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Liechtenstein: Law and Practice

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LIECHTENSTEIN

Law and Practice

Contributed by:
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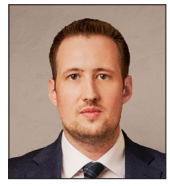

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1. Loan Market Overview

1.1 The Regulatory Environment and Economic Background

Economic Cycles

Although Liechtenstein is internationally known for its financial and private wealth industry, it also has a strong manufacturing and industrial sector with a special focus on high-tech products in the fields of machine building, automotive industry and food products. As a small and open economy, Liechtenstein reacted particularly sensitively to the COVID-19-related slump in 2020, but recovered quickly on the back of a strong rebound in global trade. Switzerland and Liechtenstein form a common economic and monetary area, and Liechtenstein introduced the Swiss franc as its official currency in 1924. In 2022, the euro fell below parity relative to the Swiss franc. The strong Swiss franc made Liechtenstein less vulnerable to the sharp inflationary spikes that have plagued other European nations. Consequently, Liechtenstein has been insulated from the kind of market volatility commonly associated with rising inflation rates.

Regulatory Environment

Unlike its neighbour Switzerland, Liechtenstein has been part of the European Economic Area (EEA) since 1995 and therefore not only offers the same regulatory standard and framework as other European member states, but also grants full access to the EU markets. For this reason, Liechtenstein is often used by non-EEA, international companies as a "hub" for penetrating into the European markets. On the other hand, market participants also benefit from Liechtenstein's close ties with Switzerland, granting privileged access to the Swiss market. Liechtenstein is part of the Swiss franc monetary area, giving Liechtenstein financial institutions the same access to refinancing with the Swiss National Bank as Swiss institutions have.

The accessibility of the Liechtenstein loan market, coupled with the hands-on approach of the Liechtenstein Financial Market Authority (FMA), which is committed to further strengthening the financial services market as one of Liechtenstein's key industries, facilitate and foster an active debt market.

When it comes to market participants on the lender's site, it has to be noted that the Liechtenstein loan market is largely in the hands of international banks, as the financial sector in Liechtenstein, and in particular the Liechtenstein banks, is/are more focused on private banking and wealth management.

Very recently, the Liechtenstein Government submitted a draft bill for a significant revision of the Liechtenstein Banking Act and the supervision regimes thereunder. The bill will be dealt with by the Liechtenstein Parliament in Q3 and Q4 of 2024. From the current perspective, at the time of this publication (early October 2024), it is expected that the revised Banking Act (and the related laws) will enter into force in Q1 of 2025. It remains to be seen whether the revised Banking Act ultimately will affect the regulatory framework for the banks' lending activities.

1.2 Impact of Global Conflicts

In line with the EU sanctions, Liechtenstein has adopted national legislation to sanction certain industries, companies and persons with close ties to or otherwise associated with the Russian Federation and Iran. In view of the fact that Liechtenstein (unlike other member states of the European Economic Area) has not hosted any (branches of) Russian banks, and considering that no party to the conflicts in Ukraine and/or

the Middle-East is included among Liechtenstein's main trading partners, the debt market in Liechtenstein has remained largely unaffected by these conflicts.

However, the Ukraine war and the Middle-East conflict have had, and continue to have, a major impact on the private wealth and asset management sector, where efforts were strengthened to combat and prevent the circumvention of EU sanctions on Liechtenstein soil.

1.3 The High-Yield Market

Liechtenstein does not have a regulated market and therefore no active high-yield market.

1.4 Alternative Credit Providers

Alternative credit providers are not regularly seen as lenders in transactions.

1.5 Banking and Finance Techniques

The Liechtenstein loan market for corporate clients is in the hands of foreign banks. The trends and therefore the documentation of financing are strongly influenced by international trends whereby the documentation of the Loan Market Association remains the "gold standard" for commercial financing in Liechtenstein.

1.6 ESG/Sustainability-Linked Lending

Liechtenstein, which ratified the Paris Agreement on climate change on 9 June 2017, has identified and declared climate risks as a core risk for the financial sector. As a member of the European Economic Area, Liechtenstein is participating in the EU-wide transformation of the financial sector towards a more long-term thinking and sustainable industry. This trend can also be found in Liechtenstein financing, where ESG-related margin grids or reporting and compliance obligations linked to environmental, social and/or governance (ESG) indicators and metrics are commonly used.

