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Liechtenstein
International Arbitration

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Liechtenstein.

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Liechtenstein: International Arbitration

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

The provisions on arbitration in Liechtenstein are incorporated in the 8th section of the Code of Civil Procedure (ZPO) in §§ 594-635. The arbitration procedure is largely dispositive in nature, but there are also provisions which must be observed by the parties without change. These relate in particular to the principles of the already existing pendency of a dispute as well as the equal treatment of the parties, the right to be heard by the court and the right to representation.

Specifically, the following provisions, among others, are of a mandatory nature:

- Limited arbitrability of disputes (§ 599 ZPO)
- Form of the arbitration agreement (§ 600 ZPO)
- Pendency of the claim before an arbitral tribunal to be considered (§ 601 ZPO)
- Application to the state court for the granting of provisional legal protection (§ 602 ZPO)
- Independence and impartiality of the elected arbitrators (§ 605 ZPO)
- Right of the defendant to comment on the complaint (§ 614 ZPO)
- Provisions on the gathering and assessment of evidence (§ 616 ZPO)
- Provisions on legal assistance (§ 619 ZPO)
- Provisions on the termination of the proceedings (§ 620 ff. ZPO)
- Appeals against the arbitral award (§ 628 ZPO)

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes, Liechtenstein signed the New York Agreement on July 7, 2011 and it entered into force in Liechtenstein on October 5, 2011. At the same time, Liechtenstein has made a reservation to the effect that arbitral awards are only recognizable in Liechtenstein if they originate from arbitral tribunals domiciled in another member state of the New York Convention. In contrast, no reservation has been made with regard to commercial matters.

3. What other arbitration-related treaties and conventions is your country a party to?

Liechtenstein concluded an agreement on the recognition and enforcement of judgments and arbitral awards with Switzerland in 1970 and with Austria in 1975.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two? Are there any impending plans to reform the arbitration laws in your country?

Since the Liechtenstein law on arbitration is based on the corresponding Austrian law, which in turn is based on the UNCITRAL Model Law, the first eight of the 10 titles of the Liechtenstein arbitration law actually govern international arbitration based on the UNCITRAL Model Law. In contrast to the UNCITRAL Model Law, however, in addition to international commercial arbitration, national and international commercial and non-commercial arbitration also falls within the scope of the Liechtenstein law on arbitration.

There are currently no revisions pending in Liechtenstein.

5. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

Although Liechtenstein has revised its arbitration law and has also acceded to the New York Convention, it still does not offer the possibility to resolve disputes before an institutionalized arbitration authority.

To remedy this situation, the Liechtenstein Arbitration Association was founded by Liechtenstein lawyers, who in practice often deal with arbitration law. Together with the Liechtenstein Chamber of Industry and Commerce, the Liechtenstein Rules were issued in a further step, with the aim of establishing national and international arbitration services.

6. Is there a specialist arbitration court in your country?

It is possible to conduct the arbitration proceedings according to institutionalized rules. In contrast, Liechtenstein does not have its own jurisdiction in the form of an institutionalized court.

7. What are the validity requirements for an arbitration agreement under the laws of your country?

According to § 598 ZPO an arbitration agreement serves the purpose of subjecting all or individual disputes which exist or will exist in the future between the parties with regard to a certain legal relationship of a contractual or non-contractual nature to the decision of an arbitral tribunal.

The arbitration agreement can be concluded either as a separate agreement or in the form of a contractual clause.

In addition, the matter in dispute must be arbitrable. In accordance with § 599 ZPO any pecuniary claim on which the ordinary courts would also have to decide is arbitrable. An arbitration agreement on claims not related to property rights has legal effect insofar as the parties are able to reach a settlement on the subject matter of the dispute. However, family law matters and claims arising from teaching contracts are explicitly not arbitrable. In addition, certain matters of supervisory proceedings over foundations and trusts are not arbitrable (§ 599 Abs. 3 ZPO). Such as the dismission of trustees (see question 13).

