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Introduction

Liechtenstein: an overview

With about 40,000 inhabitants and an area of 160 km^2, the Principality of Liechtenstein is the sixth-smallest country in the world and is located in the centre of Europe. Although Liechtenstein is located right in the middle of Europe, the principality is not a member of the European Union. As a result of its membership of the European Economic Area (EEA) and the European Free Trade Association (EFTA), the country still takes part in European regulatory developments. These international ties, and the small size of the country, contribute to the fact that various legal provisions have been adopted from neighbouring countries, and that private international law is of particular importance.

New arbitration legislation in the Code of Civil Procedure

On 1 November 2010, the new arbitration law entered into force in Liechtenstein. It is part of the Code of Civil Procedure (*Zivilprozessordnung*, ZPO) and is set forth in §§ 594 *et sqq*. ZPO. It is based on the Austrian Arbitration Law Amendment Act, 2006 (*Schiedsrechts-Änderungsgesetz*), which in turn is based on the UNCITRAL Model Law.

The intention behind the new arbitration legislation was to strengthen Liechtenstein as a place of business and place of arbitration and to make the country a more attractive location for national and international courts of arbitration. Compared to its neighbouring countries, i.e. Austria and Switzerland, Liechtenstein has created a strategic advantage and has implemented specific strengths and features of the Liechtenstein legal system; in some areas, the Liechtenstein legislation differs from the Austrian model. In particular, the Liechtenstein legislator has provided for an expedited procedure for the review of arbitral awards; the Princely Court of Appeal (*Fürstliches Obergericht*) is the sole and final instance for dealing with an action to set aside an arbitral award. In line with the principle of confidentiality, the Liechtenstein legislator has also included specific provisions on confidentiality, such as the exclusion of the public in setting-aside proceedings to the greatest possible extent.

Together with the reform of arbitration law, the requirement under the old law of the public authentication of arbitration agreements if the court of arbitration was located abroad (§ 53a (2) of the old Jurisdiction Act (*Jurisdiktionsnorm*)), was abolished. The current Liechtenstein arbitration law also makes no distinction

between institutional and *ad hoc* arbitration proceedings and between purely national and international arbitration proceedings.

The Liechtenstein legislator optimised arbitration law even further in the course of a partial reform in 2017. A new wording of the provision on consumer protection (§ 634 ZPO) now allows consumers – subject to certain requirements – to enter into an arbitration agreement even before the dispute has arisen. In matters of labour law, the protective provisions of § 634 ZPO do not apply to managing directors and board members of legal entities. The general admissibility of arbitration clauses in articles of association, company charters, foundation deeds, and trust deeds is now expressly provided for in the law. In addition, the requirement for a special power of attorney to conclude an arbitration agreement has been abolished. This results in even more significant differences in Liechtenstein arbitration law compared to the Austrian law, on which it is based.

Accession to the New York Convention (NYC)

In order to enhance the attractiveness of Liechtenstein as a location for arbitration, Liechtenstein created the requirements for the recognition and enforcement abroad of arbitral awards issued in Liechtenstein, and *vice versa*. On 19 May 2011, in the course of the complete revision of arbitration legislation, Liechtenstein joined the NYC as its 148th Member State. This is all the more remarkable since, up until then, Liechtenstein had not joined any multilateral convention in the field of the recognition and enforcement of foreign decisions. So far, there are only two bilateral treaties with the neighbouring countries Switzerland (since 1968) and Austria (since 1973). Both of these are a *convention simple*, which merely regulates the recognition and enforcement of decisions by courts of law and courts of arbitration. In contrast to the NYC, these two bilateral treaties provide for a review of the indirect jurisdiction of the court of arbitration, and also for the recognition and enforcement of arbitral settlements.

When joining the NYC, Liechtenstein made use of the reservation of reciprocity in terms of Art. I (3) NYC. Accordingly, in Liechtenstein the NYC only applies to arbitral awards that have been issued on the territory of another Member State; it does not have any effect *erga omnes*. However, the limitation to commercial cases was refrained from, since Liechtenstein arbitration is not limited to commercial matters.