The main pillars of the remodelling process are the following EU regulations, which have been approved by the Joint EEA Committee and are therefore directly applicable in Liechtenstein:

Regulation (EU) 2019/876 (ESG Disclosure)

This regulation amends the Capital Requirement Regulation (Regulation (EU) No 575/2013) and introduces an obligation to disclose ESG risks applicable to large financial institutions that have issued securities admitted to trading on a regulated market in the European Economic Area.

Regulation (EU) 2019/2088 (Sustainability-Related Disclosures)

This regulation establishes rules as to how market participants and advisers have to integrate and consider ESG risk factors in their decision-making and investment advice processes. It also foresees additional disclosure requirements for financial advisers with a view to company-related as well as product-related information and with a special emphasis on sustainability risks and adverse effects of investment decisions in that regard.

Regulation (EU) 2019/2089 (ESG Benchmarks)

This regulation requires all providers of benchmarks or indices used to measure the performance of financial instruments or investment funds to disclose whether and how ESG factors are taken into account. It focuses on increasing transparency and uniformity when it comes to indices and also introduces two new categories of benchmarks, namely the EU climate transition benchmarks and the EU Paris-aligned benchmarks.

Regulation (EU) 2020/852 (Taxonomy)

This regulation embodies the main pillar of the EU sustainability strategy and the so-called Green Deal. It provides an investment tool and classification system – the so-called green list – that facilitates sustainable investments by identifying to what degree commercial activities can be considered environmentally sustainable. It provides for additional disclosure requirements (eg, on the alignment of financial products with the taxonomy), aims to further strengthen investor protection and to avoid so-called greenwashing.

The FMA indicated in its latest report on supervisory matters relating to sustainable finance that sustainability remains a priority, and that, in view of the topic's significant relevance, its broad range of subjects, and the vast detail applicable to these, it has set supervision priorities. It is thus placing particular emphasis on the environmental aspects of ESG factors, transparency and disclosure requirements, practices in relation to identifying investors' sustainability preferences, greenwashing and the integration of ESG into risk management and business strategy.

2. Authorisation

2.1 Providing Financing to a Company

Regulatory Framework for Providing Financing

As a member of the European Economic Area, Liechtenstein has established the same regulatory framework for providing financing in Liechtenstein as other members of the European Economic Area, which is outlined below.

Liechtenstein banking license requirement

The requirement to apply for a Liechtenstein banking license not only entails the submission of very detailed and extensive documentation (eg, a business plan, envisaged organisational structure, appropriate statutes and regulations) but also requires a certain minimum corporate structure and substance in Liechtenstein. The latter requires, inter alia, a Liechtenstein entity as an applicant for the license, appropriate business premises in Liechtenstein and at least one member of the management board who must reside in or near Liechtenstein so that he/she can reach the bank's premises within a reasonable time.

Establishing a branch in Liechtenstein

Banks from other European Economic Area Member States can establish a branch (*Zweigniederlassung*) in Liechtenstein, meaning that the bank's license obtained in the home Member State is notified or "passported" to Liechtenstein as the host Member State by the supervisory authority of the home Member State.

Freedom to provide services

Banks from other European Economic Area Member States can render financing services on the basis of the freedom to provide services, meaning that no physical presence is established in Liechtenstein so that the services are rendered on a cross-border basis. This form of "passporting" also takes place via a notification by the supervisory authority of the respective home Member State to the FMA.

Reverse solicitation

Rendering financing services on a "reverse solicitation" basis refers to transactions that were initiated and concluded on the exclusive initiative of the borrower, meaning that the bank in question did not direct its business towards clients in Liechtenstein; ie, the bank neither directly nor indirectly promoted or solicited its services to clients and/or the public in Liech-

tenstein. We note, however, that the concept of reverse solicitation has not been transposed into national law, which means that there is no concrete legal basis for this type of transaction. For banks, there is no published guidance from the Liechtenstein Financial Market Authority (FMA) available. Consequently, the provision of financing on the basis of reverse solicitation involves a certain degree of regulatory uncertainty, and is also subject to any change on an EU/EEA level. For banks from other EEA member states, it is therefore advisable to passport services to Liechtenstein and, in so doing, circumvent the need to invoke the reverse solicitation principle.

Financing without obtaining a banking license

Non-banks can provide financing without obtaining a banking license as long as the financing is not carried out on a commercial basis and not as the main business of the relevant lender (eg, intra-group lending).

3. Structuring and Documentation

3.1 Restrictions on Foreign Lenders Providing Loans

Subject to compliance with the regulatory requirements (see **2.1 Providing Financing to a Company**), foreign lenders face no additional restrictions when it comes to lending to borrowers domiciled in Liechtenstein.

