COUNTRY COMPARATIVE GUIDES 2022

The Legal 500 Country Comparative Guides

Liechtenstein

INTERNATIONAL ARBITRATION

Contributor

Walser Attorneys at Law Ltd.

Dr. iur. Manuel Walser, LL.M.

Attorney at Law | manuel.walser@walser-law.li

MLaw Daria Tschütscher

Legal Assistant | daria.tschuetscher@walser-law.li

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

For a full list of jurisdictional Q&As visit **legal500.com/guides**

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?

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.

5. Are there any impending plans to reform the arbitration laws in your country?

Due to the recent changes in the arbitration law, no further revisions are currently pending.

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

considered?

Although Liechtenstein has recently 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.

7. 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.

8. 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, e-mails 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.

9. 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.

10. 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.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

The arbitration law standardised in the CCP does not expressly provide for multi-party proceedings or multi-contract arbitration. In contrast, the Liechtenstein rules explicitly refer to multiparty proceedings in their Art. 4 para. 2 (initiation of arbitral proceedings) and in Art. 9 para. 3 and 4 (constitution of the arbitral tribunal).

12. 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.

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

In contrast, family law claims and claims from apprenticeship contracts are explicitly not arbitrable. In accordance with § 599 para. 3 ZPO, the jurisdiction of the Liechtenstein courts in proceedings that can only be initiated on the basis of mandatory provisions of Liechtenstein law (i.e. ex officio or upon application or notification by the foundation supervisory authority or the public prosecutor's office) cannot be waived by an arbitration clause in the statutes or equivalent constitutional documents of a corporate entity, foundation or trust. Commercial disputes are without doubt arbitrable. Similarly, according to prevailing opinion, certain non-commercial disputes involving corporations, foundations or trusts are arbitrable unless these proceedings would aim at the initiation of supervisory proceedings. On the other hand, claims for the dismissal of a member of the board of trustees of a Liechtenstein foundation and claims for the rescission or nullification of resolutions of the board of trustees of a Liechtenstein foundation are not arbitrable.

14. 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.

15. 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.

16. Have the courts in your country applied the UNIDROIT or any other transnational principles as the substantive law? If so, in what circumstances have such principles been applied?

There is no case law to this question in Liechtenstein so far.

17. In your country, are there any restrictions in the appointment of arbitrators?

In principle, the Liechtenstein ZPO does not provide for any restrictions on the appointment of an arbitrator. However, the parties are free to adopt provisions regarding the election as arbitrator.

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.

18. Are there any default requirements as to the selection of a tribunal?

The parties are free to appoint the arbitral tribunal. However, if they have not agreed on the number of arbitrators, three arbitrators shall be appointed in accordance with § 603 para 2 ZPO. In contrast, if the parties have agreed on a specific procedure, but this fails, the state court can intervene and appoint the arbitrators.

19. 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.

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

21. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators

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.

22. Have there been any recent decisions in your concerning arbitrators' duties of disclosure, e.g., similar to the UK Supreme Court Judgment in Halliburton v Chubb?

In Liechtenstein, too, persons who wish to accept an arbitrator's office must disclose all circumstances that could raise doubts about their impartiality or independence. If such circumstances arise only after the appointment of the arbitrator, the arbitrator must inform the parties of these circumstances without delay.

However, as far as can be seen, no decision on this matter has been published so far.

23. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

If the office of an arbitrator ends prematurely, so before the award has been pronounced, a substitute arbitrator shall be appointed in his place in accordance with the

rules applicable to the appointment of the arbitrator to be replaced. However, the procedural steps taken so far are not to be repeated and the procedure can be continued unless the parties have agreed otherwise.

24. Are arbitrators immune from liability?

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

25. 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).

26. 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.

27. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

Liechtenstein arbitration law does not regulate either the commencement or the pendency of such arbitration proceedings. If there is also no party agreement, the arbitration proceedings are generally initiated by an arbitration notice, whereby the pendency of the arbitration proceedings can only be assumed when the full statement of claim is served on the respondent. The Liechtenstein Rules also explicitly state in their Art. 4.1 that the commencement of the proceedings takes place with the service of the written statement of claim on the defendant.

With regard to the statute of limitations of the claim, it should be noted that under Liechtenstein law these are deadlines under substantive law. The limitation period is therefore also judged by an arbitration court according to the substantive provisions and therefore the ZPO does not give an opinion on this.

28. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

The plea of judicial immunity of a state cannot be raised before an arbitration court.

29. 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.

30. 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.

31. Can local courts order third parties to participate in arbitration proceedings in your country?

As already mentioned, third parties can be involved in the arbitration proceedings if the parties agree to this. However, the Liechtenstein ZPO does not provide for the possibility of involving third parties in arbitration proceedings against their will.

32. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

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.

33. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

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.

34. 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.

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

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.

36. 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).

37. Are there any recent decisions in your country regarding the use of evidence acquired illegally in arbitration proceedings (e.g. ‘hacked evidence’ obtained through unauthorized access to an electronic system)?

As far as can be seen, the Liechtenstein courts have not yet had to deal with illegally obtained evidence in arbitration proceedings.

38. How are the costs of arbitration proceedings estimated and allocated?

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.

39. Can pre- and post-award interest be included on the principal claim and costs incurred?

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.

40. 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.

41. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

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.

42. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

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.

43. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

The possibility of appeal depends largely on the arbitrability of the subject matter of the dispute underlying the proceedings and the remedies available under the substantive law on the issue in question.