Furthermore, the form of the arbitration agreement must also be adhered to. According to § 600 ZPO the arbitration clause be contained either in a document signed by the parties or in letters, faxes, emails or other forms of communication exchanged between them.

Due to its procedural nature, the provisions of procedural law are applicable for the interpretation of the arbitration agreement, whereby the general rules of contract law according to the Austrian Civil Code are to be applied analogously. Preference shall be given to the interpretation variant which favors the validity of the arbitration agreement.

8. Are arbitration clauses considered separable from the main contract?

If the arbitration agreement is part of a contract, it is independent of the main contract (theory of separability). Thus, the arbitration agreement does not share the legal fate of the main contract in principle. However, there is an exception, for example, if the main contract and the arbitration clause are affected by the same (lack of will) and the (hypothetical) will of the party so requires, for example, if the main contract is terminated by mutual consent, since in case of doubt, the arbitration clause is also invalidated.

9. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

With the interpretation of an arbitration agreement the principle of «in favor validitatis» is to be applied and such interpretation will usually be given priority which favours the validity of the agreement.

10. Are asymmetric arbitration clauses – for instance, where one party has the right to choose between arbitration or litigation while the other party does not have this option – valid in your jurisdiction?

Although Liechtenstein law does not contain any explicit provisions on asymmetric arbitration clauses, the adoption of Austrian arbitration law in combination with the generally arbitration-friendly orientation of Liechtenstein law indicates that such clauses could in principle be permissible, provided that they are not unconscionable or constitute an abuse of law. However, as there is no published decision on this matter in Liechtenstein, it is not possible to conclusively answer this question.

11. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

There are several conceivable constellations in which arbitration clauses under Liechtenstein law also have binding effect for people who are not parties to the contract. For example, in cases of succession, or the third party beneficiary of a contractual relationship can invoke the arbitration clause, which is part of the underlying contract, when asserting his claim.

Of far greater practical importance for Liechtenstein is

the question of the binding effect of arbitration clauses in the articles of association of corporations and foundations as well as in the trust deeds and trust declarations. The question of such binding effect is governed by the company statutes. Statutory arbitration clauses bind both the partners and the company itself in disputes arising from the corporate relationship. An express consent of the partners is not required. There is an exception, if the arbitration clause is to be included subsequently. In this case, consent by majority vote is sufficient. It is disputed whether the binding effect also extends to the organs of the company, but according to the view held here, the answer is affirmative. However, the arbitration clause shall not be binding on creditors of the company.

12. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

As far as can be seen, no decision in this regard has been published so far. However, § 620 provides that if the parties have not made a choice as to the applicable law, the arbitration tribunal shall apply such law as it considers appropriate.

13. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

In accordance with § 620 ZPO, the arbitral tribunal shall assess the dispute in accordance with the law which the parties have declared applicable. It should be noted that unless the parties have agreed otherwise, this choice of law is to be understood as a reference to the substantive law of the country, thus excluding the respective conflict of laws provisions.

If the parties have not made a choice as to the applicable law, the arbitration tribunal shall apply such law as it considers appropriate. A decision on the basis of equitable principles shall only be possible if the parties have expressly authorized the arbitral tribunal to do so.

14. In your country, are there any particular requirements for and/or restrictions in the appointment of arbitrators?

Art. 6 of the Liechtenstein Rules stipulates that, unless otherwise provided for in the arbitration agreement or agreed by all parties, only persons who are subject to a statutory duty of confidentiality which at least makes a breach of this duty of confidentiality a criminal offence and includes a right to refuse to give evidence in civil proceedings, are eligible to be appointed as arbitrators (namely lawyers, auditors, patent attorneys and professional trustees who are subject to Liechtenstein law). This restriction only applies if the Liechtenstein Rules have been declared applicable.

An arbitrator may then be rejected if there are justified doubts about his impartiality or independence or if the fulfilment of the party's requirements is not given. A party who has participated in the appointment of an arbitrator whose impartiality or independence is in doubt, or who has himself appointed an arbitrator, may only reject the arbitrator for reasons of which he becomes aware after the arbitrator has been appointed or after his participation.

