

Focus on Liberian private foundations

Elizabeth Goralski

Abstract

The Liberian Law providing for establishment of a private foundation is modelled on the Austrian Private Foundation Law of 1993 and therefore it should be well known to most of the professionals in Europe and elsewhere. The purpose of this article is not to compare the law of Liberian private foundations with different jurisdictions, but to introduce the main features of Liberian private foundations and explain the simplicity of establishing foundations in Liberia.

Introduction

When thinking of establishing a private foundation—do also consider Liberian Private foundations. The Liberian Registry has been well known for over 60 years. Liberia offers excellent service, confidentiality, and reasonable fees. The Liberian Law providing for the establishment of a private foundation is modelled on the Austrian Private Foundation Law of 1993 and therefore, it should be well known to most of the professionals in Europe and elsewhere. The Law was enacted in 2002 and is called the Act to Further Amend the Associations Law as amended, Title 5, of the Liberian Code of Laws revised, which adds a new Part VI, Chapter 60, on the establishment of Private Foundations, to the Associations Law.

The Liberian Law providing for the establishment of a private foundation is modelled on the Austrian Private Foundation Law of 1993 and therefore, it should be well known to most of the professionals in Europe and elsewhere

Purposes

Liberian private foundations can be used for various public, charitable and personal (family) or mixed purposes, including asset protection and inheritance planning, but they cannot be used for commercial purposes. The Law also prohibits the carrying on of any activity to which the Banking or Insurance Laws apply, or the carrying on of an activity which requires a licence or authorization under Liberian law.

Taxation

Liberian non-resident private foundations are not subject to any taxes in Liberia. Also, payments to beneficiaries are not taxable in Liberia as long as the beneficiaries are not Liberian citizens.

Liberian non-resident private foundations are not subject to any taxes in Liberia

Registration costs

The cost of registration is only US\$713.50 payable at the time of the registration. The annual fee is US\$450.00 payable on the anniversary date of the registration, whereby the initial registration fee includes the first year's annual fee.

Redomiciliation

A private foundation from another jurisdiction may re-domicile into Liberia and a Liberian foundation may re-domicile out of Liberia, always provided that its constitution permits the establishment of domicile in another jurisdiction.

Sole registered agent in Liberia

There is only one registered agent for all Liberian non-resident private foundations and it is the LISCR Trust Company with its office located in Monrovia, Liberia. The correspondent LISCR offices are located in Vienna, VA, London, Zurich, Piraeus, Tokyo, Hong Kong, and Singapore. Instructions and model forms of the documents to be filed with the Liberian Registry as well as templates of the documents to be retained in the records of the foundation can be obtained from any of the LISCR offices.

Establishment of a foundation

The establishment of a private foundation starts with a donor at the time of endowment of the assets. The donor can be a private individual or a legal person of any nationality, or in case of a will, the executor of the will. Nominee donors are permitted. The minimum initial amount of the endowment is only US\$10,000 or the equivalent of that amount; it can consist of cash, real estate, shares, bonds, etc. Once the assets have been endowed by the donor, they become the assets of the foundation. The foundation through its officers is obliged to manage its assets in accordance with the Memorandum of Endowment.

Founder

The founder or rather donor is a natural or a legal person subscribing to the memorandum of endowment establishing the private foundation thereby acting either for himself or on behalf of another, and endowing the foundation with its initial assets by irrevocable transfer of title. The founder will have such rights as may be provided for in the memorandum of endowment and the management articles (if applicable). Where there is more than one donor, the powers of the donors may only be exercised by all the donors acting jointly and in common, unless the memorandum of endowment provides otherwise. The rights of a donor in respect of the formation of a

private foundation do not devolve upon his successors in title or assigns.

Documents

The Memorandum of Endowment, the Management Articles (optional but can be foreseen by the memorandum of Endowment), and a Letter of Wishes shall be executed by the donor at the time of establishment of the foundation.

In addition to the documents submitted to or presented to the Registrar at the time of registration, the foundation shall have the following internal documents, which should be retained by the Secretary as a part of the internal records: Letter of Wishes, also known as a Letter of Intent, Contract between Foundation and Officers, Delegation of Powers to one Officer, Minutes of Board of Officers including the Initial Minutes, and Documents of Supervisory Board.

Beneficiaries

A beneficiary is designated as such in the memorandum of endowment. Where no beneficiary is designated, a person may be identified as such either by the body appointed for this purpose by the donor in the memorandum of endowment or in the absence of such body, by the officers of the foundation. Beneficiaries may be fixed or discretionary.

