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Liechtenstein
LITIGATION

Contributing firm

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

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LIECHTENSTEIN
LITIGATION

1. What are the main methods of resolving commercial disputes?

The Liechtenstein Code of Civil Procedure (Zivilprozessordnung; ZPO) provides in principle for the settlement of civil law disputes to be resolved before the ordinary State courts. In addition, the parties also have the option of having the dispute judged by an arbitration court. In disputes relating to foundations and trusts, Liechtenstein law also provides for supervisory measures in non-contentious proceedings. Furthermore, other forms of dispute resolution, in particular mediation, are open to the parties.

2. What are the main procedural rules governing commercial litigation?

Commercial litigation in Liechtenstein is in particular governed by the following procedural rules: The organisation and jurisdiction of State courts are governed in the Liechtenstein Jurisdiction Act (Jurisdiktionsnorm; JN); the rules for contentious proceedings in civil courts are governed in the Liechtenstein Code of Civil Procedure (Zivilprozessordnung; ZPO); the rules for national and inter-national arbitration proceedings are governed in the 8th Section of the Liechtenstein Code of Civil Procedure (§§ 594 et seq. ZPO); the rules for the applicable law in international matters are gov-erned in the Liechtenstein International Private Law Act (Gesetz über das internationale Privatrecht; IPRG); the enforcement of judgments as well as of arbitral awards and preliminary remedies is governed in the Liechtenstein Execution Act (Exekutionsordnung; EO).

3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

All civil law actions must be brought before the court of first instance, the so-called Princely Court of Justice (Fürstliches Landgericht). Irrespective of whether the court of first instance issues a judgment (Urteil) or executes a resolution (Beschluss), the appeal is directed to the Princely Ap-peal Court (Fürstliches Obergericht) as second instance in civil matters. The Princely Appeal Court consists of three senates, whereby the decision is made by the chairman of the senate, an assessor and a senior judge in each case. Judgments of the Princely Appeal Court can be appealed against to the Princely Supreme Court (Fürstlicher Oberster Gerichtshof). However, this is basically inadmissible in the field of a) receivables with a value in dispute of less than CHF 50’000 and b) entirely confirming decisions of the Princely Appeal Court. The Princely Supreme Court is the last in-stance of ordinary jurisdiction in Liechtenstein and consists of two senates. If the claimant further alleges that one of his constitutionally guaranteed rights or one of his rights guaranteed by international agreements has been violated by a final decision or order of public authority, as an extraordinary remedy the right of appeal (individual complaint) is open to the Liechtenstein State Court (Staatsgerichtshof). The Liechtenstein legislature has accordingly provided for the assessment of civil disputes through three ordinary courts of law and the State Court as Constitutional Court.

4. How long does it typically take from commencing proceedings to get to trial?

Liechtenstein civil procedural law does not set a fixed timetable for the proceedings and the duration of the handling of the dispute lies with the court and the parties themselves. The court is responsible, among other things, for scheduling the first hearing, in which settlement discussions are held and the court defines the subject-matter of the dispute by rendering the decision to take evidence (Beweisbe-schluss). At the first hearing, the defendant may lodge an application for the release of a security to cover his costs of the proceedings (aktorische Kaution), if the plaintiff does not have his domicile in Liechtenstein. Depending on available capacities, it usually takes two to three months from the filing of a claim until the first hearing.

5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?

The court files and documents filed by the parties are only accessible to the parties of the corresponding proceedings, but not to the public. Some of the judgments of the Liechtenstein courts are published in an anonymised form on www.gerichtsentscheide.li and can be viewed by the public. In contrast, the court hearings are public. However, the public may be excluded for various reasons, namely if the *ordre public* appears to be endangered by it or if the legal dispute revolves around facts of family life.