3.2 Restrictions on Foreign Lenders Receiving Security

There are no legal restrictions or impediments that would specifically apply to foreign lenders when receiving collateral or guarantees. For general restrictions, see **5.5 Other Restrictions**.

3.3 Restrictions and Controls on Foreign Currency Exchange

Liechtenstein law does not maintain any restrictions or controls on foreign currency exchange.

3.4 Restrictions on the Borrower's Use of Proceeds

There are no specific restrictions on the borrower's use of proceeds made available under a loan or debt securities under Liechtenstein law.

However, it should be noted that certain legal entities (most importantly the company limited by shares (*Aktiengesellschaft*) and the establishment (*Anstalt*)) are subject to capital maintenance rules (see **5.2 Downstream, Upstream and Cross-Stream Guaranties**) which may limit the use of loan proceeds.

3.5 Agent and Trust Concepts

The (security) agent concept is commonly used for secured syndicated financings. Liechtenstein law – unlike most continental legal systems – also provides for a trust law that follows the Anglo-Saxon legal tradition. Consequently, the common security pooling mechanics, in particular through establishing a parallel debt (or similar) structure, are applied in Liechtenstein. However, there is no published Liechtenstein case law that has tested the (security) agent concept.

With regard to the pooling of collateral under Liechtenstein law, a distinction must be made between two different types of security: accessory (*akzessorisch*) and non-accessory (*nicht-akzessorisch*) collateral.

Accessory Collateral

Accessory collateral (most importantly, the pledge (*Pfandrecht*)) is characterised by the existential relationship and linkage of the security to the underlying obligation secured by that

security. In particular, this means that the security "follows" the secured claim (eg, if the debt is discharged, the collateral is extinguished by operation of law) and that the security taker may only hold and administer collateral if and to the extent that it is also a creditor of the secured obligation. A security pool with accessory collateral, where the security agent only holds the security interests on behalf of the other lenders, without also being a creditor of the underlying secured claims, is not permissible in Liechtenstein. This structural hurdle is often overcome by implementing a parallel debt, which consolidates the aggregate amount of debt under the financing agreements and is owed by each security provider to the security agent. On the back of this parallel debt, the security agent may hold, administer and enforce the security package on behalf of all other syndicate lenders (including the security agent itself).

Non-Accessory Collateral

Non-accessory collateral (most importantly, guarantees and security assignments/transfers) are not subject to the restrictions described above. Therefore, a security creditor can hold, administer and enforce these types of collateral regardless of who the creditor of the secured claim is.

3.6 Loan Transfer Mechanisms

A loan transfer may be achieved either through an assignment, where the lender (assignor) assigns (only) its claims against the borrower to a new lender (assignee), or via an assumption of the entire loan contract, in which case all rights and obligations are transferred to the new lender. The borrower's explicit consent is required for an assumption but not for an assignment. However, until the debtor is formally notified about the change of creditor, they can repay the loan by making payment to the original lender.

As outlined in **3.5 Agent and Trust Concepts**, an accessory collateral "follows" the respective secured obligation, meaning that if the secured claim is transferred to a new creditor, the accessory collateral is transferred to the new creditor by operation of law. Non-accessory security interests, on the other hand, have to be transferred to the new creditor requiring the debtor's consent.

A transfer of a loan, including the respective security package, can also be achieved by redemption (*Einlösung*). In this case, the new lender redeems the existing lender's claims against the borrower and requests the transfer of all associated rights (eg, security interests). The claims as well as the security interests are then transferred to the new lender by operation of law.

3.7 Debt Buyback

Liechtenstein law does not regulate or prohibit debt buy-backs through the borrower or a sponsor.

3.8 Public Acquisition Finance

As a member of the European Economic Area, Liechtenstein has transposed the European Takeover Directive (Directive 2004/25/EC) into national law. Certain fund rules foreseen in the Liechtenstein Takeover Act (*Übernahmegesetz*) require the bidder not only to ensure that sufficient funding is available before submitting a takeover bid, but also to disclose the terms in the bid documentation, which then has to be audited and approved by an independent auditor.

As Liechtenstein does not have a regulated stock exchange/market and only a limited number of listed companies (which are listed on foreign stock exchanges), no clear Liechtenstein market standards for documentation have

emerged. However, since Liechtenstein public companies are usually listed in foreign jurisdictions, the corresponding foreign rules also apply to them (alongside the Liechtenstein Takeover Act, where applicable). This becomes relevant, for instance, in squeeze-out transactions.

