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Introduction

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LIECHTENSTEIN

Law and Practice

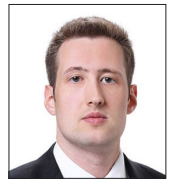
Contributed by:
Moritz Blasy, Nicolai Binkert, Simon Ott and Kathrin Binder
Schurti Partners Attorneys at Law Ltd

Contents

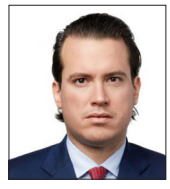
Schurti Partners Attorneys at Law Ltd represents private and corporate clients in a wide range of contentious and non-contentious matters before the Liechtenstein courts as well as national and international arbitration tribunals. Many of the disputes handled by the firm involve multiple jurisdictions, and the firm's civil litigation and arbitration team is often tasked with co-ordinating the steps to be taken in other jurisdictions. Over several decades, the firm has developed excellent working relationships with foreign law firms that also specialise in litigation/arbitration and with barristers – a great asset in this context. Additionally, Schurti Partners' civil litigation and arbitration team has members who are qualified in multiple jurisdictions, which is also an advantage in disputes involving multiple jurisdictions. Among the firm's main areas of civil litigation and arbitration are trust and foundation disputes, asset tracing, asset protection, corporate disputes, directors' and trustees' liabilities and insurance disputes, banking and finance disputes, and general commercial disputes.

Authors

Moritz Blasy is a partner at Schurti Partners and specialises in representing high net worth individuals and professional trust service providers in disputes relating to foundations, trusts and other private asset structures. He also represents insurance companies, banks and other financial intermediaries in all types of legal disputes. During his career, he has been involved in some of the most sensitive cross-border asset protection and asset-tracing disputes. He is a member of the Liechtenstein Bar Association, the Law Society of England and Wales, the Liechtenstein Arbitration Association (LIS), and the Austrian Arbitration Association (ArbAut).



Nicolai Binkert is a partner at Schurti Partners and represents clients in a wide variety of high-profile civil cases, with a special focus on trust and foundation law matters. Due to his dual qualifications (Liechtenstein and Switzerland), he regularly advises and represents clients in disputes involving both Liechtenstein and Switzerland. He is a member of the Liechtenstein Bar Association.



Simon Ott is a partner at Schurti Partners and has been involved in numerous white-collar crime cases as well as in high-value civil cases. He has gained extensive experience representing individuals and companies in sophisticated and sensitive matters over a number of years. He regularly represents clients in litigation cases relating to the financial industry as well as trusts and foundations due to his education and previous experience. He is a member of the Liechtenstein Bar Association.

Kathrin Binder is a litigator as well as an insolvency practitioner at Schurti Partners, admitted to the Austrian Bar, and is a member of the firm's dispute resolution team as a Registered European Lawyer in Liechtenstein. She is a member of the Vienna Bar Association, the Liechtenstein Bar Association, the Interdisciplinary Association of Comparative and Private International Law (IACPIL), and the Austrian Arbitration Association (ArbAut). As a former assistant professor she taught European and Austrian civil procedure law at the Johannes Kepler University Linz. Due to her academic background, she is the author of numerous publications on dispute resolution.

Schurti Partners Attorneys at Law Ltd

Zollstrasse 2
9490 Vaduz
Liechtenstein

Tel: +41 44 244 2000
Fax: +41 44 244 2100
Email: mail@schurtipartners.com
Web: www.schurtipartners.com

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1. General

1.1 General Characteristics of the Legal System

As a civil law jurisdiction, Liechtenstein has codified its laws in acts and ordinances. The laws of Liechtenstein derive to a large extent from the laws of its two neighbouring countries, Austria and Switzerland. This particularly holds true for the Liechtenstein Civil Procedure Code (*Zivilprozessordnung*) and the Liechtenstein Act on Jurisdiction (*Jurisdiktionsnorm*), which are largely based on their Austrian equivalents.

The Liechtenstein civil procedure is best described as an adversarial process with distinct inquisitorial elements. In principle, while the parties determine the subject matter of a lawsuit by submitting their applications and factual pleadings, and the court is bound by these pleadings (for example, it will not award more than requested), the judge controls the litigation process, determined on the evidence to be presented, and leads the evidence-taking process.

The Liechtenstein civil procedure is based on the principles of immediacy and orality. At the first instance, at least one oral hearing is mandatory and parties are supposed to make their pleadings by way of oral submissions. Nevertheless, in practice, written submissions do play a crucial role.

1.2 Court System

Liechtenstein does not have separate judicial districts. The Princely Courts in Vaduz have jurisdiction over the whole country. The Princely Courts consist of three instances:

- the District Court (*Landgericht*);
- the Court of Appeal (*Obergericht*); and
- the Supreme Court (*Oberster Gerichtshof*).

Further, the final decisions of these ordinary courts can be challenged before the Constitutional Court (*Staatsgerichtshof*) on the basis that they violate constitutional rights. Additionally, Liechtenstein is a signatory to the European Convention of Human Rights, so an appeal to the European Court of Human Rights is possible if the required conditions are met.

The first instance of all civil proceedings is heard by a single judge. The District Court currently consists of 18 judges. The Court of Appeal is divided into three chambers, each of which sits in compositions of three judges. The Supreme Court consists of two chambers, consisting of five judges. Generally, single judges of the District Court, as well as the different chambers of the Court of Appeal and the Supreme Court, are assigned different subject matters (such as ordinary civil claims, injunctive relief, divorce proceedings, family disputes, criminal cases).

1.3 Court Filings and Proceedings

As a rule, court files are not open to the public and case files may only be accessed by the parties to the respective lawsuit. Third parties may be granted access if all parties to the respective lawsuit agree or, in the absence of such an approval, if the third party shows a prima facie legal interest (eg, the information gained from the court case is relevant for a claim/defence in another case).

