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LIECHTENSTEIN

LAW AND PRACTICE: p.3

Contributed by Walch & Schurti Attorneys at Law Ltd

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law and Practice

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CONTENTS

1. General p.4
1.1 Prevalence of Arbitration p.4
1.2 Trends p.5
1.3 Key Industries p.5
1.4 Arbitral Institutions p.5

2. Governing Law p.5
2.1 Governing Law p.5
2.2 Changes to National Law p.5

3. Arbitration Agreement p.5
3.1 Enforceability p.5
3.2 Arbitrability p.6
3.3 National Courts' Approach p.6
3.4 Validity p.6

4. The Arbitral Tribunal p.6
4.1 Limits on Selection p.6
4.2 Default Procedures p.6
4.3 Court Intervention p.6
4.4 Challenge and Removal of Arbitrators p.6
4.5 Arbitrator Requirements p.7

5. Jurisdiction p.7
5.1 Matters Excluded from Arbitration p.7
5.2 Challenges to Jurisdiction p.7
5.3 Circumstances for Court Intervention p.7
5.4 Timing of Challenge p.7
5.5 Standard of Judicial Review for Jurisdiction/ Admissibility p.8
5.6 Breach of Arbitration Agreement p.8
5.7 Third Parties p.8

6. Preliminary and Interim Relief p.8
6.1 Types of Relief p.8
6.2 Role of Courts p.8
6.3 Security for Costs p.8

7. Procedure p.9
7.1 Governing Rules p.9
7.2 Procedural Steps p.9
7.3 Powers and Duties of Arbitrators p.9
7.4 Legal Representatives p.9

8. Evidence p.9
8.1 Collection and Submission of Evidence p.9
8.2 Rules of Evidence p.10
8.3 Powers of Compulsion p.10

9. Confidentiality p.10
9.1 Extent of Confidentiality p.10

10. The Award p.10
10.1 Legal Requirements p.10
10.2 Types of Remedies p.10
10.3 Recovering Interest and Legal Costs p.10

11. Review of an Award p.11
11.1 Grounds for Appeal p.11
11.2 Excluding/Expanding the Scope of Appeal p.11
11.3 Standard of Judicial Review p.11

12. Enforcement of an Award p.11
12.1 New York Convention p.11
12.2 Enforcement Procedure p.11
12.3 Approach of the Courts p.11

Walch & Schurti Attorneys at Law Ltd's civil litigation and arbitration team is led by Mr Andreas Schurti and Mr Moritz Blasy who are also the main contacts. Walch Schurti's litigation and arbitration team currently consists of eleven lawyers. The firm's main areas of civil litigation and arbitration are: disputes in trust and foundation matters, asset tracing, asset protection, disputes in corporate matters, directors'/trustees' liability matters, disputes in insurance matters, disputes arising out of banking and finance transactions, and general commercial disputes. Besides advising its clients on the Liechtenstein aspects of multi-jurisdictional disputes, Walch & Schurti's civil litigation and arbitration team is also often engaged in order to coordinate the steps to be taken in other jurisdictions. The firm's over decades built up working relations with foreign law firms (also specialised in litigation/arbitration) and barristers are a great asset in this context. Further, most members of Walch & Schurti's civil litigation and arbitration team are qualified in multiple jurisdictions which is also a benefit in multi-jurisdictional disputes.

Authors

Moritz Blasy is a partner specialising in representing high-net-worth individuals and professional trust service providers in disputes arising in connection with foundations, trusts and other private asset structures. Mr Blasy also represents insurance undertakings, banks and other financial intermediaries in all kinds of legal disputes. He has been involved in some of the most delicate cross-border asset protection and asset tracing disputes. In these disputes he either represented the Liechtenstein professional trust service providers and the private asset structures administered by them or high-net-worth individuals with a beneficial interest in or a claim against such private asset structures or its directors. He has published in industry journals.

Simon Ott is a senior associate involved in numerous white collar crime cases as well as in high value civil disputes. In these fields, Mr Ott has gained profound and broad experience in representing individuals and companies in sophisticated and sensitive matters over the years. Due to his education as well as his former work experience, Mr Ott regularly represents clients in litigation cases relating to the financial industry as well as to trust and foundation matters.

