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Liechtenstein: Law & Practice

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LIECHTENSTEIN

Law and Practice

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Schurti Partners Attorneys at Law Ltd advises clients on the Liechtenstein aspects of multi-jurisdictional disputes; its civil litigation and arbitration team is also often engaged to co-ordinate the steps to be taken in other jurisdictions. Over several decades, the firm has built up excellent working relations with foreign law firms that are also specialised in litigation/arbitration, and with barristers – a great asset in this context. Most members of Schurti Partners' civil litigation and arbitration team are qualified in multiple jurisdictions, which is also a benefit in multi-jurisdictional disputes. The firm's main areas of civil litigation and arbitration are disputes in trust and foundation matters, asset tracing, asset protection, disputes in corporate matters, directors'/trustees' liability matters, disputes in insurance matters, disputes arising out of banking and finance transactions, and general commercial disputes.

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1. Identifying Assets in the Jurisdiction

1.1 Options to Identify Another Party's Asset Position

In Liechtenstein, public information on a person's asset position is limited. However, there are a number of registers that may be of assistance in this regard, the most important of which are outlined below.

The Commercial Register (Handelsregister)

All legal entities that are established under Liechtenstein law and pursue commercial activities must be registered with the Commercial Register, and most types of legal entities must be registered with the Commercial Register regardless of whether or not they pursue commercial activities. However, there are certain (practically important) exemptions to this rule. Most significantly, Liechtenstein foundations do not have to be registered with the Commercial Register unless they are charitable or pursue commercial activities. Therefore, the vast majority of Liechtenstein private foundations are not registered with the Commercial Register.

The Commercial Register contains, amongst other things, information on a legal entity's statutory capital, its purpose and its directors. Furthermore, all stock companies (*Aktiengesellschaften*), limited liability companies (*Gesellschaften mit beschränkter Haftung*) and Societas Europaea are required to file their annual financial statements with the Commercial Register. However, the Commercial Register does not contain information on the shareholders of a company, except in the case of limited liability companies (which are not very common in Liechtenstein).

The Commercial Register is public and can be inspected by anyone, without the need to show any specific legal interest.

The Beneficial Ownership Register (Verzeichnis der wirtschaftlich berechtigten Personen von Rechtsträgern)

The Beneficial Ownership Register contains information on the "beneficial owners" (within the meaning of Liechtenstein anti-money laundering legislation) of all legal entities established in Liechtenstein.

Unlike the Commercial Register, the Beneficial Ownership Register is not open to the public. In principle, it may only be inspected by interested persons if they can show that inspection is required for purposes of combating money laundering or terrorist financing.

The Land Registry (Grundbuch)

The Land Registry is a register comprising all properties (real estate) in Liechtenstein and contains information on ownership, servitudes, mortgages, etc.

All information except information on mortgages is public and may be inspected without the need to show any specific legal interest. However, the Land Registry can only be inspected with respect to specific properties. It is not possible to search it for all properties owned by a particular person.

The Seizure Register (Pfändungsregister)

All seizures of movable assets are registered in a register kept by the Liechtenstein District Court. The register contains information on the creditors, the debtors, the enforced claims, the dates of the seizures, and the assets concerned.

The Seizure Register can be accessed by anyone who can show that they require the

information for the initiation of legal proceedings, for the purpose of enforcing a claim, or for other important reasons.

Asset Disclosure Orders

More detailed information on another party's asset position can be obtained through asset disclosure orders issued in the course of enforcement proceedings. For example, although a creditor is required to specify the assets against which enforcement is sought in the enforcement application, in the case of bank accounts it is acceptable in practice for a creditor to describe the assets as "all bank accounts" held by the debtor with a particular bank (without having to specify the details of the bank account(s)), and the bank can then be ordered by the court to disclose the bank accounts held by the debtor. Also, if the enforcement of a monetary judgment remains unsuccessful because no realisable assets can be found, the debtor can be ordered by the court to submit a statement of all their assets to the court, upon the application of the creditor. Failure to comply with such an order constitutes a criminal offence under Liechtenstein law.