3.9 Recent Legal and Commercial Developments

Following a general trend of "paperless" shares, Liechtenstein law has introduced uncertificated securities (*Werterechte*) allowing, inter alia, companies limited by shares to issue their shares in unsecuritised form. These shares must be recorded in a register (*Wertebuch*), which can also be kept as a distributed ledger within the meaning of the Liechtenstein fintech law, the Token and TT Service Provider Act (*Token-und-VT-Dienstleister-Gesetz*). As disposals of such uncertificated securities are subject to different rules than disposals of certificated shares, the perfection requirements as well as the enforcement procedures had to be adopted accordingly.

3.10 Usury Laws

Liechtenstein regulatory law does not provide for any limitations when it comes to the pricing of a loan. The Liechtenstein General Civil Code (*AllgemeinesbürgerlichesGesetzbuch*), on the other hand, declares agreements null and void where the value of one party's obligation is strikingly disproportionate to the value of the other party's obligation and where the beneficiary takes advantage of the other party's carelessness, vulnerability, mental infirmity, inexperience or heightened emotional state.

The practical relevance of this rule in the context of commercial lending is very limited and more focused on retail lending where the lenders also have to comply with additional consumer protection regulations (in particular information duties).

3.11 Disclosure Requirements

Liechtenstein law does not stipulate any disclosure requirements when it comes to mere loan agreements. If the financing involves the issuance of bonds or other securities, an issuer domiciled in Liechtenstein would have to comply with the disclosure requirements under the Liechtenstein Disclosure Act (*Offenlegungsgesetz*).

4. Tax

4.1 Withholding Tax

Neither principal payments nor interest payments are subject to withholding tax in Liechtenstein. The interest payments will have to be taken into account for income tax purposes at the lender's level.

4.2 Other Taxes, Duties, Charges or Tax Considerations

Should a financing or the taking of a security require an increase of share capital of a company and/or the granting of shareholder contributions, capital increases and shareholder contributions can be subject to the so-called emission fee (*Emissionsabgabe*) pursuant to the Swiss Stamp Duty Act (*Bundesgesetzüber die, Stempelabgaben*), which also applies to Liechtenstein entities. This fee accrues in connection with the issuance and increase of the nominal value of participation rights of and the granting of shareholder contributions without consideration to, amongst others, companies limited by shares and companies with limited liability and amounts to one percent of the increased capital/contribution. The Swiss Stamp Duty Act

provides for some exemptions and a general allowance amounting to CHF1 million.

For the sake of completeness, we note that the Swiss Stamp Duty Act also provides for the so-called turnover tax (*Umsatzabgabe*) which is a type of stamp duty levied on the transfer of ownership in certain securities, such as shares, bonds, and similar financial instruments, when these transactions involve a securities dealer.

4.3 Foreign Lenders or Non-money Centre Bank Lenders

There are no tax-related concerns with regard to having foreign lenders and/or non-money centre banks from a Liechtenstein law perspective.

5. Guaranties and Security

5.1 Assets and Forms of Security

The most common security package requested by lenders for corporate borrowing consists of share pledges, bank account pledges and security assignments. In some instances, mortgages on Liechtenstein buildings/real estate are requested. In relation to the particularities and differences between accessory and non-accessory collateral, see **5.1 Assets and Forms of Security**.

Share Interests

The most common types of legal entities in Liechtenstein for corporate purposes are the company limited by shares (*Aktiengesellschaft*) and the establishment (*Anstalt*). Security interests over shares in a company limited by shares are most commonly created in the form of a pledge (but can also be created in the form of a security assignment). The pledge is established under a share pledge agreement and perfected by carrying out certain perfection requirements (depending on whether and, if so, in what form the shares are securitised). There are no special requirements regarding formalities that are applicable to the share pledge agreement. As to the perfection requirements, the most common form of shares, namely registered shares (*Namenaktien*), are pledged by handing over the physical share certificate to the pledgee with an endorsement in blank, and registering the pledge in the share register of the company. If these steps are not taken, the pledge is not perfected.

The interests in an establishment, called "founder's rights" (*Gründerrechte*), cannot be pledged but can only be assigned for security purposes (Liechtenstein law explicitly prohibits the creation of a pledge over founder's rights). The security assignment agreement does not require any specific formalities. The security is perfected by handing over a so-called founder's rights certificate to the pledgee and by notifying the establishment.

