

Liechtenstein Law Gazette

Year 2009

No. 114

published 8 May 2002

Foundation Law Ordinance (FLO)

of 24 March 2009

Pursuant to article 552 §§ 21 paragraph 5, 27 paragraph 5, and 29 paragraph 6 of the Law on Persons and Companies (PGR) of 20 January 1926, LGBI. 1926 No. 4¹, in the version of the Law of 26 June 2008, LGBI. 2008 No. 220, the Government enacts the following Ordinance:

I. General provisions

Article 1

Object

This Ordinance shall govern:

- a) exercise of the authority to examine by the Foundation Supervisory Authority in accordance with article 552 § 21 PGR;
- b) the preconditions for exemption from the obligation to appoint an audit authority in accordance with article 552 § 27 paragraph 5 PGR;
- c) exercise of supervision in accordance with article 552 § 29 PGR;
- d) the fees and costs for the activity of the Foundation Supervisory Authority.

¹ LR 216.0

Article 2

Designations

The designations used in this Act to denote persons and professions shall be deemed to include persons of male and female gender alike.

II. Exercise of the authority to examine

Article 3

1) The Foundation Supervisory Authority shall verify at its due discretion the accuracy of the contents of the notifications of formation and amendment and for this purpose shall make use of the controlling body of the foundation as referred to in article 552 § 11 paragraph 2 PGR or a third party authorized by the Foundation Supervisory Authority.

2) The foundation council may make two proposals for the appointment of an authorized third party to the Foundation Supervisory Authority. The Foundation Supervisory Authority shall as a rule mandate the preferentially proposed third party to carry out the audit in accordance with paragraph 1.

3) If the audit indicates that the notification of formation or amendment is inaccurate, duplicates and copies of the records shall be made and handed over to the Foundation Supervisory Authority. The Foundation Supervisory Authority shall, on the basis of these documents, initiate the appropriate measures under article 552 § 21 paragraph 3 PGR and file a complaint with the court pursuant to § 66c Final Part PGR.

III. Exemption from the obligation to appoint an audit authority

Article 4

Principle

1) In the case of common-benefit foundations where article 5 or 6 applies, the Foundation Supervisory Authority may on request dispense with the obligation to appoint an audit authority in accordance with article 552 § 27 paragraph 5 PGR.

2) If a foundation has been exempted from the obligation to appoint an audit authority, the Foundation Supervisory Authority shall as a rule itself exercise the right of inspection.

Article 5

Exemption due to minor-value assets and non-public solicitation of assets

1) On the application of the foundation council, the Foundation Supervisory Authority may exempt a common-benefit foundation from the obligation to appoint an audit authority if:

- a) the foundation assets are less than 750,000 francs; and
- b) the foundation does not publicly solicit donations or other contributions or carry on business run along commercial lines.

2) The Foundation Supervisory Authority shall revoke the exemption if:

- a) the preconditions set out in paragraph 1 are no longer met; or
- b) doing so is necessary for a reliable assessment of the asset situation of the foundation.

Article 6

Exemption on other grounds

1) On the application of the foundation council, the Foundation Supervisory Authority may exempt a common-benefit foundation from the obligation to appoint an audit authority on other grounds where this appears appropriate.

2) A ground for exemption under paragraph 1 exists in particular if the common-benefit foundation:

a) serves Catholic purposes and ongoing supervision of the management and appropriation of the foundation assets in accordance with the purpose of the foundation is exercised by the National Church. In its application for exemption from the audit authority obligation, the foundation must demonstrate that the foundation:

1. is designated an ecclesiastical foundation according to the intention of the founder;
2. is subject to ecclesiastical supervision according to the foundation deed; and
3. is accepted by the competent ecclesiastical foundation supervisory bodies;

b) pursues an investment policy and use of assets permitting supervision by the Foundation Supervisory Authority. The Foundation Supervisory Authority may issue an executing regulation in this regard.