Court hearings, however, are generally open to the public, but the court can exclude the public if public morality or public order so demand, if it is to be feared that the procedure would otherwise be disturbed, or if facts about family life are to be discussed or established. The single judges at the District Court and the different chambers of the Court of Appeal and the Supreme Court are assigned different subject matters (such as ordi-

nary civil claims, injunctive relief, divorce, family matters, criminal matters). Additionally, the court may exclude the public if business secrets would otherwise be jeopardised.

1.4 Legal Representation in Court

Liechtenstein law does not require the representation of parties in civil court proceedings. Furthermore, in Liechtenstein, civil proceedings can be initiated by anyone with full legal capacity, not only by qualified lawyers. Only qualified lawyers are permitted to represent parties before a court (professionally) and only if represented by a qualified lawyer are parties entitled to recover costs from their adversaries.

As a rule, only lawyers qualified in Liechtenstein are allowed to professionally represent parties before Liechtenstein courts. EEA and Swiss citizens who are qualified lawyers in their home states can qualify as Liechtenstein lawyers under facilitated conditions. Furthermore, EEA and Swiss lawyers can, under certain conditions, provide legal services in Liechtenstein on a cross-border, case-by-case basis without qualifying as Liechtenstein lawyers.

2. Litigation Funding

2.1 Third-Party Litigation Funding

There are no rules in Liechtenstein concerning third-party litigation funding. Therefore, third-party litigation funding is permitted and there are no particular restrictions.

In this context, Liechtenstein law provides legal aid for parties who cannot afford the costs of litigation. Following a change in law effective 1 January 2016, legal aid is also available to legal entities.

2.2 Third-Party Funding: Lawsuits

As there are no specific rules dealing with litigation funding, it is not restricted to certain types of lawsuits.

2.3 Third-Party Funding for Plaintiff and Defendant

As there are no specific rules dealing with litigation funding, it is not restricted to certain types of parties.

2.4 Minimum and Maximum Amounts of Third-Party Funding

Given that litigation funders regularly receive a percentage of the amount in dispute as compensation, the amount of money a litigation funder is prepared to provide for a specific case will largely depend on the amount in dispute and the prospects of success. Liechtenstein law does not impose any restrictions.

2.5 Types of Costs Considered Under Third-Party Funding

Typically, litigation funders fund all types of litigation-related costs that may arise, including court fees, legal representation costs, costs associated with taking evidence and the costs of the counterparty's legal representation to the extent that they will be refunded by the funded party in the event of a defeat.

2.6 Contingency Fees

As a matter of statutory law and the Code of Ethics and Professional Conduct of the Liechtenstein Bar Association, qualified lawyers are not allowed to enter into quota litis arrangements with their clients. This restriction does not apply to pre-agreed and clearly defined success fees that are owed in addition to the basic fees.

No such restrictions apply to others, such as third-party litigation funders, whose compen-

sation regularly consists of a percentage of the awarded amounts.

2.7 Time Limit for Obtaining Third-Party Funding

As there are no specific rules dealing with litigation funding, there are no time limits by when a litigant should obtain third-party funding.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

The Liechtenstein Civil Procedure Code does not prescribe any particular pre-action conduct, and the court cannot impose such on the parties. However, a person who intends to file a claim against a respondent who is resident in Liechtenstein may, on a voluntary basis, apply for the summons of the opponent for purposes of settlement negotiations before lodging the claim. The opponent is under no obligation to follow such summons, and non-appearance by the opponent has no consequences whatsoever.

3.2 Statutes of Limitations

Under Liechtenstein law, statutes of limitation are considered a matter of substantive law rather than procedural law.

Under Liechtenstein substantive law, the ordinary limitation period is 30 years. As a rule, the limitation period commences when the respective right or claim can be exercised for the first time. However, the aforesaid is only a general rule to which numerous exceptions exist as a matter of statutory law. For example, for various types of contractual claims, the limitation period is only five years. Other claims, such as claims to challenge a will, are subject to an even shorter three-year limitation period.

The courts do not take statutes of limitation into account ex officio. Rather, it is up to the parties to raise a respective objection.

3.3 Jurisdictional Requirements for a Defendant

The general rule of jurisdiction is that Liechtenstein courts have jurisdiction if the defendant is domiciled in Liechtenstein. In addition, the Liechtenstein Act on Jurisdiction (*Jurisdiktionsnorm*) provides for various special jurisdictions that allow claimants to bring actions in Liechtenstein against defendants who are not domiciled in Liechtenstein. For example, Liechtenstein courts assume jurisdiction for contractual claims when the defendant performs its obligations in Liechtenstein, for claims against defendants with assets located in Liechtenstein, and for claims concerning real estate located in Liechtenstein, they assume jurisdiction as well. In addition, parties to a contract or a dispute are generally free to agree on the jurisdiction of the Liechtenstein courts.

Because Acts of the European Union only apply to EU member states, the Brussels Ia Regulation is not applicable in Liechtenstein. Also, while Liechtenstein is a member of the European Free Trade Association together with Iceland, Norway and Switzerland, it is not a party to the Lugano Convention 2007.

3.4 Initial Complaint

As a rule, a lawsuit is initiated by means of a written statement of claim, which is to be filed with the District Court. In the statement of claim, the claimant must clearly identify the parties, their procedural roles (ie, claimant or defendant), their representatives (if any) and the subject matter of the lawsuit. Claimants must include in their statement of claim a pleading of the facts on which they are relying, the evidence upon which

they intend to rely, and the remedy for which they are asking.

Once the defendant has been served with the statement of claim, the factual basis of the claim and the remedy sought may only be modified with the consent of the defendant or with the approval of the court, which will be granted if the court concludes that no significant complication or delay of the matter is to be expected as a result of the amendment. However, the pleading of new facts and the introduction of new evidence supporting the claim are, in principle, admissible throughout the whole procedure at first instance, unless the court concludes that such new facts or evidence were not introduced earlier out of gross negligence and if their admission would significantly delay matters.