Nicolai Binkert is a senior associate representing the firm's clients in a wide variety of civil cases, with a focus on trust and foundation law matters. Due to his double qualification (Liechtenstein and Switzerland) Mr Binkert regularly advises and represents clients in disputes which have a Liechtenstein as well as a Swiss component.

1. General

1.1 Prevalence of Arbitration

Liechtenstein is well known for its fiduciary industry (eg, Liechtenstein foundations, Liechtenstein trusts) and for its strong banking sector.

Arbitration clauses in trust deeds and foundation statues are becoming increasingly popular in Liechtenstein. As a result, more and more disputes in foundation and trust matters are resolved in arbitration proceedings. These trust and foundation matters are international in nature since the settlors, the founders, the beneficiaries and the creditors of these Liechtenstein private asset structures are normally from abroad.

The banking and finance sector in Liechtenstein heavily relies on arbitration clauses in all kind of agreements. The main reason for the popularity of arbitration in the banking and finance field is that Liechtenstein does not enforce foreign judgments (apart from Austrian and Swiss judgments and child support judgments) and vice versa Liechtenstein judgments are not enforceable in many foreign jurisdictions. However, Liechtenstein is a member of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"). Therefore, unlike ordinary Liechtenstein judgments, Liechtenstein arbitral awards are enforceable in most foreign jurisdictions and, unlike foreign ordinary judgments, most foreign arbitral awards are enforceable in Liechtenstein. A further aspect as to why arbitration clauses in agreements in the banking and finance sector have become increasingly popular is the confidentiality of arbitral proceedings.

Apart from the arbitration matters which stem from the Liechtenstein fiduciary industry and the Liechtenstein banking and finance sector, Liechtenstein has, over the last years,

established itself as an attractive place for international arbitration in matters which have, apart from the arbitration, no link to Liechtenstein.

1.2 Trends
Liechtenstein has been working intensively for years to increase its attractiveness as a forum for international arbitration. Following the adoption of a modern arbitration law in 2010, Liechtenstein's accession to the New York Convention in 2011 and the enactment of the Liechtenstein Arbitration Rules in 2012, Liechtenstein has increased its prominence as a venue for arbitration considerably.

1.3 Key Industries
The Liechtenstein banking and finance sector heavily relies on arbitration in all kind of agreements.

Liechtenstein has established itself as a neutral jurisdiction for international commercial arbitration in which neither of the involved parties has a connection to Liechtenstein.

Further, as outlined above, arbitration in relation to trust and foundation matters has become very common in the past years. This tendency continues in 2018, in particular due to the latest changes in the Liechtenstein arbitration legislation (see **2.2 Changes to National Law**, below).

1.4 Arbitral Institutions
The Liechtenstein Chamber of Commerce ("LCCI") together with the Liechtenstein Arbitration Association ("LIS") published a set of arbitration rules in 2012 ("Liechtenstein Rules").

A peculiarity of the Liechtenstein Rules is the absence of an actual administration. The LLC – contrary to most other arbitral institutions – does not uphold a permanent and costly body with regard to arbitration. According to the pertinent provision of the Liechtenstein Rules, the LCCI appoints a secretary for arbitral proceedings who has minimal duties. The activity of the secretary is limited to the appointment of a commissioner upon the respective application of a party to arbitral proceedings. The duties of the commissioner are to decide whether an arbitrator is to be appointed or dismissed or when a party requests to review the costs of the arbitral proceedings. In fact, the function of the commissioner according to the Liechtenstein Rules is similar to that of an arbitration commission or a secretary general of typical institutional arbitration. Consequently, it is possible to conduct arbitral proceedings without the involvement of the secretariat and the appointment of a commissioner. If any problems arise and the support of a third party is required, the Liechtenstein Rules provide for a mechanism to appoint an independent person who in turn is subject to a legal confidentiality obligation. This is a major advantage of the Liechtenstein Rules, since the benefits of institutional arbitral proceedings and of ad hoc proceedings (eg, flexibility, cost efficiency as well as confidentiality) are being combined. The fact that the LCCI does not maintain any expansive permanent infrastructure with regard to arbitration is in line with one of the most important goals of the Liechtenstein Rules – namely, to provide for cost-efficient high-quality arbitration.