6. What, if any, are the relevant limitation periods?

In Liechtenstein, limitation periods are not a question of procedural law, but are found in substantive law. The basic limitation period is 30 years, unless no special legal exceptions provide otherwise. The most important limitation periods are the following: three years regarding claims for damages; five years for the delivery of goods, the performance of work or other services in industrial, commercial or other business operations as well as further civil law claims (e.g., entitlement to salary, rental and leasing interests, etc.). The statute of limitations commences when the right could have been first exercised, namely when the party is aware of the counterparty (debtor) and the claim (damage). Furthermore, the statute of limitation is not observed by the courts *ex officio*, but must be pleaded by the defendant.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

In Liechtenstein, there is no legal requirement to initiate any pre-action procedures in order to start a trial. However, it is recommended and common practice to ask the debtor to fulfil his obligation before commencing legal proceedings, otherwise the court may order the claimant to bear the court fees and the defendants' legal costs if the latter immediately acknowledges the claim in the first hearing. According to the applicable procedural law, it is also possible to request a summons to the opponent prior to bringing an action and for the purpose of the settlement attempt (prätorischer Vergleich). Under Liechtenstein law, there is no pre-action disclosure. If a party is not in possession of the relevant evidence necessary to prove its claims, it can either file an action by stages (Stufenklage) to initially request the necessary information and documents from the defendant in order to then determine the claim amount. On the other hand, the claimant can request for evidence production during the proceeding, namely of "joint documents" of the parties that govern the mutual legal relationship. However, in comparison to document production possibilities in common law jurisdiction, this is rather limited in a Liechtenstein State court proceeding.

8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

The civil proceedings shall be instituted by lodging the statement of claim (Klage) with the court of first instance, namely the Princely Court of Justice. An action is officially pending upon receipt by the court. Any submissions to the court have to be written in German language. The statement of claim must contain the following features: the name of the court; the name and address of the parties, the party status and the name of the representatives, if any; the matter and amount in dispute; the relief sought as well as the facts and evidence on which the relief sought is based. Upon receipt of the statement of claim, the court examines the above-mentioned minimum requirements and, if the requirements are met, forwards the claim to the defendant. Within Liechtenstein, the claim is served by the court via post. There is no electronic communication system in place in Liechtenstein so far. If the defendant is abroad, service must be effectuated by the court via mutual legal assistance and in accordance with the laws or other legal provisions of such country. If at a later stage in the proceedings both parties are represented by a lawyer, the pleadings may also be served on the other party by direct service, i.e., without the assistance of the court, for example by a messenger or by electronic mail.

9. How does the court determine whether it has jurisdiction over a claim?

As soon as a claim is brought before the Princely Court of Justice, it examines its international jurisdiction *ex officio* by applying the Liechtenstein Jurisdiction Act (Jurisdiktionsnorm) – Liechtenstein is not a member of corresponding international treaties. In assessing the jurisdiction question, the court shall in principle base its decision solely on the information provided by the claimant, insofar as that information is not already known by the court to be incorrect. The jurisdiction standard assumes that the Princely Court of Justice has

jurisdiction for all actions if the defendant has his domicile or legal seat in the Principality of Liechtenstein. In addition, the jurisdiction rules establish further links to domestic jurisdictions, e.g., if the subject-matter or assets of the defendant are located in the territory of Liechtenstein or if the place of performance is Liechtenstein. The parties are basically free to agree on a choice of forum.

10. How does the court determine what law will apply to the claims?

In order to clarify the question of the applicable law in international situations, the first question is whether bilateral treaty provisions exist. If there are none, the court applies the *lex fori* rule. Liechtenstein's conflict of law rules are codified in the International Private Law Act (Gesetz über das internationale Privatrecht; IPRG). Liechtenstein law in general acknowledges the choice of law by the parties. However, in a situation with no international element, the court will apply national substantive law. Where conflict of law rules call for the application of foreign law, Liechtenstein must apply such foreign law unless it would produce a result contrary to public order or good morals, in other words contrary to fundamental values of the Liechtenstein legal system.

