THE DISPUTE RESOLUTION REVIEW

Thirteenth Edition

Editor
Damian Taylor

THE LAWREVIEWS

THE DISPUTE RESOLUTION REVIEW

THIRTEENTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in March 2021
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Damian Taylor

THE LAWREVIEWS

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADERS
Jack Bagnall, Joel Woods

BUSINESS DEVELOPMENT MANAGERS
Katie Hodgetts, Rebecca Mogridge

BUSINESS DEVELOPMENT EXECUTIVE
Olivia Budd

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Tommy Lawson

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Anne Borthwick

SUBEDITOR
Janina Godowska

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

www.TheLawReviews.co.uk

ISBN 978-1-83862-770-6

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ADVOKATFIRMAET SELMER AS

ADVOKATFIRMAN VINGE KB

ARIFIN, PURBA & FIRMANSYAH

ARTHUR COX

ASMA HAMID ASSOCIATES

AZB & PARTNERS

BOFILL ESCOBAR SILVA ABOGADOS

BONELLIEREDE

BREDIN PRAT

CNPLAW LLP

COSTA TAVARES PAES ADVOGADOS

CRAVATH, SWAINE & MOORE LLP

DE BRAUW BLACKSTONE WESTBROEK

FOLEY ARENA

GORRISSEN FEDERSPIEL

HENGELER MUELLER

MARXER & PARTNER ATTORNEYS-AT-LAW

MERILAMPI ATTORNEYS LTD

MOMO-O, MATSUO & NAMBA

NIEDERER KRAFT FREY

SAYENKO KHARENKO

SHIN & KIM

SLAUGHTER AND MAY

URÍA MENÉNDEZ

VAVROVSKY HEINE MARTH RECHTSANWÄLTE

WU & PARTNERS, ATTORNEYS-AT-LAW

YOUNG CONAWAY STARGATT & TAYLOR, LLP

CONTENTS

PREFACE

The Dispute Resolution Review provides an indispensable overview of the civil court systems of 28 jurisdictions. It offers a guide to those who are faced with disputes that frequently cross international boundaries. As is often the way in law, difficult and complex problems can be solved in a number of ways, and this edition demonstrates that there are many different ways to organise and operate a legal system successfully, as well as overcoming challenges that life and politics throw up along the way. At the same time, common problems often submit to common solutions, and the curious practitioner is likely to discover that many of the solutions adopted abroad are not so different from those closer to home.

Looking back over 2020 from my study at home (this will provide a clue to the theme of this Preface), I cast my eye over words I wrote in last year's Preface:

> *All this leaves me writing this preface five days before 'Brexit Day', after an exhausting 2019 in which clients have not known whether to plan for the 'May deal', 'No deal', 'Boris's deal', a referendum (on Brexit and/or Scottish independence), no Brexit, or the extensive nationalisation of private industries and tax rises outlined in Labour's manifesto.*

Not a word about a pandemic about to sweep across the globe.

If 2019 was the year of Brexit, this year was undoubtedly the year of covid-19; the year of lockdowns, tiers, furlough and, finally and thankfully, unprecedented mainstream media scrutiny of the safety and efficacy of various vaccines. Lives have tragically been lost and many more have suffered from covid-19-related illness. Restrictions on personal freedoms that would have been unthinkable this time last year have been imposed, relaxed and imposed again. In the UK, we have seen everything from virtual total lockdown to being encouraged to 'eat out to help out' as the government picked up half the bill to support the hospitality industry. Throughout this period of enormous change, the law, courts and tribunals have had to adapt to rapidly changing circumstances and, for the most part, have kept pace.

Perhaps the most noticeable change in the legal sector has been the move to online and home working, which has emphasised the need to have strong and reliable IT systems. We have seen disputes increase around force majeure and cancellation and termination clauses, and businesses have had more cause than usual to check their insurance arrangements. The latter development is best illustrated in the UK though the Financial Conduct Authority test case to determine the scope of cover afforded by business interruption insurance policies to businesses that were affected by covid-19 and a variety of government advice and restrictions, a case that saw your editor spend an uncomfortably hot British summer 'attending' court from home and promising he would never complain about being cramped in court again, so long as it had air conditioning. See Chapter 6 for further details of the case.

The question on many lawyers' lips is 'will we ever go back to life as it was before?' Some firms confidently predict the end of the working week and office environment (giving up their leases in the process); others talk of offices becoming the 'hub' with flexible working 'spokes'; and yet others urge a return to the status quo. Certainly courts and tribunals will have learned a lot during the pandemic, not least that electronic filing and short remote hearings can be efficient; but perhaps also that even the best video link cannot replace the special atmosphere that lends something intangible, but of great importance, to live, physically present advocacy and testimony. Perhaps one of the best lessons learned is that if you don't try something, you won't know which parts work and which parts don't.

A last word has to go to Brexit, as the UK and EU agreed a deal at the end of the year with only days to spare. This will have a lasting impact on the legal and political relationship, much of which is explored in more depth in the updated Brexit chapter.