2. Governing Law

2.1 Governing Law
If Liechtenstein is the seat of the arbitration, the arbitration proceedings are governed by Liechtenstein arbitration law. The pertinent provisions are set forth in the Liechtenstein Civil Procedure Code (Article 594 to 635). These provisions are mostly not mandatory and the parties may autonomously agree for specific arbitration rules to apply. The Liechtenstein provisions are in principle based on the Model Law on the International Commercial Arbitration ("UNICITRAL Model Law") as well as the respective provisions of the Austrian Civil Procedure Code (which are also based on the UNICITRAL Model Law). The fact that Liechtenstein took over many provisions from the Austrian arbitration law has the advantage that one can also rely on Austrian case law and legal doctrine when construing these provisions. The latter is a huge asset for a small jurisdiction such as Liechtenstein.

2.2 Changes to National Law
The most recent change to the arbitration law in Liechtenstein was effected on 1 August 2017. The restriction for consumers to participate in arbitration proceedings has been eased. The change had a major impact on arbitration in foundation and trust matters since it has been explicitly stipulated that arbitration clauses included in trust deeds or foundation statutes are binding irrespective of whether one of the litigants qualifies as a consumer.

3. Arbitration Agreement

3.1 Enforceability
The arbitration agreement must either be in a written document signed by the parties or established by the parties exchanging letters, faxes, emails or other means of communication which prove the existence of the agreement. Further requirements have to be met if a natural person is a party to the arbitration agreement. In fact, an arbitration agreement between an entrepreneur and a natural person may only be effectively concluded with regard to an already arisen dispute. However, this requirement does not apply if (i) the natural person is entrepreneur as well, or (ii) the arbitration agreement is contained in a separate document that deals exclusively with the arbitral proceedings and the natural

person receives legal advice or is represented with regard to the conclusion of the arbitration agreement by an attorney.

3.2 Arbitrability

In principle, any claim concerning an economic interest that would fall within the jurisdiction of the ordinary courts may be subject to an arbitration agreement. Thereby, the scope of a claim involving an economic interest has to be interpreted extensively.

3.3 National Courts' Approach

As regards the arbitrability of non-pecuniary claims, an arbitration agreement may be concluded and shall have legal effect to the extent that the parties are entitled to conclude a settlement on the subject matter in dispute. However, family law disputes and certain employment law disputes (namely, claims under apprenticeship agreements – the Vocational Education Act) must not be made subject to arbitral proceedings. Further, the jurisdiction of the ordinary courts cannot be excluded with regard to proceedings which are either initiated by the court ex officio or due to an application or report of a public authority.

3.4 Validity

Despite the fact that the Liechtenstein arbitration law is based on the UNICITRAL Model Law, the provision regarding separability has not been implemented in the Liechtenstein arbitration law. However, as outlined above, Liechtenstein's arbitration law is based upon the provisions on arbitration of the Austrian Civil Procedure Code. Consequently, Austrian case law and legal doctrine can be consulted on the questions whether an arbitral clause may be considered valid even if the rest of the agreement in which it is contained is invalid. The doctrine of separability is recognised by Austrian courts.

4. The Arbitral Tribunal

4.1 Limits on Selection

According to Liechtenstein arbitration law, the parties may freely agree on the number of arbitrators. However, if the parties have agreed on an even number of arbitrators, then an additional person must be appointed as chairman by the party-appointed arbitrators. In the absence of a different agreement between the parties, three arbitrators shall be appointed. Further, the parties are free to agree on the procedure to appoint the arbitrator(s). The appointment procedure agreed on, however, must not affect the minimum standards as to the neutrality of arbitrators.

The judges of the Princely Courts must not – according to the Liechtenstein arbitration law – act as arbitrators.

Also according to the Liechtenstein Rules, it is in the first instance up to the parties to agree on the number of arbitrators. In the absence of such an agreement, the Liechtenstein Rules set forth that the number of arbitrators should depend on the amount in dispute: the claim shall be decided by a three-member tribunal if the amount in dispute exceeds CHF1 million; only one arbitrator shall be appointed if the amount in dispute is less than CHF1 million. In case that the parties decide in the arbitration agreement to appoint an even number of arbitrators, the commissioner shall upon request of an arbitrator (and not the parties) appoint a presiding arbitrator with casting vote.

4.2 Default Procedures

If the parties have failed to choose a method to appoint the arbitrators or the chosen appointing procedure has failed, Liechtenstein arbitration law provides for a default procedure. Most importantly, the default procedure provides for the appointment of (an) arbitrator(s) by the Princely District Court as a fallback option.