In addition, full-time judges of an ordinary court are also prohibited from accepting an appointment as arbitrator during their term of office.

15. Can the local courts intervene in the selection of arbitrators? If so, how?

Yes, the state court can influence the appointment of the arbitrators in certain cases. If the parties in proceedings with a sole arbitrator cannot agree on the appointment of such an arbitrator, the court will appoint one at the request of a party.

In addition, the state court appoints an arbitrator at the request of a party if one party does not comply with this request within four weeks from the request by the other party to appoint an arbitrator.

In addition, the state court is also involved if the parties have agreed on a specific procedure for appointing the arbitrators and

- a party does not act in accordance with this agreement
- an agreement within the meaning of this agreement cannot be reached
- a third party fails to perform a task entrusted to it under this procedure within three months of receipt of written notification to that effect.

16. Can the appointment of an arbitrator be challenged? What are the grounds for such a challenge? What is the procedure for such a

challenge?

Yes, an arbitrator may be challenged pursuant to § 605 ZPO if there are justified doubts as to his independence or impartiality or if he does not fulfil the requirements agreed between the parties. It should be noted that the party who has appointed the arbitrator and wishes to challenge him may do so only for reasons of which he became aware only after his appointment.

The procedure for dismissal of an arbitrator may be freely determined by the parties. In the absence of such an agreement, the party shall, pursuant to § 606 para. 2 ZPO, within four weeks of becoming aware of the composition of the arbitral tribunal or of a circumstance which gives rise to such legitimate doubts or which is not in accordance with the party's requirements for the election of an arbitrator, submit to the arbitral tribunal in writing the reasons for the challenge. If the challenged arbitrator does not then resign from his office or if the opposing party does not agree to the challenge, the arbitral tribunal, including the challenged arbitrator, shall decide on the request for challenge.

17. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?

With the total revision of the Arbitration Act in 2011, the provision for the challenge of arbitrators has been completely changed. However, the provision has not been revised since then.

18. Are arbitrators immune from liability?

There is no provision in Liechtenstein arbitration law which provides for the immunity of arbitrators.

19. Is the principle of competence-competence recognized in your country?

Yes, the principle of competence-competence is anchored in Liechtenstein arbitration law and therefore the arbitral tribunal itself decides on its competence. The decision can be made together with the decision on the merits or separately in a separate arbitral award (§ 609 ZPO).

20. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

If a party breaches the arbitration agreement by bringing an action in a matter before a state court even though the matter is the subject of an arbitration agreement, the state court shall dismiss the action unless the defendant raises the matter or conducts oral proceedings without objecting.

21. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

Pursuant to § 614 para. 1 ZPO, the plaintiff must bring his action within a period of time determined by the parties or by the arbitral tribunal and the defendant must comment on it. If the defendant fails to do so, the arbitral tribunal shall – unless the parties have agreed otherwise – continue the proceedings. This does not mean, however, that it must consider the claimant's allegations to be true.

The same procedure shall apply if one party fails to perform another procedural act. The court then has the competence to continue the proceedings and to make a decision on the evidence already taken.

If the court is satisfied that the parties can sufficiently excuse the omitted act, the omitted procedural act may be made up. However, this is also a purely discretionary decision of the arbitral tribunal.

22. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Liechtenstein arbitration law does not explicitly mention the possibility of intervening in arbitration proceedings.

§ 611 does, though, provide that the parties are free to determine the arbitration procedure apart from the mandatory provisions of the section. They are also free to make reference to rules of procedure. This means that the parties may also apply the provisions of the ZPO before the state courts and therefore also apply §§ 17 ff. ZPO can also be applied through the secondary intervention. For this, however, a unanimous will of the parties is necessary.

If the parties disagree on the accession of a secondary intervener to the proceedings, a dispute about the

proceedings arising from the arbitration agreement is deemed to exist. In such cases, the arbitral tribunal shall have the competence to decide at its discretion by way of a decision leading the proceedings, unless otherwise agreed by all parties.