A claimant may abandon a lawsuit without waiving the underlying (substantive) claim only prior to the first hearing or, if the defendant does not appear, at the first hearing itself, at the latest. Thereafter, an abandonment of the lawsuit by the claimant will constitute a waiver of the underlying (substantive) claim unless the counterparty expressly agrees otherwise. If a claim is declared withdrawn by the court for failure of the claimant to lodge security for costs, this is not considered abandonment within the aforementioned sense and, hence, does not constitute a waiver of the underlying claim.

3.5 Rules of Service

It is the responsibility of the court to serve the statement of claim on the defendant. The court will do so once all formal requirements are fulfilled, and the claimant has paid the court fees. Service in Liechtenstein is usually done by registered mail with return receipt. Service on parties outside the jurisdiction is usually done through diplomatic channels or via letters rogatory. Parties domiciled abroad can be ordered by the court to appoint an authorised recipient in Liechtenstein, failing which service on them can be effected by depositing the relevant document with the court.

3.6 Failure to Respond

If a defendant fails to appear at the first hearing despite having been properly served with the summons, the claimant may apply for a default judgment. The court will enter judgment in favour of the claimant if the presented evidence does not obviously contradict the facts pleaded in the statement of claim and if the pleaded facts support the remedy sought. Significantly, written submissions of the defendant submitted prior to the first hearing must not be taken into consideration by the court.

A default judgment can be attacked in two ways, such as:

- by means of an appeal to the Court of Appeal; or
- an application for restitutio in integrum to the District Court.

3.7 Representative or Collective Actions

Liechtenstein civil procedure law is not familiar with the concept of representative or collective actions. As a matter of Liechtenstein procedural law, a right may only be procedurally asserted by the person who is entitled to it as a matter of substantive law. Otherwise, the claim will be dismissed for lack of standing.

There is the possibility of multiple parties appearing on one side of a dispute as provided in the Liechtenstein Civil Procedure Code; ie, as claimant or defendant in cases where multiple persons are forming a legal community regarding the subject matter of the case (such as co-

owners of an asset), or where multiple persons are entitled or liable to the same or similar legal and factual basis (for example, joint and several liability (a joinder of parties or *Streitgenossenschaft*)). However, in such cases, each of the parties litigates separately, and the actions of one party should, in principle, not affect the other parties.

The court can also ex officio join multiple separate lawsuits in which the same claimant faces different defendants or in which different claimants face the same defendant, if it is to be expected that this will simplify or expedite matters or reduce the costs of the proceedings.

Apart from that, the Liechtenstein Consumer Protection Act permits certain consumer protection organisations to initiate lawsuits on behalf of individual consumers.

3.8 Requirements for Cost Estimate

Although there is no strict statutory obligation for lawyers to advise their clients of the potential costs of a lawsuit at the outset, it is common practice among Liechtenstein lawyers to do so.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

While there is no formal pre-trial procedure in Liechtenstein, there are several types of applications and motions which are usually dealt with at the outset of the proceedings before hearing the case on the merits. In particular, this applies to formal objections and applications for security of costs and fees.

Upon receipt of the statement of claim and before serving it on the defendant and scheduling a first hearing, the court ex officio will determine whether certain severe procedural errors have occurred. In the event that the court concludes that such an error has occurred, it rejects the claim immediately (a limine) without holding a hearing.

Other than that, parties may apply for interim injunctions already prior to filing a substantive claim. Also, the Liechtenstein Civil Procedure Code allows for the taking of evidence in the form of judicial inspections and the interrogation of witnesses and experts already prior to the lodging of a lawsuit, in case evidence will not otherwise be available at a later stage.

4.2 Early Judgment Applications

Parties may apply for a case to be struck out on procedural grounds (such as a lack of jurisdiction, inadmissibility of the resort to civil litigation, res judicata or lis pendens) before the case is heard on the merits. These formal objections are usually dealt with at the outset of the proceedings. In the case of a lack of jurisdiction, the respective motion must be made at the first hearing, at the very latest, and in any event before arguing the case on the merits, otherwise, it will not be heard (and the party will be deemed to have accepted jurisdiction). If the court concludes that the objection is justified, the court will enter an early judgment rejecting the claim.

Other than that, a claimant may apply for a partial judgment (*Teilurteil*) if one or more of several claims brought in a lawsuit are acknowledged by the defendant. Also, the court may decide to enter an interlocutory judgment (*Zwischenurteil*) in cases where a claim has been disputed both in terms of its basis and its extent and the court concludes that the case permits a decision as to the basis but not yet as to the extent of the claim.

4.3 Dispositive Motions

Often, dispositive motions are filed to dispose of a claim on procedural grounds (such as lack of jurisdiction, inadmissibility of recourse to civil litigation, res judicata or lis pendens).

4.4 Requirements for Interested Parties to Join a Lawsuit

A third party who has a legal interest in the outcome of a lawsuit – ie, whose legal position will be affected by the outcome (for example, since one of the litigants may take recourse to the third party if the case is lost), may join the proceedings on the claimant's or on the defendant's side (third-party intervention or *Nebenintervention*).

A third-party intervention consists of a written submission to the court in which the third party expresses its legal interest. It is possible at any stage of a lawsuit as long as no final, non-appealable judgment has been entered. The parties to the lawsuit may oppose the third-party intervention, in which case there will be a hearing and the court will decide on the intervention in a formal decision. Only a decision rejecting the third-party intervention is subject to a separate appeal. Such an appeal does not stay the lawsuit as such and, pending the outcome of the appeal, the third party can participate as if it had been admitted.

Any procedural steps that a third party deems favourable for the party it supports may be taken without the consent of that party, unless such steps are explicitly opposed by that party or contradict its own procedural actions. The third party may appeal decisions without the approval, and even against the will, of the supported party.