Own arbitration rules

In 2011, experienced litigation lawyers and interested parties joined and formed the Liechtenstein Arbitration Association (*Liechtensteinischer Schiedsverein*, LIS). Together with the Liechtenstein Chamber of Commerce and Industry, the LIS created arbitration rules particular to Liechtenstein, the *Liechtenstein Rules*, which have existed since May 2012. These are based on the UNCITRAL Arbitration Rules, are a development of the Swiss Rules, and are tailored to the requirements of Liechtenstein as a financial centre. The *Liechtenstein Rules* aim at fast, simple, and cost-effective proceedings, and contain special rules on the confidentiality of the arbitral proceedings; e.g. only persons subject to a legal obligation of secrecy may be appointed as arbitrators.

The *Liechtenstein Rules* provide for *quasi*-institutional arbitration proceedings: in an individual case, experienced experts may be brought in to ensure the efficient handling of the proceedings (e.g. appointment or dismissal of arbitrators or review of their costs), and these experts are in turn subject to an obligation of secrecy. Thus, the *Liechtenstein Rules* are particularly suitable for proceedings with a personal character, such as disputes in family enterprises or in company, foundation, or trust law.

Arbitration agreement

Term and required content

An arbitration agreement is an agreement of the parties to make all or individual disputes that have arisen or will arise between them with regard to a specific contractual or non-contractual legal relationship

subject to decision by a court of arbitration (§ 598 (1) ZPO). Thereby, the courts of law are excluded in a binding way for these legal disputes.

The arbitration agreement may be entered into in the form of an independent contract (so-called arbitration contract) or in the form of a clause as part of a main agreement, a will, articles of association, or other unilateral orders (so-called arbitration clause). In the latter case, the provisions of §§ 594 *et sqq.* ZPO apply *mutatis mutandis.*

The minimum content of an arbitration agreement includes the designation of the parties, the designation of the dispute/specific legal relationship, and the agreement that the court of arbitration has jurisdiction.

The arbitration agreement is a procedural contract. Its interpretation is subject to the provisions of procedural law. In this regard, the interpretation that favours the validity of the arbitration agreement must prevail (*in favor validitatis*). However, the parties' wish to waive the courts of law must be expressed clearly and unequivocally in the arbitration agreement.

Formal requirements

§ 600 (1) ZPO requires that the arbitration agreement must generally be entered into in writing as laid down in § 886 of the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB). In addition, the arbitration agreement may also be contained in letters, facsimiles, or emails exchanged between the parties, and now also in other forms of transmitting messages that ensure proof of such agreement (e.g. texting, audio recording, or video recording). These alternative forms of arbitration agreement do not require a signature. Also, all of the forms of conclusion are equally valid.

Pursuant to § 600 (2) ZPO, an arbitration agreement may also be entered into by reference in a contract to another document that contains an arbitration clause (e.g. general terms and conditions). However, the main contract must in turn meet the formal requirements of § 600 (1) ZPO. Furthermore, the arbitration clause contained in the other document must become part of the main contract. A general reference to the separate document is sufficient, even without expressly mentioning the arbitration clause.

The requirement of a written form only applies to the minimum content of the arbitration agreement. Under Liechtenstein arbitration law, a formal defect of the arbitration agreement is mended (§ 600 (3) ZPO) if it is not objected to at the latest when appearance is entered in the arbitration proceedings.

Where the arbitration agreement is entered into by a representative, it is our opinion that the formal requirement does not extend to the power of attorney. Under the new law, it is also no longer necessary to have a special power of attorney to conclude an arbitration agreement. A general (*ad litem*) power of attorney is now sufficient (§ 1008 ABGB); with legal entities, a commercial power of attorney in terms of Art. 47 of the General German Commercial Code (*Allgemeines deutsches Handelsgesetzbuch*) is required.

Additional formal requirements are laid down in § 634 ZPO for arbitration agreements between enterprises and individuals (formerly: consumers). Pursuant to this provision, the arbitration agreement may be entered into even before the dispute has arisen, provided that: (a) the individual is himself or herself an entrepreneur; or (b) the arbitration agreement is contained in a separate document containing only provisions relating to the arbitration procedure, and the individual was advised by a lawyer prior to the conclusion of the arbitration agreement and/or was represented by a lawyer during the conclusion of the arbitration agreement. The fact that advice has been given must be confirmed in writing by the lawyer. Thus, the problems of consumer protection in entering into an arbitration agreement have been mitigated in Liechtenstein.