Also the Liechtenstein Rules provide for a default procedure: in the case that the parties fail to appoint arbitrators, the LCCI-appointed commissioner will appoint the arbitrators.

4.3 Court Intervention

In principle, the court does not intervene in the selection of arbitrators. However, two possibilities exist for the court to intervene. Firstly, if the parties fail to choose a method to appoint the arbitrators or the chosen appointing procedure has failed, the court is competent to appoint (an) arbitrator(s) upon the respective application of either party. Secondly, the court may dismiss an arbitrator (eg, due to impartiality or the lack of independence) upon application of a party (see below).

4.4 Challenge and Removal of Arbitrators

It is mainly within the discretion of the parties to agree on a removal procedure. The Liechtenstein arbitration law, however, provides for a default procedure, in the case that the parties have failed to agree on a removal procedure.

According to the pertinent provisions, a party that applies to challenge an arbitrator must preliminarily file a written statement to the arbitral tribunal outlining the reasons for the challenge. The written statement must be filed within four weeks upon the notification about the constitution of the arbitral tribunal or upon the party becoming aware of reasons for the challenge. Upon the submission of the written statement, the challenged arbitrator has the possibility to resign from his or her post or the other party to the arbitration may agree that the arbitrator in question shall be removed. In case the challenged arbitrator cannot be removed (either by way of his or her own decision or upon mutual agreement between the parties), the arbitral tribunal must decide on the challenge. If the challenge to the arbitral tribunal does not lead to the dismissal of the challenged arbitrator, the chal-

lenging party may then approach the Princely District Court within four weeks to decide on the challenge. The decisions of the District Court on such challenges are final and no ordinary appeal is admissible. However, a complaint to the Constitutional Court under constitutional law is possible.

The mechanism for the challenge/removal of an arbitrator under the Liechtenstein Rules is very similar to Liechtenstein arbitration law. A party has the right to challenge an appointed arbitrator if circumstances exist/arise which put the arbitrator's impartiality or independence in doubt. Within 15 days of the notification about the appointment or after the party became aware of the respective circumstances, the challenge must be made to the concerned arbitrator by indicating the relevant reasons. The challenged arbitrator must then either resign or communicate to the parties (as well as the other arbitrators) in writing that he/she is not willing to resign. If the challenged arbitrator refuses to resign, the challenging party has the opportunity to apply within seven days to the commissioner for the dismissal of the challenged arbitrator. The commissioner shall then decide within 30 days.

4.5 Arbitrator Requirements

According to the Liechtenstein Civil Procedure Code and the Liechtenstein Rules, an arbitrator must be independent and impartial. Prior to an appointment as arbitrator, the prospective arbitrator must disclose all circumstances which might raise doubts with regard to his or her independence and/or his impartiality. This duty is an ongoing one which means that if new circumstances (which might raise doubts with regard to his or her independence and/or his or her impartiality) arise during the proceedings these circumstances must be disclosed by the appointed arbitrator.

5. Jurisdiction

5.1 Matters Excluded from Arbitration

Basically, any claim involving economic interests that would otherwise fall within the jurisdiction of the ordinary courts may be subject to an arbitration agreement. The scope of a claim involving an economic interest has to be interpreted extensively. As regards the arbitrability of non-pecuniary claims, an arbitration agreement may be concluded and shall have legal effect to the extent that the parties are entitled to conclude a settlement on the subject matter in dispute.

Any disputes which have to be heard before the administrative authorities may not be referred to arbitration. Further, family law disputes and certain employment law disputes (namely claims under apprenticeship – the Vocation Education Act) must not be made subject to arbitral proceedings. Further, the jurisdiction of the ordinary courts cannot be excluded with regard to proceedings which are either initiated by the ordinary courts ex officio or due to an application or report of a public authority.

5.2 Challenges to Jurisdiction

According to Liechtenstein law, an arbitral tribunal has the competence to rule on its own jurisdiction – ie, whether it is competent to decide on the respective dispute ("competence-competence"). The arbitral tribunal may decide on its own jurisdiction together with the decision on the merits or by separate arbitral award.

An objection against the jurisdiction of an arbitral tribunal must be raised by the party no later than before the first pleading on the substance of the case; if a party fails to do so, the right to object to the jurisdiction of the arbitral tribunal is forfeited. However, the appointment of an arbitrator or the participation in the appointment of an arbitrator does not preclude a party from raising an objection against jurisdiction of the arbitral tribunal.