Injunctive Relief

Information on another party's asset position can also be obtained through injunctive relief. Under Liechtenstein law, injunctive relief can be obtained 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 preservative 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, seizures or restraining orders. Even in cases where future enforcement is not a 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, simultaneously with a statement of claim initiating a lawsuit, or during a pending lawsuit whenever the need arises, even at the stage of enforcement. In the application, the applicant needs to:

- show a prima facie case (eg, a claim whose enforcement needs to be secured) supported by prima facie evidence;
- show reasons justifying injunctive relief (ie, a risk of irreparable damage or irreversible change in circumstances); and
- specify the injunctive measure sought.

Liechtenstein statutory law does not explicitly restrict injunctive relief to assets located in Liechtenstein. Thus, injunctive measures can be ordered with respect to assets outside the jurisdiction. It is then a question of the laws applicable in the jurisdictions where the relevant assets are located as to whether an order of a Liechtenstein court will be enforceable there.

As a rule, injunctive measures can only be imposed on the applicant's counterparty, but injunctive relief can be ordered against third parties as far as it relates to a relationship (contractual or other) between the third party and the applicant's counterparty. For example, a third party who holds assets of the applicant's counterparty (eg, a bank) can be ordered not to dispose of the respective assets and, in this context, the third party can also be ordered to provide information on the applicant's counterparty's assets held with the third party.

2. Domestic Judgments

2.1 Types of Domestic Judgments

Liechtenstein courts can render the following judgments:

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

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

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. Furthermore, the court may issue a partial judgment if, in the case of a claim and a counterclaim, only one of the two claims is ready to be disposed of while a decision on the other claim requires the taking of further evidence.

An interlocutory judgment (*Zwischenurteil*) can be issued in cases where a claim has been disputed in terms of both 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.

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 (*Versäumnisurteil*). The court will render a 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 account by the court if the defendant does not appear at the hearing. A default judgment can be attacked in two ways: by means of an appeal to the Court of Appeal and by means of an application for restitutio in integrum to the District Court.

2.2 Enforcement of Domestic Judgments

The enforcement of judgments in Liechtenstein is governed by the Liechtenstein Enforcement Act (*Exekutionsordnung*), which sets forth different rules for the enforcement of monetary judgments (ie, judgments ordering the debtor to pay a certain sum of money) and non-monetary judgments (ie, judgments ordering the debtor to perform, or refrain from, a certain action).

Monetary Judgments

In the case of monetary judgments, different rules apply depending on the type of asset against which enforcement is sought. In particular, the Enforcement Act distinguishes between enforcement against immovable assets (*unbewegliches Vermögen*) and enforcement against movable assets (*bewegliches Vermögen*), including enforcement against movables (*körperliche Sachen*), against receivables (*Geldforderungen*), against claims for the delivery of tangible assets (*Ansprüche auf Herausgabe und Leistung körperlicher Sachen*) and against other pecuniary rights (*andere Vermögensrechte*) of the debtor.

In the case of immovable assets, enforcement is done at the creditor's choice by way of compulsory creation of a lien (*zwangsweise Pfandrechtsbegründung*), compulsory adminis-

tration (*Zwangsverwaltung*) or compulsory sale by auction (*Zwangsversteigerung*).

In the case of movables, enforcement takes place by way of seizure (*Pfändung*), appraisal (*Schätzung*) and sale (*Verkauf*).

In the case of receivables and other pecuniary rights, enforcement occurs through seizure (*Pfändung*) and transfer (*Überweisung*) of the receivables or other rights to the creditor in order to enable the creditor to request fulfilment of the receivable from the third-party debtor or to otherwise exercise the transferred right on behalf of the judgment debtor. Similarly, in the case of enforcement against claims for the delivery of tangible assets, the claims are seized and transferred to the creditor, and once the assets have been delivered by the third party debtor they will be realised according to the rules applicable to enforcement against immovable assets or movable assets, as applicable.

Non-monetary Judgments

Non-monetary judgments (ie, judgments ordering the debtor to perform, or refrain from, specific actions) are enforced by means of delivery (*Herausgabe bestimmter beweglicher Sachen*), eviction (*Überlassung oder Räumung von unbeweglichen Sachen*), entry into the Land Registry (*Eintragung im Grundbuch*), entry into the custodian's register regarding bearer shares (*Eintragung in das vom Verwahrer geführte Register betreffend Inhaberaktien*), substitute performance (if the relevant action can be performed by another person) or fines and even imprisonment (if the relevant action cannot be enforced by another person or if the judgment debtor violates an obligation to refrain from a specific action).