Bank Accounts

Security over bank accounts is typically created in the form of a pledge established under a bank account pledge agreement which must be in writing but is not subject to any further requirements regarding formalities. The general terms and conditions of Liechtenstein account banks usually provide for a (first-rank) pledge over all assets credited or otherwise transferred to accounts held with that bank. When pledging these bank accounts, aforesaid pledges should be either waived or subordinated to the pledge of the pledgee. The pledge is then perfected by notifying the relevant account bank(s) of the pledge.

Receivables

The common security package also comprises security over receivables (in particular trade

receivables and intra-group receivables). Receivables may either be pledged or assigned for security purposes. From a lender's perspective, the latter is more advantageous and thus more frequently used, as the full title to the receivables is transferred to the lender and not only a limited right in rem. The lender is, however, limited in disposing of the receivables as any disposal outside of an enforcement scenario would be a violation of the security agreement resulting in potential damage claims of the assignor. The security assignment is perfected by notifying the respective debtor of the assignment. Neither receivables pledges nor security assignments are subject to any formalities other than that the underlying agreements must be in writing.

Movable Assets

Movable assets are also pledged under a pledge agreement that does not require any formalities. As a general principle of Liechtenstein pledge law, physical assets subject to a pledge must be handed over to and remain with the pledgee (*Faustpfandprinzip*) as a perfection requirement. Alternatively, if the assets are with a third party, the pledge may also be perfected by instructing such third party to hold the asset on behalf and for the benefit of the pledgee. It should be noted that a determinable, coherent set of assets (eg, a warehouse) can be made the subject of a pledge agreement, but the perfection requirements have to be fulfilled for every single asset of such set, meaning that the set of assets cannot be pledged as a whole. Obviously, this can have a significant impact on the practicality of pledges.

Real Estate

Security over real estate located in Liechtenstein is taken in the form of a mortgage (*Grundpfandverschreibung*) or mortgage certificate (*Register-Schuldbrief*). Compared to the other types of collateral, the documentation for a mortgage or mortgage certificate is strongly formalised and only the template agreement published by the Liechtenstein Office of Justice (*Amtfür Justiz*) can be used. In addition, the signatures of the parties have to be notarised. The agreement is then filed and registered with the Liechtenstein Land Register (*Grundbuch*).

5.2 Floating Charges and/or Similar Security Interests

Floating charges or other universal or similar "catch-all" security interests over all present and future assets of a company are not permitted under Liechtenstein law. The assets to be charged must be clearly identified, or at least identifiable, and security cannot be created over a generic, volatile pool of assets. It should also be kept in mind that Liechtenstein law requires a perfection step for each single asset so that a security interest over an aggregation of assets (eg, a warehouse) may not be created uno actu.

5.3 Downstream, Upstream and Cross-Stream Guaranties

The most relevant and prevalent legal forms in Liechtenstein for commercial purposes (ie, the company limited by shares (*Aktiengesellschaft*) and the establishment (*Anstalt*)) are subject to capital maintenance rules which, generally speaking, prohibit a company from disbursing its assets to or for the benefit of its direct or indirect shareholder(s)/holder(s) of founder's rights other than by way of dividend payments, share-capital reductions or liquidation proceeds.

In the context of financings, this means that forwarding funds drawn under a loan to, and securing liabilities of, direct or indirect shareholder(s) (up-stream) and/or affiliated entities other than subsidiaries (cross-stream) could be a breach of applicable capital maintenance rules. There are exceptions to this general rule, such as trans-

actions carried out on an arm's length basis or where a subsidiary secures a loan granted to its shareholder which is then passed on to the subsidiary. The arm's length criterion must be assessed on a case-by-case basis and is not easy to determine as companies do not usually provide financing or security to unrelated third parties.

The legal literature is still unclear as to the consequences of a breach; ie, whether the underlying contract is only partially void or void in its entirety. In addition, the members of the board of directors are personally liable for any damages that may occur in connection with such transactions.

Given the far-reaching implications of up- and cross-stream transactions, it is advisable to have the transaction approved in advance by the general meeting of the shareholder(s)/the holder(s) of the founder's rights and the board of directors and to ensure that the statutes of the relevant company (in particular, the purpose clause) permit and cover up- and cross-stream transactions. In addition, it is standard market practice in Liechtenstein to limit the potential benefit of a security by means of specific limitation language that reduces the security interest to an amount that is in line with Liechtenstein capital maintenance rules. This can even reduce the commercial value of a security to zero in cases where no funds are available to distribute to the shareholder(s)/holder(s) of the founder's rights of a company.