11. In what circumstances, if any, can claims be disposed of without a full trial?

The plaintiff who brings his statement of claim before the court of first instance must initially pay a court fee, unless an exemption from fees can be claimed. If the fee is not paid within four weeks upon receipt of the court's payment request, the court will declare the claim withdrawn. In addition, the court will dismiss a claim *ex officio* before the first hearing takes place, if it does not meet the minimum procedural requirements (e.g., jurisdiction of the court, capacity of the parties to sue or to be sued, lis pendens etc.). With the lack of formal requirements, the court initially asks the claimant to remedy the statement of claim within a specified time period. Moreover, the defendant may apply for an early dismissal of the claim, if the claim is already time barred, inconclusive, or if procedural requirements are missing (e.g., lack of jurisdiction). If the defendant fails to attend a scheduled court hearing, the claimant may request the court to issue a default judgment (Versäumnisurteil). It is also possible for the court to render interim and partial judgments or to attempt an amicable settlement of the dispute or to reach a settlement on individual points in dispute during the oral hearing.

12. What, if any, are the main types of interim remedies available?

In order to protect the enforceability of a claim or to protect one party from irreparable damage, an application may be made for interim measures. The application can be filed either together with the statement of claim or beforehand, and also in the course of the proceedings. The Liechtenstein Enforcement Act (Exekutionsordnunug; EO) provides for two types of interim remedies: 1) The security of monetary claims (Sicherungsbot) and 2) the security of other claims (Amtsbefehl). A security reason for monetary claims also exists if the debtor has no fixed domicile, makes arrangements to escape or flees with the intention of evading the fulfilment of his obligations, does not reside in Liechtenstein or if the execution order would otherwise have to be enforced abroad. In order to secure the monetary claims, the court may order: the seizure, custody and administration of movable assets; the legal deposit of money; a judicial prohibition on the sale or pledging of movable assets; a judicial prohibition directed towards third parties; and a judicial prohibition on transferring or mortgaging immovable property. In addition, to secure other claims or rights, other means such as establishing the right of retention or ordering the debtor to refrain from any action adversely affecting the claim are available.

13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?

After filing the lawsuit and paying the court fees, the court serves the claim on the defendant. At the same time, the court sets a deadline (usually four weeks) for the defendant to file a response. However, the filing of a response is not mandatory. Failure to file a response, or filing it after the deadline set by the court, does not result in a default judgment, nor does it exclude the defendant who appeared at the hearing from making further submissions. If the defendant files a response, the document shall be served on the plaintiff. The court shall then convene a first hearing. In preparation for this hearing, the parties are free to submit a further written statement («vorbereitender Schriftsatz»). This statement must be received by the court and the opponent at least one week before the hearing. The scheduled hearing may serve to conduct settlement discussions or to raise the objections of inadmissibility of the legal proceedings, lack of jurisdiction of the court or, for example, the pendency of the dispute. In addition, the defendant may file an application for security for the costs of the

proceedings at the first hearing, if the plaintiff does not have its domicile in Liechtenstein. If no objections are raised by the defendant, the court can decide directly which evidence it wishes to take and then take it directly.

14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

There are no pre-trial discovery proceedings in Liechtenstein. The production of documents and taking of evidence takes place in the course of the proceedings. The court may order the document production by a party under limited circumstances. Where a party relies on a document in support of its claims, it shall produce it before the court, unless the court itself is required to produce the document. The documents must be produced in such a way that both the court and the other party can inspect the entire contents of the documents. If, instead, only a part of the document is relevant to the legal relationship to be assessed in the case at hand, the court may order that only these passages be produced to the other party. Where a document relevant to the presentation of evidence is in the hands of the opposing party, the court or tribunal may, by order, require the opposing party to produce the document. However, if this document, on the other hand, concerns family life, if the opponent violates a duty of honour by presenting the document, if the presentation entails the risk of criminal prosecution, or if the presentation of the document would violate a duty of secrecy recognised by the state (e.g., secrecy of lawyers, trustees, bankers etc.), the presentation of the corresponding document may be refused. Nevertheless, the production of the documents cannot be refused by a party – even if the above-mentioned criteria are met – if the party has itself referred to the document for the purpose of adducing evidence, if it is obliged under civil law to deliver or produce the document, or if the document is a “joint document”, namely a document, which records a mutual legal relationship or was drafted in the interest of both parties. If the relevant document is not in the hands of the opponent but of a third party, the latter may also be obliged to surrender it, either if the substantive law obliges him to do so or if the document is to be regarded as a joint document of the parties. Beyond that, however, third parties are not obliged to produce documents in their possession.