The management articles, if drawn up, will usually contain regulations on the distribution of assets, on the identification of the beneficiaries and the ultimate beneficiary upon winding up, on the minimum level of assets of the foundation in the absence of which no distribution to any beneficiary may be made.

Officers and Supervisory Board

The Officers appointed by the donor are the governing body of the foundation. It is required that the foundation shall have three Officers at least two of whom shall be natural persons. Neither the donor

nor a beneficiary or his or her relatives in a direct line shall be appointed as an Officer of the foundation.

The Memorandum of Endowment may contain a provision for the appointment of a supervisory board. The supervisory board shall consist of at least three persons. The donor may be one of the members of the board.

Secretary

The donor shall also appoint a Secretary. It is the Secretary of the foundation who proceeds with the registration of the foundation by signing and submitting the required documents to the Registry. The address of record of the foundation is the address of its Secretary, and all correspondence from the Registry is mailed to that address.

The Secretary submits the application for registration of the foundation as a private foundation under the Private Foundation Law of the Republic of Liberia. The Secretary also prepares and signs the Extract of Particulars, which summarizes the main data of the foundation and which is attached to the application. That document, based on the Memorandum of Endowment, includes the summary of the objects of the foundation, names, and addresses of the officers of the foundation, including the name and address of the Secretary, the address for service of documents, and the name and address of the registered agent in Liberia. The Extract also confirms the date of the Memorandum of Endowment and the date of the Management Articles. Both documents shall be presented to the Registrar at the time of registration in order to be stamped with the stamp of the Registrar confirming the date of the registration and then be returned to the foundation.

The Secretary also prepares and signs the Extract of Particulars, which summarizes the main data of the foundation and which is attached to the application

Registering a foundation

There are some restrictions on names; therefore, it is important to clear the name with the Registry prior to initiation of the process of establishing the foundation.

Applications for registration of private foundations shall be submitted to any of the LISCR offices. The following documents must accompany the application:

- Extract of Particulars.
- Consent to act as Officer (3).
- Consent to act as Secretary.

The following three documents however do not form part of the record and are returned to the foundation:

- Memorandum of Endowment.
- Management Articles.
- Certification of Initial Assets.

The donor's name is thus not part of public record.

The documents will be checked and endorsed by the Registrar, the extract of particulars filed with the Registry and a Certificate of Registration issued by the Registrar confirming the registration of the Liberian private foundation. The documents are returned to the foundation the same day the registration is completed.

Liberian private foundations—requirements

- Foundations are required to keep records; however, there is no requirement to file them with the Registrar.
- Liberian private foundations are obliged to inform the Registrar of any changes to the Extract of the Particulars by promptly filing with the Registrar an amendment of the Extract of the Particulars.
- Furthermore, foundations are required to submit the Annual Return confirming that during the

previous year either no changes were made to the Extract of Particulars or that changes were made and the amendment(s) filed with the Registrar. The annual return is due on the anniversary date of the foundation and shall be submitted with the payment of annual fee.

KYC and Anti-Money Laundering requirements

The Anti-Money Laundering legislation dated 2002 has undergone amendments. On 2 May 2013, the Liberian President enacted a long anticipated Act to fight money laundering and terrorism financing. This new Act provides the legal basis for the establishment of a Financial Intelligence Unit and empowers authorities to seize and freeze the proceeds of crime as well as to cooperate in the sharing of information as well as in investigations. In particular, the Act also requires

financial institutions to identify and report suspicious transactions to authorities.

Conclusion

Liberian Private Foundations are modelled on the Austrian Private Foundation Law of 1993. Foundations do not pay taxes in Liberia. The initial amount of endowment is very small, being only US\$10,000 or an equivalent of that sum. A Liberian private foundation is easy to establish and to register and provides a perfect holding structure for emerging financial and asset empires. Foundations from other jurisdictions can re-domicile into Liberia. Instructions and templates are available to any professional users including lawyers, financial advisors, accountants, etc, and can be obtained from any of the LISCR offices. A copy of Chapter 60, providing for the establishment of private foundation can also be provided upon request or found on LISCR website at www.liscr.com.

*Elizabeth Goralski is a Senior Corporate Manager of the LISCR LLC, Vienna, Virginia office. She has been with the Liberian Corporate Registry since 1989 and with LISCR from its very beginning. She is responsible for all internal and client enquiries regarding provisions of the Liberian Associations Law. She also supervises advanced operational activities relating to the Registry's Corporate Department and provides internal support and training. She has a Bachelor of Business Administration (BBA) degree from Averett University, VA, USA.
E-mail: elizabeth.goralski@liscr.com; Website: www.LiberianCorporations.com*