3) The Foundation Supervisory Authority shall revoke the exemption if the preconditions set out in paragraphs 1 and 2 are no longer met.

IV. Supervision

Article 7

Principle

The Foundation Supervisory Authority shall exercise the tasks assigned to it by law as a supervisory authority in relation to both common-benefit foundations and foundations made subject to supervision pursuant to a provision of the foundation deed especially by

a) taking a position as a party in special non-contentious civil proceedings for the appointment of an audit authority;

- b) ensuring, on the basis of the audit report to be submitted each year by the audit authority and any other information obtained from the audit authority, that the foundation assets are managed and appropriated in accordance with the purpose of the foundation by applying to the judge for the required orders in special non-contentious civil proceedings;
- c) taking a position as a party in special non-contentious civil proceedings in the case of orders for required measures applied for to the judge by foundation participants in accordance with article 552 § 29 paragraph 3 PGR;
- d) taking a position as a party in special non-contentious civil proceedings in the case of amendments to the purpose of the foundation or other contents of the foundation deed or the supplementary foundation deed applied for to the judge by foundation participants.

Article 8

Auditing and reporting duties of the audit authority

- 1) As an 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.
- 2) The audit authority shall submit to the Foundation Supervisory Authority a report on the outcome of this audit.
- 3) 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.
- 4) If the audit authority ascertains circumstances which indicate that the foundation assets have been managed or appropriated in a manner contrary to the purpose of the foundation or which jeopardize the existence of the foundation, it shall inform the Foundation Supervisory Authority in the form of a comprehensive report.
- 5) 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.
- 6) The Foundation Supervisory Authority may issue directives on the content and form of the audits and on the reports to be prepared.

Article 9

Inspection

The Foundation Supervisory Authority shall inspect the audit reports and foundation documents submitted to it in the course of the supervisory procedure. This inspection shall not amount to a discharge of the responsible executive bodies of the foundation.

Article 10

Presentation and notification requirements

Foundations exempted from the obligation to appoint an audit authority shall, when requested by the Foundation Supervisory Authority, present to the Foundation Supervisory Authority the foundation deed, the supplementary foundation deed, regulations, and other documents and shall notify amendments to these foundation documents immediately without being requested to do so.

Article 11

Application for required measures

The Foundation Supervisory Authority shall apply for an order for the required measures in accordance with article 552 § 29 paragraph 3 PGR directly to the judge. These applications shall not be subject to separate appeal.

Article 12

Confidentiality

The Foundation Supervisory Authority shall treat confidentially the contents of the foundation documents brought to its attention and other information brought to its attention as part of its supervisory activity and shall use such information exclusively for the performance of its duties.

V. Fees and costs

Article 13

Fees

1) The Foundation Supervisory Authority shall levy the following fees for the following activities:

- a) for the evaluation of audit reports: 200 to 1,000 francs, depending on the work involved;
- b) for decisions on exemption from the obligation to appoint an audit authority: 150 francs;
- c) for inspection of the books and documents of foundations in the case of exemption from the obligation to appoint an audit authority: 150 to 2,000 francs, depending on the work involved;
- d) for activities in connection with the application for required measures to the judge in special non-contentious civil proceedings: depending on the work involved.

2) An hourly rate of 150 francs shall be used to calculate the work involved under paragraph 1.

Article 14

Costs

The foundation shall bear the costs for:

- a) exercising the authority to examine in accordance with article 552 § 21 paragraphs 1 and 2 PGR by a controlling body or an authorized third party; and
- b) inspection of the books and documents of the foundation by an authorized third party in accordance with article 552 § 29 paragraph 3 sentence 3 PGR.

V. Final provision

Article 15

Entry into force

This Ordinance shall enter into force at the same time as the Law of 26 June 2008 amending the Law on Persons and Companies.

The Government:
signed *Otmar Hasler*
Prime Minister