15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

The Liechtenstein Code of Civil Procedure stipulates that evidence which is relevant to the court must be taken in the course of the hearing before the court. Witnesses must therefore testify orally before the court, however, the court may decide to conduct the examination of witnesses by videoconference. Depositions, written statements or affidavits are not permitted. Liechtenstein law distinguishes between witness testimony and the testimony of parties to the effect that certain rules regarding the hearing of witnesses do not apply to the hearing of parties. Witnesses with a domestic domicile are obliged to appear before the court. If their domicile is abroad, they are free to appear or otherwise will be heard by way of mutual legal assistance. Any witness is obliged to testify and to tell the truth. Witnesses have the right to refuse to testify with regard to certain persons or matters. For example, persons summoned as witnesses may refuse to testify on questions whose answers would expose the witness, his spouse or close relatives to criminal prosecution, or if they would violate a duty of secrecy recognised by the state (e.g., secrecy of lawyers, trustees, bankers etc.). In a witness examination, the judge takes the lead and questions every witness individually and in the absence of other witnesses. Thereafter, the parties have the right to ask further questions to the witness. Contradicting witnesses may be confronted with each other. In certain cases, a witness may testify in front of a delegated judge, by the use of video conference or in cases of urgency already before the hearing. Contrary to other legal systems, the lawyer may only contact witnesses if this is indispensable for the preparation of the proceedings. In doing so, the witness must not be influenced in any way, especially it is not permitted to give instructions or rules of conduct to the witnesses. It is only permitted to inform the witnesses of their legal rights and obligations, such as the abovementioned right to refuse to testify. An actual witness preparation, as known in other jurisdictions, is inadmissible.

16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

If the court or tribunal decides that the taking of evidence requires the presence of an expert, the court or tribunal shall appoint one. This power shall not be affected by any waiver by the parties. The expert

functions as an assistant to the judge, is obliged to the court and needs to be impartial. If the parties do not agree with the person of the expert, they may put forward reasons for refusal (e.g. lack of impartiality). If the rejection is accepted by the court, another expert will be appointed. The judge poses a set of questions to the appointed expert and instructs him with the delivery of a written report within a certain time period. After receipt of the written report, the parties have the right to question the expert at a hearing. Again, the court may decide to conduct the hearing of the expert via videoconference. According to the Liechtenstein Code of Civil Procedure, opinions rendered by court-appointed experts are a specific kind of evidence. Expert opinions of party internal experts are also permissible, but do not have the same evidential value as those ordered by the court, as they are private reports. However, the court-appointed expert at least has to deal with their findings in his own report.