Thus, under the current arbitration law, family law matters and claims arising from apprenticeship contracts, which are governed by the Vocational Training Act, are not arbitrable. In addition, there is a mandatory jurisdiction in favor of the Liechtenstein ordinary courts for cases which can only be initiated upon application by the foundation authority or ex officio (namely in supervisory proceedings on foundations and/or trusts). In such cases, the jurisdiction of the ordinary courts cannot be excluded in favour of an arbitration court. Also not arbitrable are claims, which contradict the domestic Ordre public. If an arbitral award has nevertheless been made in respect of such a claim, it shall be set aside ex officio or shall not be recognized in Liechtenstein.

Claims for damages are generally arbitrable under Liechtenstein law. However, if these are so-called punitive damages, they cannot be the subject of an arbitration agreement because of the Liechtenstein Ordre public.

44. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

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.

45. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

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.

46. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

On 22 April 2015, Liechtenstein acceded to the United Nations Convention on Jurisdictional Immunity of States and Their Property. To date it has not entered into force. According to this Convention, a State may not claim sovereign immunity in the enforcement phase as a defence, unless the claim for which enforcement is sought arises from a sovereign act of the State concerned.

47. 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.

48. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

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.

49. 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.

50. Are there arbitral laws or arbitration institutional rules in your country providing for 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.

51. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

No initiatives have been taken in that respect so far.

52. 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.

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

54. Have there been any recent court decisions in your country considering the judgments of the Court of Justice of the European Union in Slovak Republic v Achmea BV (Case C-284/16), Republic of Moldava v Komstroy LLC (Case C-741/19) and Republiken Polen v PL Holdings Sarl (Case C-109/20) with respect to intra-European investor-state arbitration? Are there any pending decisions?

No published decisions are known to date.

55. Have there are been any recent decisions in your country considering the General Court of the European Union's decision Micula & Ors (Joined Cases T-624/15, T-694/15 and T-694.15), ECLI:EU:T:2019:423, dated 18 June 2019? Are there any pending decisions?

No published decisions are known to date.

56. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

Since there is no separate arbitration institution in Liechtenstein, no information can be given in this regard.

57. 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.

58. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

In accordance with Liechtenstein law, all court and arbitration proceedings are discontinued as soon as insolvency proceedings are formally opened.

Discontinued arbitration proceedings may be resumed by the receiver, by related parties on the side of the insolvent party and by the opposing party in the arbitration proceedings. If the disputed claim needs to be filed in the insolvency proceedings, the arbitration proceedings may, however, only be resumed after the hearing on the recognition of the filed claims.

59. Is your country a Contracting Party to the Energy Charter Treaty? If so, has it expressed any specific views as to the current negotiations on the modernization of the Treaty?

Yes, Liechtenstein is a member of the Energy Charter Treaty. There is no information available that Liechtenstein has actively expressed its opinion on the ongoing negotiations regarding the modernization of the Energy Charter Treaty.

60. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

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

61. Has your country expressed any specific views concerning the work of the UNCITRAL Working Group III on the future of ISDS?

No, Liechtenstein has not commented on the work of the UNCITRAL Working Group III.

62. Has your country implemented a sanctions regime (either independently, or based on EU law) with regard to the ongoing crisis in Ukraine? Does it provide carve-outs under certain circumstances (i.e., providing legal services, sitting as an arbitrator, enforcement of an award)?

Based on the Law on the Enforcement of International Sanctions, Liechtenstein is able to issue coercive measures to enforce international sanctions adopted by the United Nations or by its main trading partners, which serve to ensure compliance with international law, in particular respect for human rights. Based on this, Liechtenstein has issued a regulation on the measures in

connection with the situation in Ukraine, which takes over the sanctions issued by the EU.

In addition to import and export restrictions, these sanctions include travel bans and the freezing of assets of certain natural persons. However, the regulation provides that payments from frozen accounts, transfers of frozen assets or the release of frozen economic resources may be authorized in order to satisfy claims that are the subject of an existing decision of a court, administrative body or arbitral tribunal (Article 16 para. 5 lit. c leg. cit.). The Ordinance also provides that no direct or indirect transactions may be conducted with banks, companies or organizations domiciled in the Russian Federation pursuant to Annex 16 thereto (Art. 25a para. 1 lit. a leg. cit.), with banks, companies or organizations domiciled outside the European Economic Area or Switzerland in which banks or companies pursuant to lit. a hold more than 50% (lit. b leg. cit.) and with companies and organizations acting on behalf of or on the instructions of banks, companies or organizations under lit. a or b (lit. c leg. cit.). However, transactions that are necessary to ensure access to judicial, administrative or arbitral proceedings in an EEA member state or Switzerland or for the recognition or enforcement of a court judgment or arbitral award from an EEA member state or Switzerland are exempt from this rule (Art. 25a par. 2 lit. g leg. cit.).

However, the regulation does not provide for any exceptions for the specified natural persons who are also acting as arbitrators.

63. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

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.

64. Have arbitral institutions in your country taken any specific measures to administer arbitration proceedings involving sanctioned individuals/entities? Do their rules address the issue of sanctions?

Since there is no separate arbitration institution in Liechtenstein, no information can be given in this regard.

Contributors

Dr. iur. Manuel Walser, LL.M.
Attorney at Law
manuel.walser@walser-law.li

MLaw Daria Tschütscher
Legal Assistant
daria.tschuetscher@walser-law.li