The arbitral tribunal's decision on its own jurisdiction is not final, since a judicial reversal action (against the award on the merits or the separate arbitral award dealing exclusively with the question of jurisdiction) may be brought before the Princely Court of Appeal.

5.3 Circumstances for Court Intervention

The ordinary courts can only address issues of jurisdiction of an arbitral tribunal upon the request of a party.

If an action is filed in a matter which is subject to an arbitration agreement, the ordinary courts will dismiss the respective claim unless the counterparty enters into the merits of the dispute without objecting to the jurisdictions of the ordinary courts.

If a claim is brought in a matter in which arbitration proceedings are already pending, the court will normally dismiss the respective action. Only in cases in which the jurisdiction or the arbitral tribunal has already been challenged and it is not to be expected that the tribunal will render a decision within an appropriate period, will the court continue the ordinary proceedings.

5.4 Timing of Challenge

As a general rule, an arbitral award is needed in order to be able to challenge the jurisdiction of an arbitral tribunal before the Princely Court of Appeal. If a party has challenged the jurisdiction of the arbitral tribunal at the beginning of the proceeding, the arbitral tribunal may decide on the question of jurisdiction either in a separate arbitral award dealing exclusively with jurisdiction or in the final award. Both kinds of awards may then be challenged before the Princely Court of Appeal as the sole and last instance. The only further possibility is a complaint (against the respective decision of the

Princely Court of Appeal) to the Constitutional Court under constitutional law.

Under the very exceptional circumstances that the jurisdiction of the arbitral tribunal has already been challenged in the arbitration proceedings and that it is not to be expected that the tribunal will render a decision within a reasonable period, the parties can challenge the jurisdiction of the tribunal in front of the ordinary courts (in concreto the Princely Court of Appeal).

5.5 Standard of Judicial Review for Jurisdiction/Admissibility

The Princely Court of Appeal is not bound by the findings of the arbitral tribunal when deciding on the questions of admissibility and jurisdiction.

5.6 Breach of Arbitration Agreement

If a party commences court proceedings in a dispute that is subject to an arbitration agreement, the ordinary court will reject the claim, provided the defendant does not submit to the proceedings on the merits without raising objections against jurisdiction. However, a claim would not be dismissed by the ordinary court if the arbitration agreement would be deemed to be void or is not capable of being performed.

5.7 Third Parties

According to Liechtenstein arbitration law, arbitration clauses in trust deeds or foundation statutes are valid and legally binding. For example, a beneficiary, who wants to bring a claim for information against a foundation or a trustee, is bound by an arbitration clause set forth in the statutes/trust deed of the respective foundation/trust even though the respective beneficiary has never agreed to the arbitration clause.

Further, it has to be noted that Austrian case law has established that both single and universal legal successors, assignees of a claim or contract and beneficiaries of contracts for the benefit of a third party are bound by an arbitration agreement, even if they are non-signatories. It is likely that Liechtenstein courts would decide in accordance with Austrian case law.

6. Preliminary and Interim Relief

6.1 Types of Relief

According to Liechtenstein arbitration law, an arbitral tribunal in Liechtenstein may award preliminary or interim relief, provided the parties have not agreed differently in the arbitration agreement. A further requirement under Liechtenstein arbitration law to award preliminary or interim relief is that the other party must be given the opportunity to be heard before the respective relief is granted (ex parte measures are inadmissible).

Liechtenstein arbitration law does not provide for a numerus clausus of interim measures. Consequently, all different types of relief can be granted. If an interim relief is granted which contains measures which are not known to Liechtenstein law, Liechtenstein arbitration law expects the enforcing ordinary court to interpret and amend the remedy in the light of the purpose to be achieved and grant an equivalent relief available under Liechtenstein enforcement law.

The Liechtenstein Rules provide for rules on interim or protective measures as well. According to these provisions, the arbitral tribunal may grant any interim relief it deems appropriate upon respective application of a party. Pursuant to the Liechtenstein Rules (and provided that the parties have not agreed otherwise), the arbitral tribunal shall have exclusive jurisdiction for interim relief once it has been constituted. If a party wishes to apply for interim relief granted by the ordinary court, it must then firstly seek the consent of the arbitral tribunal (or the presiding arbitrator when three arbitrators are appointed respectively). The consent of the arbitral tribunal (or the presiding arbitrator when three arbitrators are appointed respectively) may be granted ex parte. If a party is in breach of its duty to request the arbitral tribunal's consent prior to requesting interim relief from the ordinary court a contractual penalty may be ordered by the arbitral tribunal.