Conversely, if a litigant intends to take recourse against a third party in the case of a defeat, the litigant may give formal notice to such third party by means of a written submission and invite the third party to support the litigant in the lawsuit (third-party notice or *Streitverkündung*). While a third party is under no obligation to follow such an invitation, the practical effect of such third-party notice is that the notifying party may rely on a (negative) decision and the findings of fact contained therein in a later lawsuit against the third party, and the third party will be precluded from arguing that the notifying party had not conducted the first lawsuit diligently.

4.5 Applications for Security for Defendant's Costs

The defendant (or respondent to an appeal) may require the claimant (or appellant) to place security for the defendant's (or respondent's) anticipated costs for legal representation and the court fees to be borne by the defendant (or respondent). In cases of natural persons as claimants (or appellants), security for costs can be imposed if the claimant (or appellant) is not resident in Liechtenstein, unless there is a treaty between Liechtenstein and the other jurisdiction that prohibits the ordering of security for costs, or unless a cost award would be enforceable in the jurisdiction where the claimant resides. In the case of a legal entity, security for costs can be imposed if the claimant cannot prove to have sufficient funds in such jurisdiction.

The amount of the security is to be determined based on the defendant's (or respondent's) prospective costs for legal representation and the court fees to be borne by the defendant (or respondent), whereby the costs for legal representation are determined in accordance with the tariffs set by the government (and not, for example, based on the actual fee agreement between the defendant and its legal representatives).

The deposit serves as security for the cost claim of the defendant (or respondent) against the claimant (or appellant) in case the defendant (or respondent) succeeds. The deposit is to be made in cash or securities or, with the consent of the court, in the form of a bank guarantee.

The application for security for costs must be made at the first hearing before the case is heard on the merits or, in cases of appeal proceedings, before or together with the response to the appeal. If, during the proceedings, the amount turns out to be insufficient, the defendant (or respondent) can apply for additional security to be posted by the claimant (or appellant).

If the security is not lodged in time, the court declares the claim (or appeal) withdrawn upon request of the defendant (or respondent).

4.6 Costs of Interim Applications/ Motions

In orders dealing with interim applications or motions, the court may only decide on the costs of these applications or motions if the obligation to pay such costs (usually according to the principle that the loser pays) does not depend on the outcome of the lawsuit. For example, in decisions relating to oppositions to third-party interventions and decisions concerning applications for legal aid, if the counterparty of the applicant opposes the grant of legal aid.

4.7 Application/Motion Timeframe

There are no fixed timeframes for the courts to deal with applications or motions. However, courts usually take into account the urgency of a particular application or motion. If the court is in default with a procedural step (eg, taking a decision or scheduling a date for a hearing), the parties may apply to the relevant juridical supervisory authority to set a deadline for the court to take the relevant step.

5. Discovery

5.1 Discovery and Civil Cases

Pre-trial discovery, in the strict sense, does not exist under Liechtenstein law. However, the Liechtenstein Civil Procedure Code allows for the taking of evidence in the form of judicial inspections and the interrogation of witnesses and experts prior to the lodging of a lawsuit if it is to be feared that the evidence will otherwise not be available at a later stage.

5.2 Discovery and Third Parties

A third party may be ordered to produce a specific document if the third party is under an obligation to produce it as a matter of substantive law, or if the document is considered a joint document of the requesting party and the third party.

5.3 Discovery in This Jurisdiction

A party may request the court to order the counterparty to produce a specific document. In support of this request, the requesting party must explain the relevance of the document for the case and must either submit a copy of the requested document or precisely describe its content, the facts that are to be proven by it and the circumstances that suggest that the document is in the possession of the counterparty.

The counterparty can deny the production of the requested document if its content relates to family affairs or if its production would expose the counterparty to reputational damage, would be shameful for the counterparty or third parties, would expose the counterparty or third parties to public prosecution or would constitute a violation of legal privilege or a duty of confidential-

ity. However, the counterparty cannot deny the production if the counterparty itself previously referred to the requested document in its pleadings, if the counterparty is under an obligation to produce it as a matter of substantive law or if the document is considered a joint document of both parties; eg, if the document was drawn up in the interest of both parties or if it records a legal relationship between the parties (a contract, for example).

5.4 Alternatives to Discovery Mechanisms

The taking of evidence is administered by the court, while the parties can participate in the process. For example, parties are entitled to attend judicial inspections and interrogations of witnesses and experts and they are also entitled to ask questions and cross-examine witnesses and experts under the supervision of the court. While it is primarily the parties' responsibility to identify and offer the relevant evidence, the court is free to take any additional evidence it deems necessary to establish the pleaded facts (except for the production of documentary evidence and the interrogation of witnesses to which all parties are opposed).

5.5 Legal Privilege

As a matter of statutory law and the Code of Ethics and Professional Conduct of the Liechtenstein Bar Association, lawyers, not in-house counsel, are under a strict obligation to keep confidential any information they are entrusted with by their clients and any information that otherwise becomes known to them in their professional capacity, the confidentiality of which might be in their clients' interest. This professional secrecy extends to testimonies in court proceedings and the production of documents, which means that lawyers are prohibited from testifying and/or producing privileged documents unless they are relieved from their secrecy obligations by their clients.

5.6 Rules Disallowing Disclosure of a Document

The general rule under Liechtenstein civil procedure law is that a party cannot be ordered to disclose certain documents. A disclosure order can be rendered only under the very restricted circumstances described in **5.3 Discovery in This Jurisdiction**.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Injunctive relief is available to prevent irreparable damage or a change in circumstances that might frustrate or significantly complicate enforcement of a claim or right at a later stage. In such cases, injunctive relief can be granted in the form of conservatory measures in order to preserve the matter in dispute or otherwise secure future enforcement pending conclusion of the main proceedings, for example by means of freezing orders, attachments or restraining orders. Besides, even in cases where future enforcement is not of concern, injunctive relief can be granted in the form of regulatory measures in order to regulate the parties' relationship pending conclusion of the main proceedings, if it is feared that irreparable damage would otherwise occur.