Arbitration clauses in articles of association

Arbitration clauses in articles of a legal entity are admissible. Pursuant to § 598 (2) ZPO, such articles are required to be formed in a legally admissible manner. This requires merely (but at least) that firstly, the admissibility of arbitration clauses in articles of association is not legally excluded in the specific case,

and secondly, that the arbitration clauses are issued in accordance with the requirements of the applicable company laws (such as on procedure and quora to issue and/or amend provisions of articles).

Under the new law, the admissibility and binding nature of arbitration clauses in articles of association, company charters, foundation deeds, or trusts is expressly laid down in § 634 (2) ZPO. Arbitration is therefore an established fact in Liechtenstein company, foundation, and trust law.

In the event of disputes from the company relationship, arbitration clauses in articles of association are binding on the shareholders, the company itself, and its governing bodies. With foundations, it is the practice of the Liechtenstein courts that an arbitration clause contained in the articles of foundation is also binding on the beneficiaries of the foundation (Court of Appeal, 16 May 2012, LJZ 2012, 67).

Principle of separability

If the arbitration agreement is part of a contract, it is independent from the main contract. Under the principle of separability, the arbitration clause remains in force and the jurisdiction of the court of arbitration is maintained even if the main contract becomes void. The arbitration clause therefore does not share the legal fate of the main contract. An exception from this principle exists where the main contract and the arbitration clause are affected by the same defect (absence of consent).

Objective arbitrability

Under the old law, a claim was objectively arbitrable if the parties had the power to enter into a settlement agreement on it. When the arbitration law was amended in 2010, the provision on objective arbitrability was also substantially changed. § 599 (1) ZPO now states that all pecuniary claims that are subject to decision by the courts of law are objectively arbitrable. It is the legislator's intention that this shall generally apply without restriction; in case of doubt, a claim is to be classified as pecuniary. Thus, all claims arising from consumer law, labour law, company law, foundation law, trust law, succession law, tenancy law, law of obligations, insurance law, property law, execution law, banking law, and sports law, as well as civil-law disputes from intangible property law, antitrust law, and competition law are objectively arbitrable in general and without restriction. To a limited extent, this also applies to matters of bankruptcy law.

Pursuant to § 599 (1) ZPO, non-pecuniary claims are also objectively arbitrable, provided that the parties have the power to enter into a settlement agreement on them. Thus, claims from moral rights (such as from copyright) or under company law, as far as economic interests are secondary (e.g. with a charitable company object, associations, cooperative societies, etc.), may be brought before a court of arbitration.

In § 599 (3) ZPO, the legislator created an exception from arbitration that is unique for Liechtenstein. According to this provision, the jurisdiction of the courts of law cannot be excluded in matters of public supervision in company law. Under the current law, the dismissal of governing bodies of foundations (Supreme Court 7 Oct 2011, LES 2011, 187) or the challenging of resolutions of the foundation council (Supreme Court 5 Feb 2016, LES 2016, 66) are reserved for the supervisory court of law.

Competence-competence of the court of arbitration

The court of arbitration decides itself on its jurisdiction, and thus also on the formal and substantive validity of the arbitration agreement (so-called competence-competence). What was considered an unwritten international standard under the old law is now expressly laid down in the law in § 609 (1) ZPO.

The competence-competence of the court of arbitration is mandatory law; it cannot be abolished by agreement of the parties. However, the decision of the court of arbitration on its own jurisdiction is just preliminary and not final, since it is subject to review by the court of law. The jurisdiction check by the court of arbitration must therefore be considered to be merely a "relative competence-competence". Also, the competence-competence of a Liechtenstein court of arbitration is limited insofar as it must

be accompanied by a final domestic decision, or foreign decision by a court of law or another court of arbitration, if it is to be recognised. A different decision of the court of arbitration as to its jurisdiction would be contrary to the *ordre public* and would therefore – if an action to set aside were to be brought – lead to the issued arbitral award being set aside *ex officio* (§ 628 (2) (8) ZPO).