6.2 Role of Courts

While arbitration proceedings are pending the parties can either apply to the ordinary courts (in concreto the Princely District Court) or to the arbitral tribunal to grant preliminary or interim relief. The competence of the arbitral tribunal to grant preliminary or interim relief can be excluded by the parties. The competence of the ordinary courts to grant preliminary or interim relief cannot be excluded – however, if the parties have agreed that the Liechtenstein Rules apply, once arbitral proceedings have commenced the prior consent of the arbitral tribunal has to be obtained before applying for interim relief with the Princely District Court in order to avoid any penalties resulting from contractual breach.

In any case, under Liechtenstein law, ex parte injunctive relief can only be granted by the ordinary courts.

6.3 Security for Costs

The Liechtenstein arbitration law does not provide for an explicit provision allowing the arbitral tribunal to order a party to provide security for costs. However, it is the prevailing opinion that it is within the discretion of the arbitral tribunal to order security for costs unless the parties agree otherwise.

According to the Liechtenstein Rules, the arbitral tribunal may order, and is expected to order, the provision of sufficient security for costs.

7. Procedure

7.1 Governing Rules

The Liechtenstein arbitration law allows the parties the greatest possible autonomy. Therefore, only a few procedural rules are mandatory.

The Liechtenstein arbitration law provides for certain default rules to be applied in arbitral proceedings if the parties have failed to agree on procedural rules.

As regards the Liechtenstein Rules, subject to (i) the provisions of the rules itself, and (ii) the provisions of the arbitration agreement and the arbitration clause, the procedure of arbitral proceedings is determined by the arbitral tribunal. The principles by which the arbitrators must be guided when determining the arbitral proceedings are fairness and efficiency. The Liechtenstein Rules also provide for default procedures like the Liechtenstein arbitration law if the parties have failed to agree on procedural rules.

7.2 Procedural Steps

Due to the autonomy of the parties in arbitral proceedings in Liechtenstein, it is at their discretion how the arbitral proceedings are to be conducted. Consequently, no particular procedural steps apply. If the parties do not agree on how the arbitral proceedings are to be conducted, the non-mandatory provisions of the Liechtenstein arbitration law apply as default rules. Within this very wide frame of the default rules set forth in the Civil Procedure Act, it is at the discretion of the arbitrators to decide how to conduct the proceedings. The discretion of the arbitrators is limited by the (few) mandatory provisions, such as the requirement of the arbitrators to observe the parties' rights to fair treatment and the right to be heard.

If the parties have agreed that an arbitral tribunal has jurisdiction under the Liechtenstein Rules, it falls also within the discretion of the arbitral tribunal to determine how the arbitration shall be conducted (provided the parties have not agreed otherwise).

7.3 Powers and Duties of Arbitrators

As set forth above, the arbitral tribunal has the power to decide on its own jurisdiction as well as on the merits of the case. If there is no agreement between the parties, the arbitral tribunal has to decide on the rules according to which the proceedings are to be conducted. Moreover, the arbitral tribunal has the power to decide on the admissibility of evidence and to determine its relevance as well as to grant preliminary or interim relief.

With respect to the duties, the arbitral tribunal must treat the parties equally and must ensure that each party exercises its right to be heard. The arbitrators must remain impartial and independent and have an ongoing obligation to disclose any circumstances which might give rise to doubts with respect to their impartiality or independence.

7.4 Legal Representatives

There are no legal requirements or particular qualifications for legal representatives in arbitration proceedings in Liechtenstein.

8. Evidence

8.1 Collection and Submission of Evidence

The collection and submission of evidence is not separately and explicitly stipulated in the Liechtenstein arbitration law. The arbitral tribunal is entitled to decide at its own discretion on the collection and submission of evidence. In arbitration proceedings conducted in Liechtenstein both civil and common law rules on evidence are considered. For example, common law-style written witness statements and cross-examination are very popular in arbitration proceedings in Liechtenstein, whereas common law-style discovery proceedings are out of favour.