Applications for injunctive relief can be made prior to the initiation of a lawsuit, together with a statement of claim initiating a lawsuit, or during a pending lawsuit whenever the need arises. In the application, the applicant needs to show a prima facie case (eg, a claim the enforcement of which needs to be secured, supported by prima facie evidence), show reasons justifying injunc-

tive relief (ie, a risk of irreparable damage or irreversible change in circumstances) and specify the injunctive measure sought.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

In urgent cases, injunctive relief is usually granted by the court within 24–72 hours upon receipt of the application if the court concludes that the requirements are fulfilled.

Where circumstances are even more urgent, super-provisional measures can be ordered by authorities such as municipal councils, the police or the court bailiff. These authorities are obliged to grant the requested measure unless they conclude that the same is manifestly inadmissible. They are not allowed to review the application in terms of the requirements for injunctive relief. The super-provisional measures are valid for two days and cease automatically at the end of this period unless the applicant files an application for injunctive relief with the court.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

It is in the court's discretion to decide whether the circumstances of the case require that injunctive relief be granted on an ex parte basis or whether the respondent should be heard in advance. Injunctive relief is usually granted on an ex parte basis in cases of great urgency or where there is a risk that the enforcement of the relief would otherwise be frustrated. If injunctive relief is granted on an ex parte basis, the respondent can subsequently seek to have the injunctive measure set aside.

6.4 Liability for Damages for the Applicant

An applicant for injunctive relief is liable for any damage incurred by the respondent as a result thereof if the applicant fails to validate the injunctive measure, be it because the applicant's case is dismissed in the validation proceedings (ie, main proceedings) or because the applicant fails to initiate the validation proceedings within the deadline set by the court.

An applicant for injunctive relief can be ordered to lodge security for the potential damage the respondent might incur as a result of the injunctive measure. Such security may be ordered upon application of the respondent or ex officio (especially in the case of ex parte injunctive relief). Furthermore, an applicant for injunctive relief can also be ordered to lodge security for costs, that is for the respondent's costs in relation to the proceedings concerning the injunctive relief (eg, costs in relation to an appeal against an interim injunction), on the same conditions and according to the same principles that apply to security for costs in ordinary proceedings.

6.5 Respondent's Worldwide Assets and Injunctive Relief

Liechtenstein statutory law does not explicitly restrict injunctive relief to assets located in the country. Consequently, injunctive measures can be ordered against assets located outside of the jurisdiction. It is then a matter of the laws of the jurisdictions in which the relevant assets are located as to whether a Liechtenstein court order is enforceable there.

6.6 Third Parties and Injunctive Relief

As a rule, injunctive measures can only be opposed by the applicant's counterparty, which needs to be clearly identified in the application. However, injunctive relief can be ordered against third parties as far as it relates to a relationship (contractual or other) between a third party and the applicant's counterparty. For example, a third party who is a debtor or who holds assets

of the applicant's counterparty can be ordered not to settle the respective debt or not to dispose of the respective assets.

6.7 Consequences of a Respondent's Non-compliance

Court orders granting injunctive relief are immediately enforceable against their addressees and will be enforced by the Liechtenstein enforcement authorities in the case of non-compliance. Non-compliance with an injunction can be punished by the court with a fine or imprisonment upon application by the party who applied for the injunctive relief.

7. Trials and Hearings

7.1 Trial Proceedings

Liechtenstein civil procedure is governed by the principles of immediacy and orality. This means that the parties are supposed to make their pleadings by way of oral submissions and the judge is required to personally establish the relevant facts and take the relevant evidence at oral hearings. In practice, parties make most of their factual pleadings (and legal arguments) by way of written submissions and oral hearings primarily serve for the taking of evidence by the court. Importantly, no judgment on the merits can be handed down without there having been at least one oral hearing.

The procedure for taking evidence is usually initiated by way of a special hearing in which the court deals with the parties' submissions concerning the evidence to be taken, sets the procedure for the taking of evidence, and issues an order setting out the evidence to be taken (*Beweisbeschlusstagsatzung*). In more complex cases, the judge also uses this hearing to discuss case management matters with the parties. After that, there will be one or as many more oral hearings as necessary in order to take the evidence and for the parties to plead their case.

Although the judge must, in principle, obtain an immediate impression of any presented evidence, the Liechtenstein Civil Procedure Code also permits the taking of evidence by means of legal assistance in other jurisdictions (eg, if a witness resides abroad and refuses to appear before court in Liechtenstein). Also, a judge is entitled to rely on evidence taken in previous court proceedings under certain specific circumstances.

Once the court considers the facts to be sufficiently established, it will terminate the oral hearings. In most cases, the judgment then follows in writing.

7.2 Case Management Hearings

The first hearing (primarily dealing with formal objections – eg, for lack of jurisdiction or res judicata, and applications for security of costs and fees) and the hearing dealing with the parties' submissions concerning the evidence to be taken, are often shorter hearings and of a procedural nature. The judge often uses the latter to discuss case management matters with the parties. All subsequent hearings normally focus on the taking of evidence – ie, the examination of witnesses and experts.

7.3 Jury Trials in Civil Cases

Liechtenstein civil procedure law is not familiar with jury trials.

7.4 Rules That Govern Admission of Evidence

The burden of proof lies with each party to provide evidence supporting and establishing the necessary facts for its case. However, the court

may also take evidence ex officio. Conversely, if the court considers certain facts to be sufficiently established, it may refrain from taking further evidence even if a party requests that further evidence be taken. The same holds true if the court considers presented evidence to be irrelevant.

No evidence is required for facts presupposed by law to be true. However, evidence to the contrary is admissible unless precluded by law.

Parties may offer evidence in the form of witnesses, documents, judicial inspections of places or items, expert testimonies or statements and the testimony of the parties.