Objection of the court of arbitration's lack of jurisdiction

If a party wants to challenge the jurisdiction of the court of arbitration, the objection must be submitted no later than with the first pleading on the merits of the case (§ 609 (2) ZPO). In practice, the objection must therefore be submitted with the statement of defence or, if that has not yet been submitted, during the first hearing before the court of arbitration, and before an appearance in the main case is entered. Cooperation in the appointment of the court of arbitration does not yet constitute entering an appearance.

If the respondent in arbitration fails to submit the objection of lack of jurisdiction in time before defending against the claim and the pleadings in the main case, a later objection of lack of jurisdiction is excluded as a matter of principle both in the setting-aside proceedings and in the execution proceedings. It may be submitted later as an exception if, in the arbitrators' opinion, there is sufficient excuse for the delay in submission.

Res iudicata of the arbitral award

Many jurisdictions do not have express rules on *res iudicata* in their *lex arbitri*. However, the Liechtenstein arbitration law refers in § 624 ZPO to the provisions on final judgments by courts of law as to the assessment of the legal implications of an arbitral award, and therefore to the rules of domestic procedural law. These rules are mandatory for domestic arbitral awards. If an arbitral award issued abroad fulfils the requirements for recognition in Liechtenstein, its effects also extend to Liechtenstein. If the award is final in formal terms, this already constitutes the legal obstacle of *res iudicata*. If it is final in substantive terms, however, it is binding upon courts (of arbitration) and public authorities in follow-up lawsuits; no deviation from the decision of a court of arbitration is permitted in assessing a preliminary question (precedent). If a court of arbitration disregards the *res iudiciata* effect of a prior decision, the arbitral award is subject to rescission pursuant to § 628 (2) (5) ZPO. However, this ground to set aside need not be considered by the Princely Court of Appeal *ex officio*, but merely on application of a party.

Arbitration procedure

Structuring of the arbitration proceedings

Pursuant to § 611 (1) ZPO, the parties may structure the arbitration proceedings as they like, but they may also refer to a set of procedural rules (such as the *Liechtenstein Rules*). If there is no such agreement, however, the court of arbitration may proceed at its discretion. In any case, however, the mandatory provisions of Liechtenstein law on arbitration proceedings (§§ 594 *et sqq*. ZPO) remain reserved. The parties must always be treated fairly, and every party must be suitably heard in court.

Beginning of the proceedings

§§ 594 *et sqq*. ZPO do not give any express rules as to the time when arbitration proceedings start and accordingly, the case becomes pending in arbitration. According to practice and doctrine, the disputes become pending in arbitration as soon as the arbitration claim or any other notice or notification about the intention to have a certain dispute settled by arbitration is served upon the respondent. Thus, the relevant point in time for a matter being pending in arbitration is the service of the arbitral claim and/or the notification of the respondent and his knowledge of the proceedings. However, it is required here that the subject of the matter in dispute of the arbitration proceedings has already been determined in advance; the claim/notice must therefore be worded in a suitably concrete way.

The arbitration claim/notice may be served by the court of arbitration itself or (before it has been constituted) directly by the claimant. In contrast to this, cooperation in the establishment of the court of arbitration – such as by appointing an arbitrator – does not cause the matter to be pending in arbitration, since the parties have not yet subjected it to the court of arbitration.

Seat of the court of arbitration

The parties may agree on the seat of the court of arbitration at their discretion (§ 612 (1) ZPO). The selection of the court of arbitration's seat is therefore entirely subject to freedom of contract. This can be agreed upon either in the arbitration agreement or later. Where there is no such agreement, the court of arbitration may determine its seat at its discretion pursuant to § 612 (1) ZPO, taking into account the circumstances of the case and the suitability of the location for the parties.