The secondary intervention is not dependent on the consent of the parties if the secondary intervener was already involved in the arbitration agreement. However, if only the parties to the arbitration agreement are involved in the arbitration agreement, a third party may neither join as a secondary intervener nor be admitted by the arbitral tribunal against their mutual will.

23. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal? Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

If the assertion of a claim becomes impossible or more difficult or in case of a threat of irreparable damage, the possibility for the arbitral tribunal to issue interim measures is expressly provided for in § 610 ZPO. Such interim measures can therefore be issued by an arbitral tribunal at the request of a party and are thus objectively arbitrable. Such preliminary or interim relief shall be granted by the arbitral tribunal after hearing both parties. Such orders of the arbitral tribunal cannot be challenged independently.

Alternatively, the parties may also apply to the state court for the adoption of interim measures. This is important because the arbitral tribunal does not have the authority to issue third-party prohibitions. This is reserved to the state court.

In addition, the parties may contractually limit or exclude the arbitral tribunal's authority to issue interim measures. In addition, the arbitral tribunal cannot, by its nature, issue interim measures before the arbitral proceedings have been initiated and constituted, so that only the state court can be called upon to do so. It is also no longer possible to apply for interim measures after the award has been made.

No, neither anti-suit nor anti-arbitration injunctions are permitted, as they are incompatible with the concept of competence-competence and would therefore constitute an inadmissible interference with the arbitral tribunal's examination of competence.

24. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

The rules for the conduct of the arbitration proceedings may be determined autonomously by the parties. The law provides that the parties may submit all the evidence they wish to rely on in their respective submissions (statement of claim, statement of defence), or may indicate in such submissions which evidence they wish to rely on in the course of the arbitration proceedings.

The arbitral tribunal will decide whether an oral hearing will take place or whether the proceedings will be conducted only in writing, unless the parties have agreed otherwise. In addition, it decides on the admissibility of evidence as well as on the conduct of evidence proceedings, the outcome of which the arbitral tribunal must assess at its discretion (see § 616 Liechtenstein ZPO).

The Liechtenstein Rules contain further provisions on the conduct of evidence procedures which refer to the respective provisions of the ZPO on the taking of evidence in ordinary court proceedings (see Art. 18 of the Liechtenstein Rules and §§ 303 ff. ZPO).

Thus, the arbitral tribunal has wide discretion when deciding on the procedure of taking evidence. It is also possible for an arbitral tribunal to conduct the evidence procedure in accordance with the IBA Rules on the Taking of Evidence, especially in cases involving parties from civil and common law jurisdictions.

Since the arbitral tribunal has no authority to take coercive measures, it cannot force the submission of evidence or the appearance of witnesses. However, the refusal to appear may be freely assessed. However, since coercive measures cannot be enforced, the arbitral tribunal or the parties may, with the prior consent of the arbitral tribunal, request the state court for judicial assistance.

25. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country? Do these codes and professional standards apply only to counsel and arbitrators

having the nationality of your jurisdiction?

There are currently no specific rules that would explicitly govern the conduct of counsel or arbitrators in arbitral proceedings. They are, however, still bound to adhere to the code of ethics issued by the bar association, for example. The code of ethics issued by the bar association applies to all members of the bar association of Liechtenstein regardless of their nationality. However, foreign lawyers are subject to their own professional rules at their place of registration.

26. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

Liechtenstein arbitration law does not contain any provisions on the question of a possible confidentiality obligation. § 633 para. 2 ZPO merely provides that the public may be excluded from proceedings following the challenge of an arbitral award at the request of a party if a legitimate interest exists.

The exclusion of the public is therefore doubly restricted by the requirement of the existence of an application and a legitimate interest. The parties are therefore advised to include provisions on confidentiality already in the arbitration agreement.

In contrast, the Liechtenstein Rules deal extensively with the issue of confidentiality and numerous provisions have been laid down in this regard. For example, Art. 6 of the Liechtenstein Rules provides that only persons who are already subject to a duty of confidentiality due to their professional activities, such as lawyers, trustees and auditors, may be appointed as arbitrators.