Producing Evidence

Due to the principle of immediacy, evidence generally has to be taken by the deciding judge. However, if evidence on disputed facts has already been produced in another judicial proceeding, the minutes or a written expert opinion therefrom can be used as evidence and the court can refrain from re-taking this evidence if the parties were involved in the other judicial proceeding, and no party expressly requests the evidence to be re-taken or the respective evidence is no longer available, or the party which was not involved in the other legal proceeding expressly agrees to the introduction of such evidence. Furthermore, the Liechtenstein Civil Procedure Code allows evidence to be taken abroad by means of legal assistance.

New evidence to support a position may be introduced by a party until the closure of the last oral hearing. However, the introduction of new evidence may be denied ex officio or upon application of the other party if the court concludes that the new evidence was not introduced at an earlier stage of the proceedings out of gross negligence and that the taking of the new evidence would significantly delay the completion of the proceedings.

Liechtenstein law does not provide for rules of inadmissibility of evidence obtained by illegal means and, therefore, such evidence may be introduced in civil proceedings. However, it is in the judge's discretion to take such circumstances into consideration when evaluating the evidential value of such evidence.

7.5 Expert Testimony

Expert testimony is admissible in Liechtenstein civil law proceedings. Experts are court appointed. The deciding judge will nominate an expert after hearing the parties' views on the possible candidate(s). Parties can challenge the appointment of an expert based on the same grounds on which they may apply for the dismissal of a particular judge (ie, grounds of exclusion and of refusal, such as a lack of neutrality). Furthermore, parties can challenge the impartiality of the expert. Strict rules apply as regards the neutrality of experts.

The mere impression of lacking neutrality may lead to a successful challenge of the appointment of the expert. Usually, an expert produces a written expert report and the judge and the parties may then examine the expert on the submitted written expert report in an oral hearing.

While parties may also appoint private expert witnesses, party-appointed experts are considered and heard as witnesses rather than as experts.

7.6 Extent to Which Hearings Are Open to the Public

As a rule, court hearings in civil cases are open to the public. The court can exclude the public if public morality or public order so demand or if it

is feared that the procedure would otherwise be disturbed. The court can also exclude the public from a hearing upon application of a party if facts about family life are to be discussed or established. Additionally, the court may exclude the public if business secrets would otherwise be jeopardised.

Transcripts or written submissions in civil proceedings are, in general, not open to the public. However, third parties may be granted access if all parties to the respective lawsuit agree or, in the absence of such an approval, if the third party shows a prima facie legal interest.

7.7 Level of Intervention by a Judge

The judge has the principal role of leading the proceedings. They control the proceedings and the timetable by opening, directing and closing the oral hearings. The judge may order the parties to provide written statements or legal documents, as well as take the lead in questioning the parties, witnesses and experts. It is for the judge to decide whether further evidence needs to be heard or whether the heard evidence is sufficient to establish the facts of the case and to render a decision.

While the law prescribes that a judgment shall, if possible, be given orally immediately following the oral hearings, in practice, most judgments are given in writing after the oral hearings are terminated.

7.8 General Timeframes for Proceedings

The Liechtenstein Civil Procedure Code stipulates several provisions that guarantee the expediency of civil proceedings. For example, parties are required to present facts and evidence at their earliest convenience in order to avoid the risk that such facts and evidence are precluded.

The deadlines for procedural steps to be taken are mostly 14 days or four weeks, with such deadlines usually being stayed during the court holidays (from 15 July to 25 August and from 24 December to 6 January).

The duration of proceedings largely depends on the complexity of the case. As a guide, proceedings before the District Court usually take between six months and two years, and proceedings before the Court of Appeal and the Supreme Court usually take around six to 12 months for a decision to be handed down.

However, if the appellate courts order the taking of further evidence due to procedural errors, or if the case is remitted to the District Court for further hearing, the proceedings will typically last considerably longer since any new decisions will again be subject to further appeal. The same holds true if a party files a constitutional complaint with the Constitutional Court. If a judgment is lifted due to a violation of constitutional rights by the Constitutional Court, the case must be re-heard by the ordinary courts, which in turn opens the possibility to appeal the new decisions.

8. Settlement

8.1 Court Approval

The settlement of a pending lawsuit (either within or outside of a court hearing) does not require the approval of the court, except for matters concerning child support and custody of children.

Judges are encouraged by law to make litigants settle amicably at any stage of the proceedings and, in practice, judges go to great efforts to get disputes settled in the early stages of the pro-

ceedings in order to avoid unnecessary, costly and lengthy proceedings.

8.2 Settlement of Lawsuits and Confidentiality

Parties can, and often do, agree on a confidentiality clause in a settlement.

8.3 Enforcement of Settlement Agreements

A settlement taken on record in court, which was concluded irrevocably, constitutes an enforceable title (ie, a judicial settlement is equal to a judgment). An extrajudicial settlement does not constitute an executory title, and new proceedings must be initiated in order to enforce a claim arising from an out-of-court settlement.

8.4 Setting Aside Settlement Agreements

Parties can agree to include a revocation clause in the settlement enabling them to withdraw within a certain timeframe. Apart from that, settlement agreements can only be challenged on the grounds of a severe mistake or of deliberate deceit and duress.

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant

The Liechtenstein courts can render judgments:

- ordering performance of a certain action (eg, payment of a certain sum of money or handing-over of a specific asset);
- forbidding a certain action;
- creating or altering legal status (eg, divorces, annulments of corporate resolutions); or
- of a declaratory nature.

In principle, courts are bound by the relief sought (and may not order more or something different than requested by the applicant).

9.2 Rules Regarding Damages

Liechtenstein civil procedural law does not provide for special rules regarding damages. In most cases, awards granted for damages are monetary judgments. Declaratory judgments for future damages (interrupting limitation periods) are another important form of award for damages.