The seat of the court of arbitration is not necessarily the place where the arbitration proceedings must be carried out. It is not even mandatory for procedural acts to be carried out at that location. Rather, the court of arbitration may, pursuant to § 612 (2) ZPO, carry out procedural acts at any location that it deems suitable unless the parties have agreed otherwise. Thus, the court of arbitration's seat is merely the legal domicile of the court of arbitration and thus a purely legal or "fictitious" seat. This has the advantage that no (official) acts of mutual legal assistance are required to carry out the arbitration proceedings; rather, the court of arbitration may take the required evidence itself at the location in question.

The mandatory venues of Liechtenstein law that are provided for, e.g. legal entities (Art. 114 of the Persons and Companies Act, *Personen- und Gesellschaftsrecht*), do not affect the free choice of seat for the court of arbitration.

Publicity

In contrast to proceedings before a court of law, the public is excluded from proceedings before a private court of arbitration.

For the preservation of confidentiality, the *Liechtenstein Rules* include special provisions on confidentiality (Art. 29): all participants of the proceedings are obliged to keep strict secrecy and must keep secret all arbitral awards and rulings of the court of arbitration, as well as any documents received or facts learned during the arbitration proceedings. The court of arbitration may order additional measures for this purpose. The *Liechtenstein Rules* provide for a contractual penalty in the event of violation.

In the proceedings to set aside the arbitral award, the Princely Court of Appeal must carry out a public oral trial on the action for rescission (§§ 171 *et sqq*. ZPO). However, to preserve confidentiality, the Liechtenstein legislator has provided for less stringent requirements for excluding the public here than in normal civil proceedings. Pursuant to § 633 (2) ZPO, the public may be excluded on application of one party, if there is a justified interest in exclusion.

Taking of evidence

The court of arbitration has a wide range of discretion in carrying out the proceedings. It may, therefore, generally lay down the rules on the taking of evidence freely and on the basis of the individual case, or may refer to existing rules (e.g. the IBA Rules on the Taking of Evidence in International Arbitration). The court of arbitration has the power to decide on the admissibility of a particular taking of evidence, carrying it out, and valuating its result at will (§ 616 (1) ZPO). Therefore, evidence that is unknown to domestic law may be taken in arbitration proceedings.

Pursuant to § 618 ZPO, the court of arbitration may, in principle, appoint one or more independent and unbiased experts to prepare an expert's opinion on certain questions to be laid down by the court of arbitration. To this end, the court of arbitration may ask the parties to give information or submit documents or make these accessible to the expert. On application of a party or if the court of arbitration

considers this necessary, the expert shall take part in the oral trial and reply to questions after submitting his expert opinion. Grounds for refusal or exclusion may be asserted against the expert. The parties may also submit opinions by their own experts.

To support the taking of evidence, the court of arbitration or (with its consent) the parties themselves may, pursuant to § 619 ZPO, apply to a court of law to carry out judicial acts that the court of arbitration does not have the authority to carry out. To this end, the court of law may, e.g., order the summons of witnesses or order them to testify on penalty of coercion, order the delivery of important documents, or send a letter of request to another (foreign) authority. The court of arbitration and the parties then have the right to take part and ask questions in the proceedings before the court of law.

Arbitrators

Appointment of arbitrators

The appointment of the arbitrators is left to the discretion of the parties. Pursuant to § 603 (1) ZPO, they may agree on the number of arbitrators at will. However, if the parties have agreed on an even number of arbitrators, the latter must appoint another person as the umpire. If the parties have not agreed on anything, the law (§ 603 (1) ZPO) provides that three arbitrators must be appointed.

The written request for the appointment of an arbitrator must also state what claim is being asserted and to which arbitration agreement the party is referring. If a party fails to appoint its arbitrator within four weeks from receipt of this request, the arbitrator must (on application by a party) be appointed by the court of law. The decision of the court of law is not subject to appeal (§ 604 (8) ZPO). This has the advantage that, in the event of an impasse between the parties, the court of arbitration can be formed quickly with the assistance of the court of law.