Unless the parties have agreed otherwise, they are obliged under Art. 29.1 of the Liechtenstein Rules to maintain secrecy with respect to all arbitral awards and orders as well as all documents or facts submitted or disclosed by other parties to the arbitral proceedings in the course of the arbitral proceedings on which no other right exists, unless and to the extent that disclosure by one party is indispensable to comply with a legal obligation, to preserve or enforce a legal claim or to enforce or challenge the arbitral award.

The parties, their representatives as well as the arbitrators and any authorized representatives shall take appropriate organizational measures to ensure confidentiality. If special confidentiality requirements are necessary, the arbitral tribunal shall have the authority to hand over the documents for examination to an expert who is also subject to a confidentiality obligation, but without the other parties having access to the documents.

The Liechtenstein Rules also explicitly state that the obligation to maintain confidentiality is not lifted upon conclusion of the arbitral proceedings, but must be maintained even after the end of the arbitral proceedings. A breach of this obligation is punishable by a contractual penalty of CHF 50.000.00 for each breach (see Art. 29.7 Liechtenstein Rules).

27. How are the IBA guidelines on conflicts of interest and other similar soft law sources viewed by courts and tribunals in your jurisdiction? Are they frequently applied?

The IBA guidelines and other similar soft law sources serve as guidance and interpretation aids. However, no explicit frequency of use can be recognized.

28. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

Upon termination of the arbitration proceedings, the arbitral tribunal shall at the same time decide on the obligation of the parties to reimburse costs, unless the parties have agreed otherwise (§ 626 ZPO). The obligation to pay compensation may include all reasonable costs for appropriate legal prosecution or legal defence. The arbitral tribunal shall take into account all circumstances of the case, including the outcome of the arbitration proceedings.

However, it only determines the legal costs of the parties. The costs of the arbitrators may not be imposed in the arbitral award, as there is no arbitration agreement on this matter; this obligation of the parties is derived from the private arbitration agreement; furthermore, the arbitrators may not be judges in their own right.

The Liechtenstein Rules, on the other hand, stipulate in their Art. 27 that the costs of the arbitration proceedings shall in principle be borne by the losing party. If the arbitral tribunal considers it appropriate and correct in view of the circumstances of the case, it may also provide for a different apportionment of costs.

Interest on the principal claim may be claimed from the date on which the claim becomes due until the date of payment.

Interest on the costs may be claimed from the date of the arbitration award until the date of payment.

29. How are applications for security for costs viewed in your jurisdiction?

It is up to the parties to settle the issue of security and advance costs. According to published decisions, the arbitration clause becomes invalid if one party is financially unable to pay advance costs and the other party does not cover the costs. However, if the Liechtenstein Rules have been declared applicable, the following applies in accordance with Art. 28: Unless the parties have agreed otherwise, the claimant shall, at the defendant's application, provide the defendant with adequate security for the costs of the proceedings. The arbitral tribunal shall decide on the admissibility of the security deposit in terms of merits and amount.

30. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

If there is a domestic arbitral award which is not challenged, no recognition proceedings are necessary. The prevailing party in the arbitration proceedings may directly file an application for an enforcement order with the court.

The recognition and enforcement of foreign arbitral awards is governed by § 631 ZPO, which in turn refers to the provisions of the Execution Rules, unless otherwise provided for by international treaties or declarations of reciprocity. Since Liechtenstein has ratified the New York Convention, the provisions of that Convention also apply. If a foreign arbitral award exists, the prevailing party must file an application for a writ of execution together with an application for a declaration of enforceability of the arbitral award. The enforceability of a foreign arbitral award is reviewed by the court in the course of the proceedings for the issuance of an enforcement order.

Unless the parties have agreed otherwise, the arbitral award shall be substantiated in accordance with § 623 para. 2 ZPO.