While as a matter of substantive Liechtenstein law, the maximum amount of damage is generally not restricted, a damaged party may, in principle, only claim the amount of the actual damage, whereas punitive damages are alien to substantive Liechtenstein law.

9.3 Pre-judgment and Post-judgment Interest

Under Liechtenstein law, the question as to whether interest can be collected is a matter of substantive law rather than procedural law. Therefore, whether and to what extent interest can be claimed depends on the underlying legal relationship between the claimant and the defendant. If interest is due based on the respective underlying legal relationship, pre- and/or post-judgment interest can be claimed.

According to substantive Liechtenstein law, the general statutory interest rate is 5% per annum. Between entrepreneurs, the general interest rate is 8% per annum above the base interest rate of the Swiss Central Bank. In addition, a debtor may be ordered to compensate for all damage resulting from late payment.

9.4 Enforcement Mechanisms of a Domestic Judgment

After a judgment is final, the judgment creditor can seek enforcement in accordance with the Liechtenstein Enforcement Act (*Exekutionsordnung*), which lays out different rules for enforcing monetary judgments as well as judgments for acts or omissions.

In the case of a monetary judgment, different rules apply depending on the asset against which the judgment shall be enforced (ie, movable or immovable property). A monetary judgment can be enforced against immovable property by means of forced creation of a lien, forced administration or foreclosure. Monetary judgments can also be enforced against all kinds of moveable property and rights held by the judgment debtor (eg, IP rights, receivables).

Judgments for acts and omissions are enforced by means of eviction, substituted performance or fines and even imprisonment.

9.5 Enforcement of a Judgment From a Foreign Country

There are no bilateral or multilateral agreements between Lichtenstein and other countries regarding the mutual acknowledgement and enforcement of foreign judgments, with the exception of bilateral treaties with the Republic of Austria and Switzerland and the Hague Convention on Child Support. Therefore, judgments of foreign courts (other than Austrian and Swiss judgments and child support judgments) are not directly enforceable in Liechtenstein.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

The Court of Appeal and the Supreme Court are the appellate courts in the Liechtenstein civil justice system. Furthermore, decisions of the Supreme Court (or of the Court of Appeal, if it decides as last instance) may be appealed by means of a constitutional complaint to the Liechtenstein Constitutional Court. Most orders of a procedural nature cannot be appealed to the Supreme Court and are decided by the Court of Appeal as last instance. The same holds true if the Court of Appeal confirms an order of the District Court.

10.2 Rules Concerning Appeals of Judgments

As a rule, decisions of the District Court can be appealed to the Court of Appeal, and decisions of the Court of Appeal can be appealed to the Supreme Court.

10.3 Procedure for Taking an Appeal

An appeal against a judgment has to be filed within four weeks upon service of the judgment on the appealing party. An appeal against an order must be filed within 14 days (or four weeks in non-contentious proceedings) upon service of the order on the appealing party. The opponent party may submit a statement of response within the same timeframes. The deadlines are not extendable.

10.4 Issues Considered by the Appeal Court at an Appeal

A decision of the District Court can be appealed on procedural grounds, errors in the application of substantive law, errors of fact, a contradiction between a factual finding and the court files, or nullity. In appeal proceedings before the Court

of Appeal, new facts and evidence can only be introduced in the statement of appeal and only if the court concludes that the new facts or evidence were not introduced in the first instance proceedings out of gross negligence. The respective standard applied by the Court of Appeal is very strict.

In practice, new facts or evidence are almost never considered permissible by the Court of Appeal. In appellate proceedings before the Court of Appeal, evidence can be re-taken. In practice, this rarely happens. The Court of Appeal can either dismiss the appeal and confirm the appealed decision, grant the appeal and either change the appealed decision on the merits, or remand it back to the District Court.

The Supreme Court is bound by the facts established by the lower courts. Thus, a decision of the Court of Appeal can only be appealed on procedural grounds, on substantive law errors, or on a conflict between a factual finding and the court files or if the decision is null and void. New facts or evidence may only be presented to prove that the challenged decision is subject to nullity or suffers from material procedural mistakes. In general, the Supreme Court decides without an oral hearing.

10.5 Court-Imposed Conditions on Granting an Appeal

As a rule, judgments are appealable. However, judgments of the Court of Appeal are not appealable if the amount in dispute does not exceed CHF5,000. Furthermore, judgments of the Court of Appeal cannot be appealed to the Supreme Court if the amount in dispute does not exceed CHF50,000 and if the Court of Appeal confirms the decision of the District Court.

Most orders of a procedural nature cannot be appealed. Also, orders of the Court of Appeal confirming orders of the District Court or referring the matter back to the District Court cannot be appealed to the Supreme Court as a matter of statutory law, but the Court of Appeal can permit an appeal to the Supreme Court in exceptional circumstances.

10.6 Powers of the Appellate Court After an Appeal Hearing

The appellate court can either dismiss the appeal and confirm the appealed decision or grant the appeal and either change the appealed decision on the merits or refer it back to the lower instances to re-hear the case.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

At first, each party is responsible for its own attorney's fees and expenses and, as a rule, court fees are to be borne by the applicant. The succeeding party may then recover its costs and expenses (both attorney's fees and court fees) from the losing party according to the pertinent provisions of law.

A cost award can be appealed, either together with the judgment or order in relation to which it was given, or separately if the judgment or order itself is not appealed. If only the cost award is appealed, the Court of Appeal decides as the last instance.

11.2 Factors Considered When Awarding Costs

The value of the claim in dispute and the extent of success are the key factors to calculate both the costs recoverable from the losing party and

the court fees. As regards the latter, Liechtenstein applies a flat-rate fee system depending on the value of the amount in dispute. The attorneys' fees recoverable by the succeeding party are calculated according to the tariffs set by the Liechtenstein government.

11.3 Interest Awarded on Costs

In the event that the cost award is not paid within the relevant time period, default interest of 5% per annum will be charged from the date of the cost award.