The Liechtenstein Rules – in accordance with the Liechtenstein arbitration law – also stipulate that the collection and submission of evidence is to be decided by the arbitral tribunal at its own discretion. However, when performing this discretion, the arbitral tribunal must consider the principles of equal treatment of the parties and their right to be heard. As regards the submission of documents, the Liechtenstein Rules refer to the pertinent provisions of the Liechtenstein Civil Procedure Code which provides for quite restrictive rules as to what and when documents have to be submitted to the counterparty in arbitral proceedings. A specific feature of the Liechtenstein Rules with regard to the submission of evidence is that the arbitral tribunal must not order the forwarding of certain documents to the opposing party if the submitting party can prima facie prove to have an interest in confidentiality. In such a case, the relevant documents can be made available at an appropriate location for inspection. Further, the Liechtenstein Rules contain provisions on the refusal of testimony or the refusal of document production. The provisions on collecting and submitting evidence set forth in the Liechtenstein Rules aim to protect confidentiality in arbitration proceedings conducted in Liechtenstein.

8.2 Rules of Evidence
Neither the Liechtenstein arbitration law nor the Liechtenstein Rules provides for specific rules of evidence to be applied in arbitral proceedings conducted in Liechtenstein. The applicable principle, however, is that the arbitral tribunal shall assess the evidence freely.

8.3 Powers of Compulsion
Under Liechtenstein arbitration law, arbitral tribunals do not have any powers of compulsion. However, an arbitral tribunal (or a party to the arbitral proceedings with the respective consent of the arbitral tribunal) may apply to the ordinary courts for legal assistance regarding the collection of evidence or the interrogation of witnesses. Consequently, the interrogation of a witness or the production of a document can only be indirectly forced by an arbitral tribunal in Liechtenstein through legal assistance by Liechtenstein and/or foreign ordinary courts.

9. Confidentiality

9.1 Extent of Confidentiality
Liechtenstein arbitration law does not provide for any explicit provisions on confidentiality of the arbitral proceedings. However, confidentiality is a matter of high priority in Liechtenstein. In fact, confidentiality is one of the most important features of the Liechtenstein Rules. Confidentiality is, inter alia, protected by the following provisions of the Liechtenstein Rules.

- Only persons subject to a statutory duty of confidentiality may be appointed as arbitrators.
- The production of documents is based on the Liechtenstein Civil Procedure Code and therefore regulated very strictly in comparison to common law tradition.
- The arbitral tribunal may order that copies of documents and evidence should not be physically handed over to the other party. Instead, such documents should be presented for inspection at the seat of the arbitral tribunal or at another appropriate location.
- All parties involved in the arbitration proceedings are obliged to protect confidentiality. The breach of confidentiality is sanctioned by a penalty. The obligation to protect confidentiality continues after the termination of the arbitration proceeding.
- The arbitral tribunal is obliged to make all appropriate arrangements to protect confidentiality. In particular, it may order that an expert witness (who in turn is subject to professional secrecy) reviews documents and reports on the content of such documents to the arbitral tribunal. As a result, there is no need to produce the concerned documents for inspection by the arbitral tribunal or the opposing party.
- Due to a de facto exclusion of the public at the setting-aside proceedings, the protection of confidentiality is even ensured if the proceedings are brought before the ordinary court.

No other set of arbitration rules contains such wide-ranging provisions to protect confidentiality. Therefore, the Liechtenstein Rules are particular attractive in highly sensitive matters which require utmost discretion and confidentiality.

10. The Award

10.1 Legal Requirements
Under Liechtenstein arbitration law, provided the parties have not agreed otherwise, the arbitral award shall be made by majority vote of the arbitrators in arbitration proceedings with more than one arbitrator. The Liechtenstein Rules contain the same provision. In addition, the Liechtenstein Rules stipulate that the presiding arbitrator shall have the casting vote the in case of a tie vote. Further, it is stated that no arbitrator shall abstain from voting.

According to Liechtenstein arbitration law, an arbitral award shall be issued in writing, show the date on which it was rendered and the seat of the arbitral tribunal. In the absence of any agreement between the parties, (i) it suffices when the arbitral award is signed by the majority of arbitrators (the award shall name the reasons for the absence of the signatures), and (ii) the award shall state the grounds which lead to the decision. The Liechtenstein Rules contain in fact the same provisions on the form of the arbitral award.