Financing and/or collateral granted on a downstream basis are not capital maintenance sensitive from the shareholder's perspective and are therefore possible without the above-mentioned limitations.

5.4 Restrictions on the Target

The same limitations and formalities outlined in **5.3 Downstream, Upstream and Cross-Stream Guaranties** apply.

5.5 Other Restrictions

The two main limiting factors to be taken into account when granting collateral or guarantees are (depending on the type of security) the accessory nature of certain collateral (and the required structural steps to properly pool those security interests – see **3.5 Agent and Trust Concepts**) and ensuring compliance with Liechtenstein capital maintenance rules (see **5.3 Downstream, Upstream and Cross-Stream Guaranties**).

In distressed scenarios, insolvency law and in particular claw-back and avoidance rights of the insolvency administrator must be taken into account. Generally speaking, an insolvency administrator can challenge legal acts (eg, the granting of security) which were performed prior to the opening of insolvency proceedings and to the disadvantage of the debtor's creditors.

For the creation and the enforcement of mortgages in Liechtenstein real estate, the restrictions of the Liechtenstein Real Estate Transfer Act (*Grundverkehrsgesetz*) must be complied with (see **6.4 A Foreign Lender's Ability to Enforce Its Rights** below).

5.6 Release of Typical Forms of Security

Collateral of an accessory nature will automatically cease to exist when the secured obligation is fully discharged (see **3.5 Agent and Trust Concepts**). It is nevertheless customary for security agreements to foresee a certain release procedure to properly document the release. The release by operation of law does not apply to non-accessory collateral (eg, security assignment and guarantees), meaning that

additional steps have to be taken to accomplish the release.

The release procedures depend on the asset and the actions undertaken to perfect the security. The security interests are typically released by setting the actus contrarius; ie, by physically re-transferring the assets and documents handed over to the security agent (eg, share certificates, powers of attorney), notifying third parties (eg, account banks and third-party debtors) of the security release, deletion of register entries (eg, share register) and re-assignment of receivables and/or founder's rights to the company.

5.7 Rules Governing the Priority of Competing Security Interests

When it comes to the ranking of multiple security interests, Liechtenstein law follows the principle of priority, meaning that the security interest validly perfected first will prevail and rank ahead of any other security interest subsequently established in respect of that asset. Contractual arrangements that deviate from this principle by setting a ranking of competing security interests are valid under Liechtenstein law. It is, however, unclear whether an insolvency administration would be bound by and uphold such an agreement.

5.8 Priming Liens

The most material security interests that arise by operation of law and that rank ahead of any other (registered) security (even without registration in the Liechtenstein Land Register) are for the benefit of the state and municipalities for taxes, building insurance companies for their insurance premium claims and for claims of public undertakings (eg, land improvements) attributable to the property.

The first-ranking pledge of account banks (see **5.1 Assets and Forms of Security**), although not arising by operation of law, should also be mentioned in this context.

6. Enforcement

6.1 Enforcement of Collateral by Secured Lenders

As a general rule, a lender can enforce its collateral when the secured claim falls due. Security interests are either enforced in court proceedings or, if agreed by the parties, by out-of-court enforcement.

Court Proceedings

If enforced in court proceedings, the respective asset is sold in the course of a public sale in accordance with the provisions of the Liechtenstein Enforcement Act (*Exekutionsordnung*).

Out-of-court Enforcement

Depending on what has been agreed between the parties, the out-of-court enforcement can take place by public auction, private sale or a so-called self-entry, where the asset is not sold to a third party, but acquired by the lender itself. Enforcement by self-entry is generally only permitted where the asset has an easily determinable market or exchange price. As a general rule, when enforcing the security interest, the lender must take into account and consider the interests of the security provider, which means that the lender must sell the asset at the best possible price.

If the asset does not have a market price, such as share interests in unlisted companies or property, independent valuations must be obtained to ensure that the asset is not sold at a below-market price. Any surplus, meaning the amount

of enforcement proceeds exceeding the secured obligation, will have to be handed over to the security provider.

Liechtenstein, being a member of the European Economic Area, has also transposed the Financial Collateral Directive (Directive 2002/47/EC) into national law. If the requirements under the directive are met and if the parties agree to establish the security in the form of financial collateral, the security taker will have, inter alia, the right to appropriate the asset.