17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

If the Princely Court of Justice issues a (interim) judgment, the unsuccessful party may appeal the judgment to the Princely Appeal Court within four weeks of service («Berufung»). In doing so, procedural defects, defects in the presentation of the facts as well as defects in the legal assessment may be objected to. The notice of appeal shall be served on the opponent, who shall have the opportunity to file a response to the appeal within four weeks. An appeal against the judgment of the Princely Appeal Court may then be lodged again with the Princely Supreme Court within four weeks of service of the judgment («Revision»). Only procedural deficiencies of the second instance and questions of law may be challenged. However, deficiencies with regard to the facts of the case can no longer be raised. Furthermore, the appeal is inadmissible if the amount in dispute is less than CHF 50’000 and the Princely Appeal Court has confirmed the judgment of the first instance in its entirety on the merits. In contrast, the law provides that in certain cases the decision shall not be rendered in the form of a judgment but in the form of an order. This is the case, among other things, with preliminary injunctions. A party may appeal against such a decision to the Princely Supreme Court within 14 days from the date of service («Rekurs»). The unsuccessful party may, under certain circumstances, appeal within 14 days to Liechtenstein State Court against the decision finally made by the Princely Supreme Court in this matter («Revisionsrekurs»). In these cases, the opposing party can also comment on the pleadings. However, the ZPO expressly provides that certain orders of the court cannot be appealed separately, e.g., procedural orders.

18. What are the rules governing enforcement of foreign judgments?

Liechtenstein has been a member of the European Economic Area (EEA) since 1995. However, the small State has not yet acceded to the Brussels Convention on Jurisdiction and Enforcement or the Lugano Convention. The recognition and enforcement of foreign judgments is therefore determined purely by national law, namely by the Liechtenstein Enforcement Act (Exekutionsordnung; EO). Pursuant to the Enforcement Act, foreign judgments will be enforced by Liechtenstein courts only if – and to the extent that – reciprocity with the foreign country has been guaranteed by government policy statements or international treaties. Only with Austria and Switzerland Liechtenstein has concluded applicable enforcement treaties, but not with other countries. However, foreign judgments can at least be recognized as authentic instruments, which lead to a facilitation in the payment order procedure (Schuldentriebsverfahren). After an objection against a payment order, the creditor may apply for an annulment of such objection in a summary proceeding called legal opening procedure (Rechtsöffnungsverfahren), where the original foreign judgment is regarded as an official document evidencing the debt. In contrast, Liechtenstein acceded to the New York Convention on the recognition and enforcement of foreign arbitral awards. Therefore, awards rendered by an arbitration tribunal in Liechtenstein can be enforced in all contracting states and therefore almost worldwide, and that all arbitral awards issued in a contracting state are in turn recognized and enforced in Liechtenstein.

19. Can the costs of litigation (e.g. court costs, as well as the parties’ costs of instructing lawyers, experts and other professionals) be recovered from the other side?

In principle, each party bears the costs of the proceedings itself. The claimant has to prepay the court fees. If the costs are incurred jointly by both parties or are undertaken by the court in the interest of both parties, they must also be paid jointly. The losing party must then reimburse its opponent for all costs caused by the conduct of the proceedings, to the extent that these were necessary for the appropriate legal prosecution or legal defence. The court shall assess which costs are deemed necessary at its discretion. Reimbursement is granted for court fees, expenses (e.g., for interpreters, witnesses, experts, traveling expenses, etc.) and legal fees. In consequence, if neither of the two parties are

entirely successful, the costs are to be set off against each other or shared proportionately. Even in such cases the court may order a party to reimburse the entire costs incurred by the opponent if the opponent has only been unsuccessful with a relatively small part of his claim, the assertion of which has not given rise to any particular costs. The reimbursement of legal fees is based on the official lawyer's tariff (Rechtsanwaltstarifgesetz, RAG; Rechtsanwaltstarifverordnung, RATV), irrespective of the arrangement between a lawyer and its client. Therefore, the actual lawyer's costs of a prevailing party are usually higher than the amount reimbursed. The decision of the court of first instance on costs may be appealed to the next instance without simultaneously challenging the decision given in the main proceedings. The second instance then makes the final decision, excluding any further appeal. If the matter in dispute is not terminated by judgment, but the parties reach a settlement, the costs are deemed to be mutually waived, unless otherwise agreed.

20. What, if any, are the collective redress (e.g. class action) mechanisms?

Liechtenstein law does not explicitly provide for collective redress, such as class actions. However, the law allows claimants to assign their claims to a third party, usually a specific association, with the intention that this association raises these claims in one lawsuit on behalf of the assignors against the defendant(s).