This 13th edition follows the pattern of previous editions where leading practitioners in each jurisdiction set out an easily accessible guide to the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. *The Dispute Resolution Review* is also forward-looking, and the contributors offer their views on the likely future developments in each jurisdiction. Collectively, the chapters illustrate a continually evolving legal landscape responsive to both global and local developments.

As always, I would like to express my gratitude to all of the contributors from all of the jurisdictions represented in *The Dispute Resolution Review*. Their biographies can be found in Appendix 1 and highlight the wealth of experience and learning from which we are fortunate enough to benefit. I would also like to thank the whole team at Law Business Research who have excelled in managing a project of this size and scope, in getting it delivered on time and in adding a professional look and finish to the contributions.

Damian Taylor
Slaughter and May
Harpenden
January 2021

Chapter 15

LIECHTENSTEIN

Stefan Wenaweser, Christian Ritzberger, Laura Negele-Vogt and Edgar Seipelt[1]

I INTRODUCTION TO THE DISPUTE RESOLUTION FRAMEWORK

The Liechtenstein court system and procedural laws were both largely copied from the Austrian model. The Liechtenstein legal system is a civil law system. The laws relating to dispute resolution are the Civil Procedure Law (ZPO), the Jurisdiction Act (JN) and the Execution Code (EO). Non-contentious proceedings are governed by the Special Non-Contentious Civil Proceedings Act.[2]

The Liechtenstein courts are all located in Vaduz, the capital of the country. There are three levels of ordinary civil law courts:

a the Princely Court of First Instance (LG);
b the Princely Court of Appeal (OG); and
c the Princely Supreme Court (OGH).

Besides the three instances mentioned above, there is the Constitutional Court (StGH) acting as an extraordinary court of appeal. A party may have recourse to the StGH against final decisions that ultimately determine a matter for alleged violations of constitutional rights or rights granted by international conventions such as the European Convention on Human Rights. There are no special courts or juries adjudicating in civil or commercial law matters.

As a rule, the party that has lost the proceedings must reimburse the costs of the successful party according to the Lawyers' Tariffs Law and bear the court's fees. If a plaintiff is only partially successful, then the court normally adjudicates the costs of the proceedings in proportion to the success. There are, however, some exceptions and special rules.

The Lawyers' Tariffs Act defines costs of lawyers in accordance with the value in dispute and is not based on hourly rates. Court fees are determined according to the Court Fees Act. Where the value in dispute is relatively low, a cost award may not cover all the lawyer's fees that the client has to bear. Usually, the majority of the costs involved will be recovered by the winning party where a value in dispute of several hundred thousand Swiss francs is concerned. In certain cases, for example supervisory court cases, the value in dispute is often relatively low (e.g., 50,000 Swiss francs) because there is no monetary claim at issue that lends itself to set the value in dispute.

Court decisions as precedents do not have the same legal quality as they have in common law countries under the stare decisis doctrine. However, they are of great factual

1 Stefan Wenaweser is a partner and Christian Ritzberger, Laura Negele-Vogt and Edgar Seipelt are associates at Marxer & Partner Attorneys-at-Law.

2 Liechtenstein laws are promulgated in the Legal Gazette (LGBl). All Liechtenstein laws are available at www.gesetze.li (in German only).

significance, because they provide an interpretation of the statutory framework. For the sake of legal certainty, an existing interpretation is only changed if there are new and convincing arguments justifying a decision different from the precedent.

The most important alternative dispute resolution paths are arbitration (governed by the ZPO) and mediation proceedings (governed by the Law regarding Mediation in Civil Law Matters (ZMG)).

II THE YEAR IN REVIEW

i OG bound to its legal opinion expressed in an order to annul

Pursuant to Section 468(2) ZPO the LG, to which the OG refers a case for a new hearing or decision, is bound by the legal assessment on which the OG based its decision. The OGH held that for reasons of legal certainty, the OG is also bound by its legal opinion contained in such an order to repeal. However, a violation of this principle by the OG cannot constitute grounds for appeal to the OGH if the new judgment of the OG is correct, since the assessment of questions of law is ultimately up to the OGH so that it is irrelevant whether the Court of Appeal deviated from its original opinion if only the legal opinion in the second decision is the correct one.[3]

ii Interruption of the statute of limitations by lodging a claim and proper continuation of the proceedings

An improper continuation of proceedings may particularly result in cases, where the claimant had a procedural duty to act, because there was a procedural standstill or at least a de facto standstill and, nonetheless, the claimant remained idle. In these cases, when reviewing the proper continuation of the proceedings, not only the duration of the inactivity, but also the reasons for it, are to be considered. These may arise from the relationship between the parties or from the inactivity of the court itself. It must be assessed in each individual case whether the plaintiff's inactivity is unusual and whether this may be viewed as an expression that he or she is no longer interested in achieving the objectives of the proceedings. In cases where the plaintiff may expect the court to act, his or her inactivity does not necessarily lead to the conclusion that he or she is no longer interested in the proceedings, and in such circumstances a generous standard must be applied, which means that only a prolonged period of inactivity of the court would require the plaintiff to take steps to require the court to become active.[4]

iii Appeal against the cassatorial appeal decision of the OG

The purpose of an appeal within the meaning of Section 487 (1) No. 3 ZPO is to review the legal opinion on which the resolution to annul the decision of the subordinate court is based. If the appeal is admissible, the OGH must comprehensively examine the legal opinion of the OG supporting the resolution to lift the decision of the subordinate court. As in the case of an appeal to the OGH, this principle is limited insofar as the appellant must already deal