6.2 Foreign Law and Jurisdiction

Under Liechtenstein law, the law governing the agreement may be freely chosen by the parties (subject to certain limitations) as far as contractual aspects are concerned (*Vertragsstatut*). However, this does not apply to the law governing the creation, extinction and the content of rights in rem. It is therefore standard market practice that assets that are located in Liechtenstein are pledged under a Liechtenstein law governed security agreement which then stipulates the respective perfection steps to be taken in compliance with Liechtenstein law.

The rights to immunity may be, generally speaking, waived under Liechtenstein law.

6.3 Foreign Court Judgments

Liechtenstein has neither entered into bilateral treaties nor joined multilateral treaties with other countries (except bilateral treaties with the Republic of Austria and Switzerland and a multilateral treaty limited to the subject matter of child support) regarding the mutual acknowledgement and enforcement of foreign judgments. Judgments of foreign courts (except Austrian and Swiss judgments and child support judgments) are, therefore, not enforceable in Liechtenstein without instituting summary proceedings to validate foreign judgments. However, such summary proceedings will, if persistently defended by the opposing party, not avoid a full re-litigation on the merits. As a consequence, judgments of a non-Liechtenstein, non-Swiss, and non-Austrian court will not be directly enforceable against a company in Liechtenstein.

However, Liechtenstein is a party to the New York Convention (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards), and arbitral awards from foreign arbitral tribunals are therefore recognised and enforceable in Liechtenstein in accordance with the terms and conditions of this convention.

6.4 A Foreign Lender's Ability to Enforce Its Rights

When it comes to security interests in real estate located in Liechtenstein, according to the Liechtenstein Real Estate Transfer Act (*Grundverkehrsgesetz*), the transfer of ownership and similar rights requires a legitimate interest of the acquirer in obtaining the property. The transfer of property must also be approved in advance by the Office of Justice (*Amtfür Justiz*). Without such approval, the underlying contract is null and void by law. As the declared goal of the Liechtenstein Land Transfer Act is to ensure that the land remains with the local people and businesses (which is reflected in the catalogue of legitimate interest), the market as well as the pool of potential, eligible acquirers in an enforcement scenario is limited.

In the context of regulated companies (eg, banks, investment companies, insurance companies), any intended disposal of shares in such companies (therefore also the enforcement of security interests) exceeding certain thresholds have to be notified to and approved by the Liechtenstein Financial Market Authority.

7. Bankruptcy and Insolvency

7.1 Impact of Insolvency Processes

With the commencement of insolvency proceedings, the debtor is deprived of its control over the insolvency estate, the insolvency administration takes over the day-to-day management of the company, and all outstanding obligations of such debtor become due. This means that any loan granted to such lender becomes due and payable by operation of law without the need for acceleration or termination of the loan agreement. Further, any power of attorney granted to a lender (eg, voting proxies, powers of attorney to facilitate the enforcement of collateral) will automatically lapse upon the opening of the insolvency proceedings.

In relation to assets that are subject to in rem rights of the lender, Liechtenstein insolvency law foresees a right of separation (*Absonderungsrecht*). With such a separation right, the lender is not entitled to the asset itself, but rather to preferential treatment in relation to the proceeds from the sale of that asset. The asset is sold by the insolvency administration and the proceeds are handed over to the lender up to the amount of his secured claim. Any excess amount is returned to the insolvency estate. This applies to in rem rights where the full title is transferred to the lender (eg, security assignments) as well as collateral granting a limited in rem right (eg, pledges).

Rights in personam (eg, guarantees, sureties and other joint liabilities) are not "insolvency-proof" and do not benefit from any preferential treatment, meaning that creditors with security in personam rank pari passu with the other unsecured creditors of such debtor.

Liechtenstein law also provides for a claw-back and avoidance regime, under which the insolvency administrator may set aside certain legal acts detrimental to the insolvency estate and to the interests of the debtor's creditors that were performed within a certain period prior to the opening of the insolvency proceedings.

7.2 Waterfall of Payments

The Liechtenstein Insolvency Act (*Insolvenzordnung*) provides for a mandatory waterfall of claims as follows:

- claims of segregation (*Aussonderungsansprüche,* eg, assets in the insolvency estate that are owned by third parties) and claims of separation (*Absonderungsansprüche,* eg, creditors that are secured by a pledge or security assignment);
- estate claims (*Masseforderung*), such as the costs of the insolvency proceedings itself and contractual arrangement made by the insolvency administrator; and
- claims of unsecured creditors.