12. Alternative Dispute Resolution (ADR)

12.1 Views of ADR Within the Country

Alternative dispute resolution (ADR) has become increasingly relevant in Liechtenstein in recent years. The most popular ADR method in Liechtenstein is arbitration. Since 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 considerably increased its prominence as a venue for arbitration.

Mediation is another ADR method available to parties in civil law disputes. A dispute may be made subject to mediation both prior to and after the commencement of court proceedings. As a matter of Liechtenstein substantive law, the commencement of a mediation process suspends statutory limitation periods.

An extrajudicial conciliation board has been established to act as a mediator for conflicts between clients and banks, asset management companies and payment service providers in Liechtenstein. Subject to mediation before the conciliation board are complaints of clients of financial intermediaries. The extrajudicial conciliation board consists of one arbitrator appointed by the Liechtenstein government.

A similar mechanism has recently been put in place by the Liechtenstein Chamber of Professional Fiduciaries to resolve disputes between beneficiaries of trusts and foundations and their respective professional trustees.

12.2 ADR Within the Legal System

Although ADR is not generally compulsory in Liechtenstein, the Liechtenstein legal system is quite open to it. In particular, judges are expressly encouraged by statutory law to make litigants settle amicably at any stage of the proceedings.

For certain disputes between regulated professionals (eg, lawyers), the respective codes of conduct prescribe ADR prior to the commencement of court proceedings.

Furthermore, in disputes concerning parental custody, the parties may be ordered to engage in mediation. These decisions are not appealable and the mediation is compulsory.

12.3 ADR Institutions

The Liechtenstein Association of Mediation is the professional organisation for mediation and mediators in Liechtenstein. The organisation is a member of other national mediation lobby groups (eg, *Österreichischer Bundesverband Mediation*, *Schweizerischer Dachverband Mediation*).

The arbitrator of the conciliation board for conflicts relating to financial services and the members of the conciliation board of the Liechtenstein Chamber of Professional Trustees are experts in their respective fields of practice.

The Liechtenstein Chamber of Commerce and Industry (LCCI), together with the Liechtenstein Arbitration Association (LIS), published a set of arbitration rules in 2012 (the "Liechtenstein Rules"). A peculiarity of the Liechtenstein Rules is the absence of an actual administration.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

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. These provisions are mostly non-mandatory and the parties may autonomously agree for specific arbitration rules to apply. The Liechtenstein arbitration law is largely based on the Model Law on the International Commercial Arbitration (UNICITRAL Model Law) and the respective provisions of the Austrian Civil Procedure Code.

The fact that Liechtenstein adopted many provisions from the Austrian arbitration law has the advantage that if there is no specific Liechtenstein case law and legal doctrine, one can refer to Austrian case law and legal doctrine for the construction of the Liechtenstein arbitration law in the absence of such law. In the case of a small jurisdiction such as Liechtenstein, this is a huge asset.

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

13.2 Subject Matters Not Referred to Arbitration

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.

With regard to the arbitrability of non-pecuniary claims, an arbitration agreement can 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 cannot be made subject to arbitral proceedings. Furthermore, 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, and disputes which have to be heard before the administrative authorities cannot be referred to arbitration either.

13.3 Circumstances to Challenge an Arbitral Award

According to Liechtenstein arbitration law, the grounds for challenging an arbitral award are very similar to the grounds set forth in the UNCITRAL Model Law. Two notable differences between the Liechtenstein arbitration law and the UNCITRAL Model Law are that:

- the challenge must be submitted within four weeks of the date of receipt of the award; and
- the Liechtenstein arbitration law only provides one ordinary instance for setting aside the award (that is, the Liechtenstein Court of Appeal).

The procedure is public in principle, but the public can be excluded upon request of a party if

the party has a legitimate interest. Moreover, any person involved in the proceedings can ban third parties from being granted access to the files.

In summary, the distinctive features of the 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 Liechtenstein Court of Appeal renders a final decision against which no further ordinary appeal is admissible.

While, in theory, a complaint to the Constitutional Court for a violation of constitutional law is possible, the Constitutional Court has held that arbitral awards are only to a very limited extent bound by constitutional norms. In particular, an arbitral award will not be reviewed on the grounds of arbitrariness. Consequently, the chances of success with a constitutional complaint are very limited.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

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 (Liechtenstein) courts. Arbitral awards are, therefore, enforced in the same way as judgments of the ordinary courts, that is, by means of an application for enforcement to the Liechtenstein District Court.

The enforcement of a foreign arbitral award in Liechtenstein is governed by the provisions of the New York Convention. 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. Furthermore, the District Court must confirm the enforceability of the arbitral award.

14. Outlook

14.1 Proposals for Dispute Resolution Reform

The last major reform of the Liechtenstein Civil Procedure Code was completed in 2018. The purpose of the 2018 reform was to simplify and accelerate proceedings.

Recently, the government in Liechtenstein is planning to abolish the Supreme Court as highest instance of ordinary jurisdiction. Instead, a High Court (*Obergerichtshof*) should be established as second and highest instance of ordinary jurisdiction in Liechtenstein. With its long history of success, the Supreme Court preserves the legal unity, legal certainty and legal development of jurisprudence in Liechtenstein and guarantees the rule of law. For this reason, representatives from the judiciary and the legal profession have already opposed such a judicial reform. At present, it is still too early to predict whether it will be implemented at all.

Furthermore, the Liechtenstein Enforcement Act has been undergoing a rather comprehensive reform with a view to increasing the efficiency of enforcement proceedings. The first part of the reform, concerning execution against chattels (*Fahrnisexekution*), has entered into force with effect from 1 March 2019. The second part of the reform, mainly concerning provisions dealing with the execution against receivables (*Forderungsexekution*), in particular wage garnishment, compulsory administration (*Zwangsverwaltung*), and compulsory sale by auction (Zwangsversteigerung), has entered into force with effect as of 1 January 2021.

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