Enforcement procedures are initiated by way of an enforcement application by the creditor. In the application, the creditor must specify the creditor and the debtor, the claim to be enforced (including the enforceable title on which the claim is based), the means of enforcement and the particular assets against which enforcement is sought.

If all requirements are fulfilled, the court will issue the enforcement order ex parte – ie, without hearing the debtor. Once the enforcement order has been issued, the debtor can appeal it within 14 days of service. Likewise, if the court dismissed the enforcement application, the creditor can file an appeal within 14 days of service. As a matter of law, an appeal of a debtor against an enforcement order does not have suspensive effect but the court has discretion to stay enforcement pending appeal upon the application of the appellant if it is of the view that the purpose of the appeal would otherwise be defeated.

If the debtor does not appeal the enforcement order or if the court does not stay enforcement pending appeal, the procedure will continue with the actual enforcement. The enforcement is taken care of by court officers (*Gerichtsvollzieher*) and the particular steps to be taken depend on the means of enforcement and the assets against which enforcement is sought.

2.3 Costs and Time Taken to Enforce Domestic Judgments

The costs involved in enforcing a judgment in Liechtenstein typically comprise attorneys' fees, court fees and, as the case may be, costs related to the relevant means of enforcement. While it is difficult to give a general indication of attorneys' fees and the costs related to the means of enforcement, given that much

depends on the circumstances of the case, the court fees merely depend on the amount of the claim to be enforced, and range between CHF10 and CHF3,400.

In terms of timing, while an enforcement order can usually be obtained relatively quickly (the process being ex parte), the length of the actual enforcement process depends on the means of enforcement and the assets against which enforcement is sought. Also, enforcement orders can be appealed by the debtor and, even though an appeal against an enforcement order does not have suspensive effect as a matter of law, the court has discretion to stay enforcement pending appeal upon the application of the appellant if it is of the view that the purpose of the appeal would otherwise be defeated. A stay of enforcement pending appeal may delay the enforcement procedure by several months, or even more than a year.

2.4 Post-judgment Procedures for Determining Defendants' Assets

A creditor seeking enforcement of a judgment must specify in the enforcement application with reasonable detail the means of enforcement and the assets against which enforcement is sought. However, that does not mean that a creditor is required to describe the relevant assets in full detail. Rather, it is sufficient for a creditor to describe the assets in a general manner, such as "all chattels in the possession of the debtor" or "all bank accounts" held by the debtor with a particular bank. In the latter case, the bank can then be ordered by the court to disclose all bank accounts held by the debtor with the bank.

Furthermore, if the enforcement of a monetary judgment remains unsuccessful because no realisable assets can be found, debtors can be ordered by the court to submit a statement of all their assets to the court. Failure to comply with such an order constitutes a criminal offence under Liechtenstein law.

2.5 Challenging Enforcement of Domestic Judgments

Enforceable Judgments

Only "enforceable" judgments can be enforced under the Liechtenstein Enforcement Act. A judgment or order is enforceable if an appeal is no longer available or, if an appeal is available, the appeal does not have suspensive effect as a matter of law and the court does not grant a stay of enforcement.

Once a judgment is enforceable, the judgment creditor can apply for an enforcement order. The enforcement order can be appealed by the debtor within 14 days of service. An appeal against an enforcement order does not have suspensive effect as a matter of law but the court has discretion to stay enforcement pending appeal upon the application of the appellant if it is of the view that the purpose of the appeal would otherwise be defeated.

Other Remedies

In addition to an appeal against the enforcement order, there are a number of other remedies available to debtors that may lead to a temporary stay and, if successful, even the (full or partial) termination of the enforcement proceedings, as follows.