7.3 Length of Insolvency Process and Recoveries

The length of the proceedings depends largely on the complexity of the company's business and the number of creditors, and can range from one to several years. Insolvency proceedings in Liechtenstein often involve creditors from several different jurisdictions, which further slows down the proceedings. The full value of the company is seldom fully recovered during insolvency. However, there have been instances where the recovery quota has exceeded 50 percent of the owed amounts.

7.4 Rescue or Reorganisation Procedures Other Than Insolvency

Liechtenstein reformed its insolvency law in 2021 to provide a regime more focused on the survival and restructuring of a company rather than its liquidation. The Liechtenstein Insolvency Act (*Insolvenzordnung*) distinguishes between two types of proceedings, namely insolvency proceedings (*Insolvenzverfahren*) aiming at the liquidation of the company's assets and restructuring proceedings (*Sanierungsverfahren*) focusing on the continuation of the company. The latter has two sub-variants, namely restructuring proceedings with self-administration (*Sanierungsverfahrenmit Eigenverwaltung*) and restructuring proceedings without self-administration (*Sanierungsverfahrenohne Eigenverwaltung*).

Restructuring Proceedings With Self-Administration

Restructuring proceedings where the debtor retains control of the company, therefore with self-administration, can only be opened and approved where the debtor itself has filed for insolvency. This sub-variant of restructuring proceedings is not available to the debtor if insolvency proceedings have already been opened. In addition to the insolvency petition, the debtor has to submit a restructuring plan (*Sanierungsplan*). In the restructuring plan, the debtor has to offer to its creditors a minimum quota of 20 percent to be paid within the next two years. The restructuring plan must then be accepted by the creditors with a double majority; ie, the majority of the votes of the creditors present at the court hearing, which must represent more than 50 percent of the total amount of the insolvency claims of the creditors present at the hearing. Provided that the debtor complies with the terms of the restructuring plan and meets its payment obligations in full, the residual debt is discharged. If the debtor fails to comply with its duties under the restructuring plan, regular insolvency proceedings are opened.

Restructuring Proceedings Without Self-Administration

In proceedings without self-administration, the debtor is deprived of its control over the company and the insolvency court appoints a restructuring administration to manage the company's affairs. Unlike restructuring proceedings with self-administration, restructuring proceedings without self-administration may also be commenced after insolvency proceedings have already been opened. The debtor has then to submit a restructuring plan offering its creditors a minimum quota of 20 percent to be paid within the next two years. The restructuring plan is put to the vote of the insolvency creditors, which have to approve the plan with a double majority (regarding restructuring with self-administration, see above). If the debtor complies with the terms of the restructuring plan and discharges its payment obligations thereunder in full, the residual debt is discharged. If it fails to comply with its duties under the restructuring plan, regular insolvency proceedings are opened.

7.5 Risk Areas for Lenders

The Liechtenstein Insolvency Act (*Insolvenzordnung*) in conjunction with the Liechtenstein Legal Protection Act (*Rechtssicherungs-Ordnung*) provide for a claw-back and avoidance regime under which an insolvency administrator may challenge certain legal acts taken within a certain period of time prior to the opening of the insolvency proceedings. This includes certain disposals:

- for no consideration or only inadequate consideration, made within one year prior to the opening of insolvency proceedings;

- made at a time the debtor was already illiquid within one year prior to the commencement of insolvency proceedings; and
- made with the purpose of disadvantaging the other creditors of the debtor, regardless of when this act has been taken.

8. Project Finance

8.1 Recent Project Finance Activity

Infrastructure projects in sectors like transportation, energy, water supply and public health do not play a significant role in Liechtenstein due to its size. Furthermore, the state maintains a major stake in this infrastructure.

8.2 Public-Private Partnership Transactions

Liechtenstein law does not provide for a separate legal framework for project financing and/or public-private partnerships. Where public procurement is involved, the parties will have to comply with the Liechtenstein Public Procurement Act (*Gesetzüber das Öffentliche Auftragswesen*). Liechtenstein is also a party to the Agreement on Government Procurement of the WTO, which applies in particular to construction services.

8.3 Governing Law

Liechtenstein does not provide for a specific legal framework for project financing, so there is no legal requirement when it comes to the choice of law.

8.4 Foreign Ownership

See **8.1 Recent Project Finance Activity**.

8.5 Structuring Deals

See **8.1 Recent Project Finance Activity**.

8.6 Common Financing Sources and Typical Structures

See **8.1 Recent Project Finance Activity**.

8.7 Natural Resources

See **8.1 Recent Project Finance Activity**.

8.8 Environmental, Health and Safety Laws

See **8.1 Recent Project Finance Activity**.

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