Challenging and dismissal of an arbitrator

An arbitrator may be challenged if there are circumstances that raise "justified doubts" as to him being independent and unbiased, or if the arbitrator does not (any longer) meet the requirements agreed upon by the parties. However, the parties must have become aware of such circumstances only after the arbitrator has been appointed or after they have participated in the appointment of the arbitrator (§ 605 (2) ZPO); otherwise, the challenging of the arbitrator in question is no longer possible. Pursuant to § 606 (1) ZPO, the parties may freely agree upon the challenging procedure in this connection. If the parties have not laid down such procedure and the opposing party does not agree with the intended course of action, the court of arbitration – including the arbitrator challenged by the party in question – decides on the challenge on application of a party (§ 606 (2) ZPO).

If an arbitrator is challenged unsuccessfully, the challenging party may within four weeks apply to the court of law and apply for a decision on the challenge (§ 606 (3) ZPO). The decision of the court of law is final.

Premature termination of the position of arbitrator

As a result of the parties' extensive freedom of disposal in arbitration proceedings, the activities of an arbitrator may also be terminated prematurely by agreement (§ 607 (1) ZPO). Of course, any arbitrator is also free to resign on his own initiative.

Apart from that, each party may apply to the court of law for a decision on the termination of the position of arbitrator if the arbitrator is unable to perform the duties assigned to him or fails to carry them out within a reasonable term, and if the arbitrator does not intend to resign and the parties cannot agree on his dismissal.

Interim relief

Alternative jurisdiction of the court of law and the court of arbitration

Pursuant to § 602 ZPO, an arbitration agreement does not preclude an application to a court of law (in Liechtenstein or abroad) for the granting of interim relief. This mandatory provision of the Liechtenstein *lex arbitri* exists in the alternative to the competence of the court of arbitration. The court of arbitration may itself grant interim relief (§ 610 ZPO). The parties are thus free to choose.

Types of interim measures

Pursuant to § 610 ZPO, the court of arbitration may, on application of a party, order interim or securing measures against another party after hearing such other party, as the court of arbitration deems fit with regard to the matter in dispute, on the grounds the enforcement of the claim might otherwise be thwarted or complicated considerably or that irretrievable damage is threatened. In general, courts of arbitration have wide-ranging discretion in ordering interim measures. They may also order measures unknown to domestic law; however, such orders may only be issued against a party of the arbitration proceedings. The provisional orders of the court of arbitration are not subject to separate appeal.

Due to the nature of arbitration, certain forms of interim measure may only be issued by the court of law. For example, decisions without hearing the other party (so-called *ex parte* measures) or third-party prohibition are excluded before the court of arbitration. Also, only the court of law may issue coercive measures, enforce provisional injunctions against the parties or third parties, or order measures before the court of arbitration has been constituted.

Support of international arbitration proceedings

The court of law has the power to issue and enforce interim measures even if the seat of the court of arbitration is located abroad (§ 592 (2) ZPO). Thus, the Liechtenstein courts may issue and enforce provisional injunctions to support foreign arbitration proceedings. When enforcing a measure, however, the court of law must *ex officio* examine whether certain minimum requirements of domestic law are met, such as the existence of a comparable means of securing or a reason for denying recognition and enforcement (§ 610 (4) ZPO).

Arbitration award

Formal requirements to an arbitral award

Pursuant to § 623 ZPO, an arbitral award must be issued in writing and must be signed by the arbitrator (if the court is composed of several arbitrators, by all of them). The arbitral award must state the date on which it was issued and the seat of the court of arbitration. Unless otherwise agreed by the parties, the award must be justified. Each party must receive a counterpart signed by the arbitrators. The ZPO does not provide a time limit for issuing the arbitral award.

Decision on costs

Upon termination of the arbitration proceedings, the court of arbitration must decide in the form of an arbitral award on the parties' obligation to reimburse costs, unless the parties have agreed otherwise (§ 626 (1) ZPO). In this, it must – at its discretion – take into account the circumstances of the individual case; in particular, the outcome of the proceedings. However, the court of arbitration may only decide on the costs between the parties; not on the reimbursement of the costs of the arbitrators themselves.

Challenge of the arbitration award

Action to set aside and proceedings

Liechtenstein arbitration law does not provide for an ordinary appeal against an arbitral award. The only relief available is the action for setting aside the arbitral award pursuant to § 628 ZPO, which must be brought within four weeks from receipt of the arbitral award. This is not an ordinary appeal but an appeal action, by which proceedings in the first instance are initiated at the court of law. The Princely Court of Appeal is the first and only instance.