- A debtor can file a so-called opposition claim (*Oppositionsklage*) in order to raise substantive objections against the claim that is sought to be enforced on the basis of circumstances that have occurred after the judgment that is sought to be enforced was rendered – eg, that the claim has ceased to exist (because it has already been satisfied

(*erfüllt*) or because the debt was acquitted (*erlassen*), etc) or that the claim has become temporarily unenforceable (eg, because the creditor has granted a temporary deferral of performance). If the debtor succeeds with the opposition claim, the enforcement procedure will be terminated. Also, the court can stay enforcement pending the opposition claim if it is of the view that the purpose of the opposition claim would otherwise be defeated.

- A debtor can file a claim for the cancellation of an enforcement order (*Impugnationsklage*) in order to challenge the enforcement order on formal grounds (eg, that the claim is not yet mature or enforceable, or that the creditor has waived the right to enforce the judgment). If the debtor succeeds with the claim, the enforcement procedure will be terminated and the court can stay enforcement pending the claim if it is of the view that the purpose of the claim would otherwise be defeated.

Third parties may also challenge enforcement proceedings if they are of the view that the enforcement concerns assets that belong to them rather than the debtor (so-called *Exszindierungsklage*). Such an action may also lead to a stay of the enforcement proceedings and, if successful, to the termination of the enforcement procedure with respect to the relevant assets.

2.6 Unenforceable Domestic Judgments

Only judgments ordering the performance or omission of a certain action (*Leistungsurteile*) can be enforced. Judgments creating or altering legal status (*Rechtsgestaltungsurteile*) and declaratory judgments (*Feststellungsurteile*) cannot be enforced (and, by definition, do not need to be enforced).

2.7 Register of Domestic Judgments

There is no central register of judgments in Liechtenstein. However, all seizures of movable assets are registered in a register kept by the Liechtenstein District Court. The register contains information on the creditors, the debtors, the enforced claims, the dates of the seizures and the assets concerned.

3. Foreign Judgments

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

Judgments of foreign courts are only enforceable in Liechtenstein if and to the extent such has been agreed in international treaties, or if reciprocity is guaranteed by international treaties or by declarations of reciprocity issued by the Liechtenstein government.

Liechtenstein has entered into bilateral treaties regarding the mutual acknowledgement and enforcement of foreign judgments with the Republic of Austria and the Swiss Confederation only. In addition, Liechtenstein is a party to the Hague Convention on Child Support.

Therefore, judgments of foreign courts other than Austria and Switzerland, and other than child support judgments, are not enforceable in Liechtenstein. However, such foreign judgments can serve as a basis to obtain a summary judgment through summary proceedings (so-called *Rechtsöffnungsverfahren*).

Summary proceedings are initiated by an application for a payment order (*Zahlbefehl*) with the District Court. Once the payment order has been served on the defendant, the defendant has two weeks to file an objection to it. Neither the appli-

cation for a payment order nor the objection to a payment order need to be substantiated.

If no objection is filed, the payment order becomes final and binding and can then be enforced like a final court judgment. On the other hand, if an objection is filed, the applicant can make an application for the setting aside of the objection (so-called *Rechtsöffnung*) with the District Court. Such application must be based either on an acknowledgement of debt by the defendant or a public deed evidencing the applicant's claim against the defendant. This is where the (non-enforceable) foreign judgment comes into play: A foreign judgment, even if it is not enforceable in Liechtenstein, is, in principle, considered a public deed and can, therefore, serve as a basis for an application to lift an objection against a payment order.

If the application for the lifting of the objection is granted, the defendant must either file a constitutional complaint against the order lifting the objection with the Liechtenstein Constitutional Court within four weeks of service or file a claim against the applicant with the District Court requesting a declaratory judgment to the effect that the applicant's alleged claim does not exist (so-called *Aberkennungsklage*) within 14 days of service in order to avoid that the order lifting the objection becomes final and binding and, thus, enforceable like a court judgment. The proceedings initiated by such claim are ordinary civil proceedings and the court will, therefore, fully reassess the claim on the merits without being bound to the (non-enforceable) foreign judgment which served as a basis for the application to lift the objection against the payment order. However, the roles of the creditor and the debtor are interchanged in that the debtor is now the claimant and the creditor is now the defendant. This has the advantage for the creditor that as defendant, he/she/it cannot be ordered to post security for costs. Instead, the debtor as claimant can be ordered to do so. However, the burden of proof remains the same and is not affected by the interchanged roles of the parties.