31. What is the estimated timeframe for the recognition and enforcement of an award (domestic and international)? Can a party bring a motion for the recognition and enforcement of an award on an ex parte basis? Would the standard of review be different for domestic and international awards?

There is no general rule that prescribes a time frame for the court to issue an enforcement order. In principle, the application of the prevailing party is processed within a short period of time. This is because the court decides on the issue of an enforcement order on the basis of the application of the prevailing party, without hearing a party, unless the enforcement act provides otherwise.

Pursuant to Art. 1 lit. m of the Liechtenstein Execution Rules domestic arbitral awards which can no longer be judged by a higher instance are enforced by the Liechtenstein courts. With respect to foreign arbitral awards, the ZPO does not contain any provisions on the recognition and enforcement of foreign arbitral awards. § 631 para. 1 ZPO merely states that recognition and enforcement is governed by the Liechtenstein Enforcement Act, which, however, does not contain any provisions on separate proceedings.

The question of enforceability must therefore be answered as a preliminary question in enforcement proceedings.

32. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure in this regard? Is it possible for parties to waive any rights of appeal or challenge to an award by agreement?

The only remedy against an arbitral award may be an application to the ordinary court for setting the arbitral award aside. Pursuant to § 628 para. 2 ZPO, an arbitral award shall be set aside on the following grounds:

- the absence of a valid arbitration agreement, the denial of the arbitral tribunal's jurisdiction despite the existence of a valid arbitration agreement, or the lack of capacity of a party under the applicable law to conclude an arbitration agreement (point. 1 leg. cit.);
- the absence of any notice to a party of the arbitration proceedings or of the appointment of the arbitrators (point 2 leg. cit.);
- the arbitral award exceeded the scope of the arbitration agreement (point 3 leg. cit.);
- the composition of the arbitral tribunal did not comply either with the agreement between the parties or with the applicable provisions of the ZPO (point 4 leg. cit.);
- the arbitration proceedings were conducted in a

manner which violated the Liechtenstein procedural ordre public (point 5 leg. cit.);
- the requirements which would permit the reinstatement of ordinary court proceedings are fulfilled (point 6 leg. cit.);
- the subject matter of the dispute is not arbitrable under national law (point 7 leg. cit.); or
- the arbitral award violated the Liechtenstein substantive ordre public (point 8 leg. cit.).

The grounds for challenge under points 7 and 8 must also be observed ex officio. If a party wishes to challenge the arbitral award on one of the above-mentioned grounds, which are not also to be taken into account ex officio, it must bring the action within four weeks of receipt of the arbitral award.

The action for annulment shall be brought before the Princely Appeal Court (Fürstliches Obergericht). This gives the act of private jurisdiction the form of an act of sovereignty. In cancellation proceedings, the State Court of Justice (Staatsgerichtshof) either grants the action for annulment or if the State Court recognizes that the challenged decision or order of public authority violates one of the rights guaranteed by the constitution or one of the rights guaranteed by international conventions, it annuls the decision and, if necessary, order the authority against which the complaint has been lodged to rule on the case again. There is no formal referral of the case back to the court of arbitration.

The Princely Appeal Court decides on the action for annulment in accordance with § 32 para. 1 ZPO as the first and only instance. A further ordinary appeal is not open. However, this exclusion of appeal provided by law only applies to the ordinary court of appeal, not to the individual appeal to the State Court of Justice. The decision of the Princely Appeal Court is final and therefore subject to individual appeal.

However, the setting aside of an arbitral award shall not affect the validity of the underlying arbitration agreement. If an arbitral award on the same subject matter has already been set aside with final effect twice and a further arbitral award on the same subject matter is to be set aside, the court shall, at the request of one of the parties, at the same time declare the arbitration agreement invalid with respect to that subject matter.

Although the setting aside proceedings are of a subsidiary nature and can only be initiated after the arbitral remedies provided for in the arbitration agreement have been exhausted, the action for setting aside under Liechtenstein law is also mandatory and the parties cannot validly waive the filing of such an action in advance, for example in the arbitration agreement.