The action to set aside may expressly be brought also against arbitral awards in which the court of arbitration has decided on its jurisdiction and against decisions of the court of arbitration on costs. However, the arbitral award must always meet the formal requirements of § 623 ZPO, meaning that it is an "arbitral award" in the proper sense.

The setting-aside proceedings are subsidiary and can only be initiated after all instances stipulated in the arbitration agreement have been exhausted. The action to set aside is a mandatory institution, and the parties cannot lawfully waive its assertion in advance, such as in the arbitration agreement.

Grounds for challenging an arbitration award

§ 628 (2) ZPO provides an exhaustive list of the grounds for setting aside. An arbitral award shall be set aside on application of a party if:

- there is no valid arbitration agreement;
- the court of arbitration has incorrectly denied its jurisdiction;
- a party has not been suitably informed of the appointment of the arbitrator or of the arbitration proceedings, or if it was unable for any other reason to assert its means of attack or defence;
- the arbitral award is about a dispute to which the arbitration agreement does not apply, or if it contains decisions that exceed the limits of the arbitration agreement or the parties' applications for relief;
- the court of arbitration has been formed or is composed in a defective manner;
- carrying out the arbitration proceedings is inconsistent with Liechtenstein's procedural *ordre public*;
- the matter of dispute is not objectively arbitrable under Liechtenstein law; or
- the arbitral award violates the substantive *ordre public* of Liechtenstein.

A review of the merits by a court of law is not admissible (prohibition of *révision au fond*). On the other hand, certain grounds for challenging the award, such as defects in the composition of the court of arbitration, formal defects in the arbitration agreement, lack of jurisdiction of the court of arbitration, or exceeding the court of arbitration's scope of authority, may be mended by entering an appearance in the arbitration proceedings, so that these cannot be asserted later by way of the action to set aside. Pursuant to § 601 (2) ZPO, such action is also excluded if the court of arbitration has denied its jurisdiction and the claimant has brought legal action in the main case at a court of law.

If the action to set aside the award is successful, it generally does not affect the effectiveness of the underlying arbitration agreement. However, if an arbitral award on the same matter has already been rescinded twice and another arbitral award issued on this matter is to be rescinded, the court must – on application of any of the parties – at the same time declare the arbitration agreement ineffective as regards this matter (§ 628 (5) ZPO).

Correction, explanation, or supplementation of the arbitral award

Pursuant to § 627 (1) ZPO, the arbitral award may in certain cases be amended by the court of arbitration itself. If no time limit has been agreed between the parties in this regard, each of the parties may request

from the court of arbitration, within four weeks from receipt of the arbitral award, to correct clerical or computational errors, to explain a particular part of the award or to issue a supplementary arbitral award on claims that have been asserted in the arbitration proceedings but not dealt with in the arbitral award. However, none of the foregoing shall start a new time limit for bringing the action for rescission.

Enforcement of the arbitration award

Enforcement proceedings

A domestic arbitral award that cannot be appealed to any superior arbitration instance automatically constitutes a title for enforcement. Pursuant to § 631 (1) ZPO, the recognition and enforcement of foreign arbitral awards is subject to the provisions of the Execution Act (*Exekutionsordnung*, EO), unless international treaties or declarations of reciprocity provide otherwise.

According to the latest practice of the Liechtenstein courts, there is no separate *exequatur* procedure in Liechtenstein; rather, the enforceability of the arbitral award is merely (but at least) examined as a preliminary question when granting enforcement (Supreme Court 7 Sep 2017, LES 2017, 173). It must be explained in the application for enforcement on the basis of what arbitral award enforcement is applied for, to what extent there is domestic jurisdiction, and/or to what extent assets of the debtor are located in Liechtenstein. At the same time, the measures of enforcement applied for must be stated. A copy of the arbitral award must be submitted together with a confirmation by the arbitrators that it is final and enforceable (§ 623 (6) ZPO).