Unlike an order granting an application for the lifting of an objection against a payment order, an order dismissing such application can be appealed with the Liechtenstein Court of Appeal within 14 days of service. If an application for the lifting of an objection against a payment order is conclusively dismissed, the creditor has no choice but to initiate new ordinary civil proceedings in Liechtenstein in order to enforce his/her/its claim against the debtor, and the Liechtenstein courts will then fully reassess the claim on the merits without being bound to the (non-enforceable) foreign judgment that served as a basis for the application to lift the objection against the payment order.

Thus, the initiation of summary proceedings may make sense if a creditor of a non-enforceable foreign judgment seeks to avoid being ordered to post security for costs, which can be quite substantial depending on the amount in dispute, or if it is expected that the debtor will be unwilling or unable to mount an extensive defence in Liechtenstein. On the other hand, the initiation of summary proceedings can considerably delay matters from a creditor's perspective as they cannot avoid a full re-litigation on the merits if persistently defended by the debtor.

3.2 Variations in Approach to Enforcement of Foreign Judgments

Liechtenstein has entered into bilateral treaties regarding the mutual acknowledgement and enforcement of foreign judgments with the Republic of Austria and the Swiss Confederation

only. In addition, Liechtenstein is a party to the Hague Convention on Child Support. Therefore, judgments of foreign courts other than Austria and Switzerland, and other than child support judgments, are not directly enforceable in Liechtenstein.

3.3 Categories of Foreign Judgments Not Enforced

The bilateral treaties concluded with the Republic of Austria and the Swiss Confederation only apply to judgments in civil matters. Also, both treaties exclude certain subject matters from their ambit, such as bankruptcy matters, and certain types of decisions, such as decisions on civil law claims entered in criminal proceedings, interim injunctions or regulatory fines.

3.4 Process of Enforcing Foreign Judgments

To the extent a foreign judgment is enforceable in Liechtenstein, because one of the aforementioned treaties applies and the conditions set forth therein are fulfilled, the procedure to enforce the foreign judgment is similar to the procedure to enforce a domestic judgment. In particular, a creditor can apply directly for an enforcement order based on a foreign judgment without first having to apply for the foreign judgment to be formally recognised.

The main difference between enforcement on the basis of a domestic judgment and enforcement on the basis of a foreign judgment is that, in the latter case, the Enforcement Act provides for a special opposition procedure (*Widerspruchsverfahren*) in which the debtor can raise objections specifically (and only) available against the enforcement of foreign judgments, with the following examples:

- that the debtor did not have an opportunity to participate in the foreign proceedings;
- that the action that shall be enforced based on the foreign judgment is unlawful as a matter of Liechtenstein law;
- that the foreign judgment violates Liechtenstein public policy (*ordre public*); or
- that the conditions set forth in the relevant treaty are not fulfilled.

The opposition is to be raised with the Liechtenstein District Court (ie, the court of first instance) and is to be dealt with in an oral hearing. The opposition can be raised in parallel to an appeal against the enforcement order with the Liechtenstein Court of Appeal.

3.5 Costs and Time Taken to Enforce Foreign Judgments

In principle, the procedure to enforce a foreign judgment is the same as the procedure to enforce a domestic judgment. Therefore, court fees are also the same, ranging between CHF10 and CHF3,400, depending on the amount of the claim to be enforced.

However, in practice, the enforcement of a foreign judgment often turns out to be more time-consuming and therefore more expensive (in terms of attorneys' fees) than the enforcement of a domestic judgment because additional challenges specifically available against the enforcement of foreign judgments may be raised by the debtor.

3.6 Challenging Enforcement of Foreign Judgments

The treaties concluded with the Republic of Austria and the Swiss Confederation set forth certain conditions that must be fulfilled in order for a judgment of the other jurisdiction's courts to be recognised and enforceable. In particular,

under both treaties, recognition and enforcement is only permissible if:

- the recognition and enforcement do not violate the public policy of the jurisdiction in which they are sought;
- the court that rendered the judgment for which recognition and enforcement are sought had jurisdiction according to the rules set forth in the treaties;
- the judgment for which recognition and enforcement are sought is final and binding; and
- in the case of a default judgment, the document instituting the proceedings that led to the default judgment was served on the defendant in a timely manner.