Therefore, the waiver contained in Art. 23.2 of the Liechtenstein Rules to refer the arbitration case to a state court is invalid if the seat of the arbitral tribunal is in Liechtenstein.

33. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

The question of the extension of the arbitral award's validity is about whether arbitration awards – as well as state judgments – also towards third parties a binding effect and thus a binding effect erga omnes can unfold. To this § 624 seems ZPO, which is the binding effect of the arbitral award only “between the parties".

However, this formulation is not to be understood as subjective limit of the legal force, but only excludes the general extension of the material legal effects to third parties. The legal effect of an arbitral award, however, everyone must be valid against itself. Therefore, in the case of legal actions of corporate, foundation and trust law under certain conditions also without explicit legal order an extension of legal force of the arbitral award to the other parties and to the third parties are considered permissible.

The following requirements must be met:

- objective arbitrability of the dispute
- Binding nature of the arbitration clause
- Participation in the appointment of the arbitration panel
- right to be heard in the proceeding
- Recognizability of the arbitral award

Under certain conditions, third parties affected by the effect of the arbitral award may also be actively legitimized to file an action for setting aside.

34. Are there any rules / court decisions that regulate or prohibit third party funding of arbitration proceedings – for instance, where funding by an entity not involved in the dispute in return for a share of the eventual award may be barred – in your jurisdiction?

Liechtenstein law does not provide statutory rules governing third-party funding. Therefore, there are no restrictions as to arrangements between funders and

litigants. There is no obligation to disclose funding arrangements either. However, if lawyers act as third-party funders, the general professional restrictions apply, since contingency and conditional fee arrangements (quota litis), which give a part of the proceeds to the lawyer, are prohibited between lawyers and their clients.

To date, however, the question of third-party funding has not yet been the subject of a published decision.

35. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Neither the Liechtenstein law on arbitration nor the Liechtenstein rules contain provisions on the appointment of emergency arbitrators. For this reason, this issue has not yet been the subject of a court decision.

36. Are there arbitral laws or arbitration institutional rules in your country providing simplified or expedited procedures for claims under a certain value? Are they often used?

Neither the Liechtenstein law on arbitration nor the Liechtenstein rules contain provisions on the appointment of emergency arbitrators. For this reason, no information can be given on this. However, the Liechtenstein Rules provide that a sole arbitrator has jurisdiction for claims with an amount in dispute below CHF 1 million.

37. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

No published decisions are known to date.

38. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving corruption? Which party bears the burden of proving corruption?

To date, no court decision has been published which would answer these questions, and therefore no further information can be given.

39. Have there been any recent court decisions in your country with respect to intra-European investor-State arbitration generally or enforcement of awards stemming from proceedings of this nature? Are there any pending decisions?

No published or pending decisions are known to date.

40. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

As already mentioned, there are no arbitral institutions in Liechtenstein. However, the Liechtenstein Rules already provide in Art. 18 para. 5 that witnesses can also be heard by video conference or telephone.

41. Have there been any recent developments in your jurisdiction with regard to disputes involving ESG issues such as climate change, sustainability, social responsibility and/or human rights?

No, there are no specific developments in relation to these topics.

42. Have any international economic sanctions regimes been implemented (either independently, or based on EU law) in your jurisdiction recently? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

Since joining the UN in 1990, Liechtenstein has been obliged under international law to implement sanctions imposed by the UN Security Council. In addition, Liechtenstein participates in individual sanctions imposed by the EU on an autonomous basis. The legal basis for the domestic implementation of UN and EU sanctions in Liechtenstein is the International Sanctions Enforcement Act (ISG). Implementation is carried out on a case-by-case basis in the form of regulations. Liechtenstein has recently implemented international economic sanctions, particularly those related to the situation in Ukraine.

Since, as far as can be seen, the Liechtenstein courts

have not yet dealt with the effects of sanctions on international arbitration proceedings, it is not possible to say whether the Liechtenstein courts consider international economic sanctions to be part of international public policy.

43. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

No, Liechtenstein has not yet implemented any rules or regulations in this regard.

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