Arbitral award from a Member State of the NYC

Since Liechtenstein has acceded to the NYC, not only are arbitral awards issued in Liechtenstein subject to recognition and enforcement in all Member States (and thus almost worldwide), but in turn all arbitral awards issued in another Member State will be recognised and enforced in Liechtenstein. As a result of the reservation of reciprocity made by Liechtenstein, the provisions of the NYC apply in Liechtenstein only to arbitral awards issued by a foreign court of arbitration with its seat in another Member State to the Convention. The NYC therefore has no *erga omnes* effect in Liechtenstein.

The application for enforcement must be submitted together with the suitably authenticated (legalised) original or a legalised copy of the arbitral award in German. The arbitral award must be translated into German by a translator entered in the list of interpreters and translators admitted at the Liechtenstein courts and authorities and must be certified by that translator (Supreme Court 7 Jun 2013, LES 2013, 147). The original or certified copy of the arbitration agreement need only be submitted if so requested by the Court of Justice (*Landgericht*) (§ 631 (2) ZPO). A confirmation of the arbitrators on the finality and enforceability of the arbitral awards in the seat country is not required.

Arbitral awards from Austria and Switzerland

Liechtenstein has entered into treaties on the recognition and enforcement of court decisions and arbitral awards with its two neighbouring countries, Austria and Switzerland. Since both Austria and Switzerland are member states of the NYC, these bilateral treaties have been of next to no separate significance since the accession of Liechtenstein. They are significant only where they provide for alleviations in recognition and enforcement in comparison to the NYC. This applies, in particular, to the recognition and enforcement of arbitral settlements, since these are not included in the scope of application of the NYC.

Arbitral awards from a third country

The recognition and enforcement of arbitral awards from a third country is subject to the provisions of the EO. Pursuant to Art. 52 EO, acts and documents executed and subject to enforcement abroad, under the rules applicable there, may serve as the basis for enforcement in Liechtenstein only to the extent provided

for in international treaties and declarations of reciprocity by the Government. Such declarations of reciprocity do not exist in Liechtenstein. This is why under the provisions of the EO, arbitral awards and arbitral settlements from a third country cannot be directly recognised or enforced in Liechtenstein. The only way to make them enforceable in Liechtenstein is the so-called *Rechtsöffnungsverfahren* (simplified proceedings for obtaining an enforceable title, Art. 49 *et sqq.* Act Concerning the Securing of Rights, *Rechtssicherungsordnung*).

Enforcement proceedings and action to set aside the award

The proceedings on the recognition and enforcement of a (foreign) arbitral award are essentially independent from the action to set aside the award in the country where the seat of the court of arbitration is located. Thus, recognition and enforcement may be applied for in Liechtenstein in parallel to an action to set aside that has been brought. However, there is the option of applying to the Court of Justice to suspend enforcement if such enforcement would lead to a direct and irretrievable disadvantage (Art. 24 *et sqq*. EO and Art. VI NYC). It is only the final rescission of the arbitral award by the courts of law at the seat of the court of arbitration that constitutes a reason for denying or discontinuing enforcement (Art. 21 (1) (a) EO).

Investment arbitration

In Liechtenstein, there are no special regulations regarding investment arbitration. Therefore, reference can be made to the above statements.

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Dr. iur. Manuel Walser, LL.M., is a lawyer and head of Walser Attorneys at Law Ltd. in Vaduz. Since 2014, he has been a Board member of the Liechtenstein Arbitration Association, as well as a Board member and, since 2024, the president of the Liechtenstein Chamber of Lawyers. He regularly acts as counsel and arbitrator in international and national arbitration cases. Since 2017, he has been the official arbitrator of the Principality of Liechtenstein at the Court of Conciliation and Arbitration of the OSCE. His track record also includes the representation of private and institutional clients in civil and commercial disputes before the state courts; in particular, in international corporate, foundation and trust matters.

In 2018, Manuel published the monograph *Arbitrability in Liechtenstein Law*; the work provides the first manual for arbitration in Liechtenstein and across the borders. In 2019, he published his work, *Seat of Arbitration in Liechtenstein Law*. Furthermore, he regularly publishes on matters of arbitration law and speaks at national and international conferences.

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