant to para. 4, the audit in accordance w ith A rt. 552, § 11, para. 4 or A rt. 552, § 27 para. 4 m ust initially take place by 30 June 2010.

A rt. 2

A daptation to the N ew L aw

1) If, w ith regard to a foundation form ed prior to 31 D ecem ber 2003, the form ation docum ents do not satisfy the requirem ents in accordance w ith A rt. 552, § 16, para. 1, item 4, a law ful status shall be produced by 31 D ecem ber 2009.

2) T he founder shall be entitled to am end the declaration of establishm ent in order to produce a law ful status, even if he has not reserved for him self such a right. If the foundation has been form ed by an indirect representative (A rt. 552, § 4, para. 3), the principal²⁹ (authorisor) shall be deem ed to be the founder; A rt. 552, § 30, para. 3 shall apply m utatis m utandis.

3) If the founder is deceased or is w ithout legal capacity to contract, the declaration of establishm ent can be am ended by the foundation council in a m anner in conform ity w ith A rt. 552, § 16, para. 1, item 4. A m endm ent by the foundation council is only perm issible if the intention of the founder can be ascertained. A s a m eans of ascertaining the intention of the founder, only docum ents originating from the founder, a direct or indirect representative involved in the form ation or an executive body of the foundation shall be perm itted to be used. If the docum ent does not originate from the founder, only docum ents draw n up prior to 1 D ecem ber 2006 shall be perm itted to be used.

4) The foundation council of all foundations not entered in the Public Registry shall, by way of express declaration, provide the Office of Liquidation and Public Registration with express confirmation that the foundation documents comply with Art. 552, § 16, para. 1, item 4. Insofar as applicable, this declaration shall not be permitted to be submitted until a lawful status has been produced. Art. 552, § 21 shall apply *mutatis mutandis* to the verification of the accuracy of the declaration.

5) If a lawful status has not been produced by 30 June 2010, the foundation council shall adopt a resolution on dissolution pursuant to Art. 552, § 39, which shall be reported to the Office of Liquidation and Public Registration.

6) If the report in accordance with para. 5 has not been submitted by 1 August 2010, the Office of Liquidation and Public Registration shall request the foundation council to submit a declaration in accordance with para. 4 within a period of grace of six months or to report the resolution on dissolution. If this time limit also expires without submission, the Office of Liquidation and Public Registration shall notify the judge; the latter shall in special non-contentious civil proceedings declare the foundation dissolved.

7) If a foundation is dissolved in accordance with para. 5 or 6, the Office of Liquidation and Public Registration shall be entitled to demand all executive bodies of the foundation to provide information on the progress of the liquidation. If it proves that the liquidator is dilatory in carrying out the liquidation, the judge can, in special non-contentious civil proceedings, on the application of foundation participants, the Office of Liquidation and Public Registration or ex officio, remove the liquidator from office and appoint another suitable person as liquidator. 30 Art. 3

Penal Provisions

1) If, contrary to Art. 1, para. 2, a report is not submitted, § 66c, paras. 1 and 2 SchlT shall apply *mutatis mutandis*.

2) Any person who makes a declaration incorrect in substance in accordance with Art. 1, para. 2 or Art. 2, para. 4 or intentionally fails to

submit a report pursuant to Art. 1, para. 4 or who wrongfully declares that he is not subject to the supervision of the foundation supervisory authority, or who as an attorney at law, trustee or holder of an entitlement in accordance with Art. 180a intentionally or negligently provides an incorrect confirmation of the information pursuant to Art. 1, para. 2 in conjunction with Art. 552, § 20, para. 1 of the Persons and Companies Act, shall be sentenced by the Court of Justice of Liechtenstein to pay a fine of up to 50,000 Swiss francs on account of a *misdeemeanour*, and in the event of non-collectibility to a term of imprisonment of up to six months. If the perpetrator acts negligently, he

shall be sentenced by the Court of Justice of Liechtenstein to pay a fine of up to 20,000 Swiss francs on account of a misdemeanor, and in the event of non-collectibility to a term of imprisonment of up to three months.

3) The right to take disciplinary measures is reserved.

Art. 4

Application of the New Law to Existing Establishments

1) Art. 107, para. 4a as well as Art. 552, § 2, para. 4, §§ 26, 27, 29, 31 to 35, 36, para. 1, and 41 shall also be applied mutatis mutandis to those establishments pursuant to Art. 551, para. 2 of the Persons and Companies Act which were formed prior to the entry into force of this Law.

2) The members of the management of an establishment, which pursuant to Art. 551, para. 2 in conjunction with Art. 552, § 29 is subject to the supervision of the foundation supervisory authority, shall report this to the foundation supervisory authority, enclosing an extract from the Public Registry, within six months following the entry into force of this Law. 31

3) Any person who as a member of the management pursuant to para. 2 intentionally or negligently fails or wrongfully declares that he is not subject to the supervision of the foundation supervisory authority, shall be punished in accordance with Art. 3, para. 2.

III.

Entry into Force

Subject to the expiration of the referendum time limit without a referendum having been taken, this Law shall enter into force on 1 April 2009, or otherwise on the date on which it is announced.

On behalf of the Reigning Prince:

signed Alois

Hereditary Prince

signed Otmar Hasler

Prime Minister