10.2 Types of Remedies
There are no explicit provisions contained in the Liechtenstein arbitration law on the types of remedies that an arbitral tribunal may award. In general, the awarded remedy shall be defined by reference to the applicable substantive law on the merits. However, there are limits to be considered. For example, the arbitral award rendered in Liechtenstein shall not contravene public policy in Liechtenstein ("*ordre public*"). A rendered arbitral award which is not in accordance with the Liechtenstein *ordre public* is likely to be set aside by the Princely Court of Appeal. As regards punitive damages, it has to be said that this remedy is unknown under Liechtenstein law and might be considered a violation of the Liechtenstein *ordre public.*

10.3 Recovering Interest and Legal Costs
The Liechtenstein arbitration law does not provide for provisions on whether a party is entitled to recover interests. This seems rather to be a question on the substantive applicable law on the merits.

As regards the entitlement of a party to recover costs, the Liechtenstein arbitration law contains the applicable provisions. The arbitral tribunal shall decide on the coverage of costs upon termination of the arbitration proceedings, unless the parties have agreed otherwise. Concerning the allocation of the costs between the parties, the arbitral tribunal has to take into consideration all angles of the case, in particular the outcome of the proceedings.

The pertinent provision of the Liechtenstein Rules states that the arbitral tribunal shall decide on the costs of arbitration in its arbitral award. The Liechtenstein Rules have the so-called "loser pays" principle implemented. However, the arbitral tribunal may decide on a different allocation of costs, if it is considered appropriate in the light of the circumstances of the case.

11. Review of an Award

11.1 Grounds for Appeal

The grounds for challenging an arbitral award according to Liechtenstein arbitration law correspond largely with the grounds provided in the UNCITRAL Model Law. However, there are two main features in Liechtenstein arbitration law in this context. Firstly, the challenge must be submitted within four weeks of the date of receipt of the award. Secondly, the Liechtenstein arbitration law provides only for one ordinary instance for setting aside the award (ie, Princely Court of Appeal). The procedure is generally public, but upon request of a party, the public may be excluded if the party has a legitimate interest. Moreover, any person involved in the proceedings may ban third parties from being granted access to the files. In summary, the distinctive features in Liechtenstein arbitration law ensure that a swift and confidential arbitral proceeding is not thwarted by lengthy and public proceedings before the ordinary courts. As mentioned, the Princely Court of Appeal renders a final decision against which no further ordinary appeal is admissible. Basically, a complaint to the Constitutional Court under constitutional law would be possible. According to the case law of the Constitutional Court, arbitral awards are only bound to a very limited extent to constitutional norms (an arbitral award would not be reviewed on the grounds of arbitrariness). Consequently, the chances of a constitutional complaint being successful are slim.

11.2 Excluding/Expanding the Scope of Appeal

According to Liechtenstein arbitration law, the parties cannot agree to exclude or expand the scope of appeal or challenge to the ordinary courts. Nevertheless, it is within the autonomy of the parties to agree to a further arbitral tribunal as a second instance.

11.3 Standard of Judicial Review

The Princely Court of Appeal does not review the merits of the case.

12. Enforcement of an Award

12.1 New York Convention

Liechtenstein signed and ratified the New York Convention in 2011, but has submitted a reservation on reciprocity. Contrary to some other signatories to the convention, Liechtenstein has not submitted a reservation on commercial trade.

12.2 Enforcement Procedure

The enforcement of an arbitral award does not require a separate recognition procedure in Liechtenstein since arbitral awards are deemed to be equal to judgments of the ordinary courts. Arbitral awards will be enforced in the same way as judgments of the ordinary courts, by means of application to the Princely District Court. The certified original or a duly certified copy of the arbitral award must be enclosed with the application for enforcement. The submission of the original or a duly certified copy of the arbitration agreement is only required upon request of the court.

The provisions of the New York Convention govern the enforcement of a foreign arbitral award in Liechtenstein. Accordingly, to enforce a foreign arbitral award, the enforcing party must enclose with the application for enforcement the certified original or a duly certified copy of the arbitral award and a certified translation of the arbitral award. Further, the Princely District Court must confirm the enforceability of the arbitral award (ie, what may be applied for in the application for enforcement).

12.3 Approach of the Courts

According to Liechtenstein case law, the New York Convention must be interpreted in a manner supporting the arbitration and enforcement thereof. The public policy grounds must reach a high threshold for an enforcement of an arbitral award to be impeded.

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