An objection to the enforcement of a foreign judgment in Liechtenstein on the grounds that one of the aforementioned conditions is not fulfilled is to be raised by the defendant by way of an opposition (*Widerspruch*) against the enforcement order. The opposition is to be made within 14 days of service of the enforcement order on the defendant, and is to be raised with the Liechtenstein District Court, which has to deal with the opposition in an oral hearing. An opposition can be raised in parallel to an appeal against the enforcement order with the Liechtenstein Court of Appeal.

4. Arbitral Awards

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

Arbitral awards of arbitral tribunals with their seat in Liechtenstein are deemed by law to have the effect of final and binding judgments of the ordinary Liechtenstein courts and, therefore, are enforceable like judgments of the ordinary courts.

The enforcement of foreign arbitral awards in Liechtenstein is governed by the provisions of the New York Convention, which Liechtenstein signed and ratified in 2011.

4.2 Variations in Approach to Enforcement of Arbitral Awards

A distinction is to be drawn between domestic and foreign arbitral awards. While domestic arbitral awards are deemed by law to have the effect of final and binding judgments of the ordinary Liechtenstein courts, and are therefore enforceable just like judgments of the ordinary courts, the enforcement of foreign arbitral awards in Liechtenstein is governed by the provisions of the New York Convention.

4.3 Categories of Arbitral Awards Not Enforced

The enforcement of foreign arbitral awards in Liechtenstein is governed by the provisions of the New York Convention. Foreign arbitral awards that do not fall within the ambit of the New York Convention are not enforceable in Liechtenstein.

4.4 Process of Enforcing Arbitral Awards

To the extent an arbitral award is enforceable in Liechtenstein (because it is a Liechtenstein arbitral award or a foreign arbitral award that falls within the ambit of the New York Convention), the enforcement procedure, in principle, is the same as for judgments of the ordinary courts. In particular, in the case of a foreign arbitral award, a creditor can apply directly for an enforcement order based on the foreign arbitral award without first having to apply for the foreign arbitral award to be formally recognised.

The main difference between enforcement on the basis of a domestic arbitral award and enforcement on the basis of a foreign arbitral award is that, in the latter case, the Enforcement Act provides for a special opposition procedure (*Widerspruchsverfahren*) in which the debtor can raise objections that are specifically (and only) available against the enforcement of foreign arbitral awards – eg, that the conditions set forth in the New York Convention are not fulfilled, or that the foreign arbitral award violates Liechtenstein public policy (*ordre public*).

The opposition is to be raised with the Liechtenstein District Court and is to be dealt with in an oral hearing. An opposition can be raised in parallel to an appeal against the enforcement order with the Liechtenstein Court of Appeal.

4.5 Costs and Time Taken to Enforce Arbitral Awards

In principle, the procedure to enforce an arbitral award is the same as the procedure to enforce a judgment of the ordinary courts. Therefore, court fees are also the same, ranging between CHF10 and CHF3,400, depending on the amount of the claim to be enforced.

However, in practice, the enforcement of a foreign arbitral award often turns out to be more time-consuming and therefore more expensive (in terms of attorneys' fees) than the enforcement of a domestic arbitral award because additional challenges that are specifically available against the enforcement of foreign arbitral awards may be raised by the debtor.

4.6 Challenging Enforcement of Arbitral Awards

If an award has been set aside by the courts in the seat of arbitration in a binding decision, said award cannot be enforced in Liechtenstein under the New York Convention. It is up to the party against whom enforcement is sought to argue and prove that the award has been set aside in a binding decision. The mere challenge of the award does not constitute an obstacle to recognition.

According to Liechtenstein case law, the New York Convention must be interpreted in a manner supporting the arbitration and enforcement thereof. The public policy grounds must reach a high threshold in order for the enforcement of an arbitral award to be impeded. Not every deviation from Liechtenstein law constitutes a violation of public policy – a severe violation of the fundamental values of the Liechtenstein legal order as a whole is required. Therefore, the public policy exemption is applied extremely restrictively.

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