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?

Liechtenstein civil procedural law distinguishes between two basic constellations in the intervention of third parties: third-party notice and secondary intervention. Through Third-party notice (Streitverkündung), a previously uninvolved third party is subsequently formally notified of a dispute pending between two parties. The main party thereby requests the third party to support it in the pending proceedings. The announcement of the dispute is made against the background of a possible subsequent lawsuit in which the main party fears that the called third party will raise the objection of a badly conducted first trial. In contrast, the secondary intervention (Nebenintervention) provides that a third party may participate in the legal dispute in a supporting capacity if the third party can demonstrate a legal interest in the outcome of the legal dispute for one of the parties. This third party is entitled to assert means of attack and defence in the interest of the main party, to offer evidence and to take all other procedural steps. The secondary intervention can take place any time until the decision on the substance of the case is legally binding. Consolidation of two or more proceedings pending before the same court and involving the same parties is possible for cost- and time-saving reasons. The parties cannot appeal such a decision. Normally, a joint judgment is rendered, but it is also possible that a final judgment may be announced separately for each of the proceedings.

22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Liechtenstein law does not provide statutory rules governing third-party funding. Therefore, there are no restrictions regarding 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.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction (and in particular, have the courts adopted remote hearings and have there been any procedural delays)?

At the beginning of April 2020, the Liechtenstein Parliament passed a law on accompanying measures in the administration and judiciary in connection with the coronavirus (Gesetz über Begleitmassnahmen in der Verwaltung und Justiz in Zusammenhang mit dem Coronavirus, COVID-19-VJBG). Since then, it has been possible to extend, upon request, all procedural deadlines in judicial and administrative proceedings whose first triggering event happens in the period after the entry into force of the law, or which have not yet expired by the entry into force of the law, as long as the law is in force. In addition, hearings and oral proceedings in court were only possible after careful consideration of all circumstances, continuation of the proceedings was required and the interest of the general public in the prevention and control of coronavirus did not outweigh individual interests. Initially, these provisions were in effect until 15 June 2020 but were prolonged several times until 30 September 2021 due to the ongoing

pandemic. Because of the impacts of the pandemic, like travel restrictions, quarantine rules or absences of employees due to illness, the provisions of the COVID-19-VJBG have again become effective on 19 November 2021 and will be in force until 30 June 2022. Hearings and oral proceedings in court are possible if the recommendations of the government and the Office of Public Health regarding sanitary measures and social distancing are followed.

Meanwhile, several adjustments of the procedural laws are planned to guarantee the functionality of the administration and judiciary during such extraordinary times.

24. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?

The Liechtenstein courts are very efficient in international commercial disputes. According to recent statistics, the majority of court cases have been settled within a time period of three to six months with the court of first instance and within a time period of three months with the Appeal Court, the same applies for the Supreme Court. However, due to the lack of international treaties, judgments rendered in Liechtenstein may not be automatically recognized and enforced abroad, except in Austria and Switzerland.

25. What, in your opinion, is the most likely growth area for disputes for the next five years?

In our opinion, the most likely growth area was and will be in the field of foundation and trust law disputes connected with international commercial transactions. We also see potential growth areas in the field of banking and insurance.

26. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?

Liechtenstein has not yet established an e-government or electronic communication system with the courts. In our opinion, this field will be developed in order to ease the communication with the courts and to enable that court filings can be made electronically.

27. What, if any, will be the long –term impact of the COVID-19 pandemic on commercial litigation in your jurisdiction?

The COVID-19 pandemic has presented significant challenges to the courts in conducting hearings, particularly regarding physical presence. In order to ensure the functioning of the courts at all times, amendments to the law shall provide for the possibility for collegiate courts and administrative authorities to apply to the government for the deliberation and decision-making as well as the conduct of hearings on cases using appropriate technical means of communication (such as video or telephone conferencing) or by circulation, if the circumstances so require.

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