3 OGH 07.02.2020, 08 CG.2016.26, published in LJZ 2020, 124/2.

4 OGH 05.06.2020, 04 CG.2016.147, published in LJZ 2020, 280/1.

in the appeal to the OG with legal grounds based on independent facts creating, inhibiting or destroying the legal claim in question so that these legal grounds do not fall outside the subsequent review procedure of the OGH.[5]

III COURT PROCEDURE

i Overview of court procedure

International jurisdiction is given once the jurisdiction of the Liechtenstein courts is established.[6] National jurisdiction is given either where the general jurisdiction applies or one of the 'special jurisdictions'[7] is given. If a defendant is resident in Liechtenstein, general jurisdiction is established.[8] For practical purposes, the special jurisdiction based on assets is of particular importance. This means that monetary claims may be pursued against an individual or legal entity that does not have its domicile in Liechtenstein but has assets within Liechtenstein; for example, in the form of a deposit with a Liechtenstein bank or a claim against a debtor resident in Liechtenstein. Besides this, parties may also submit themselves to Liechtenstein jurisdiction by express agreement (prorogation).[9]

Civil proceedings are initiated by filing a legal action or statement of claim with the LG. In the legal action, the plaintiff has to set out the facts on which he or she bases his or her claim and the evidence with which he or she intends to prove the asserted facts. If the court accepts that it has jurisdiction,[10] it serves the legal action on the defendant[11] and at the same time sets a date for the first hearing. At the first hearing, the defendant may invoke formal objections[12] and must apply for the order of a security for costs, if the prerequisites are given.[13] Persons who have no residence in Liechtenstein[14] or who lose such during the legal proceedings and are plaintiffs or appellants in a Liechtenstein court are in most cases obliged, if so required, to furnish the defendant or respondent with a security for the costs of the proceedings. Likewise, legal entities that do not have sufficient property on which execution can be levied may also be required to furnish a security for the costs of the proceedings.

Natural persons who are not able to bear the costs of litigation without detriment to the necessary maintenance may apply for legal aid in civil matters with the LG. Likewise, legal persons may apply for legal aid if the means necessary to cover the costs of litigation cannot be borne by the legal person itself or the persons economically involved in the proceedings.

5 OGH 03.07.2020, 05 CG.2018.220, published in LJZ 2020, 280/4.

6 OGH in LES 2009, 167; OGH in LES 2006, 480.

7 The LG, for example, has exclusive jurisdiction over disputes regarding immovable property located in Liechtenstein pursuant to Section 38 JN.

8 See Section 30 et seq. JN.

9 It should be noted that free choice of forum is restricted, for example, in consumer cases and in insurance law cases.

10 Where the court concludes that its jurisdiction is not given, the action is normally dismissed *ex parte*.

11 Defendants not residing in Liechtenstein are normally served by way of letters rogatory to the competent court where they reside.

12 For example, lack of jurisdiction.

13 This defence has to be raised.

14 Or in Austria and Switzerland because of the bilateral recognition and enforcement treaties in place with these two countries.

Legal aid is only granted if the litigation is not considered vexatious or futile (Section 63 ZPO). If legal aid is granted, the party may also be (and in general is) freed from the payment of court fees and from the provision of a security for costs (Section 64 ZPO).

In cases where the claimant is ordered by the court to deposit a security for costs, the defendant is invited by the court to submit a reply to the statement of claim if such a security for costs is deposited in time. Thereafter, depending on the complexity of the case, the court usually sets a hearing to decide on the evidence that will be taken. The matter is then heard in one or more oral hearings where, inter alia, the parties may plead their case and witnesses are examined. Once the judge is satisfied and finds that the factual basis of the case is duly presented and the matter ready for taking a decision, he or she will close the hearing and then deliver the written judgment. As a general rule, further factual pleadings and new evidence may be put forward or offered by the parties to support their pleadings until the closure of the oral hearing.[15]

Control of the proceedings is exercised by the judge who opens, directs and closes the oral hearing and thereby is in charge of controlling the duration of the proceedings (Section 180 ZPO). He or she may order the parties to submit written pleadings and sets the dates for the examination of witnesses, experts and the production of evidence.[16] He or she is also obliged to discuss the factual and legal pleadings with the parties (Section 182a ZPO) and must not base his or her decision on any legal ground that one of the parties obviously was not aware of unless he or she discussed it with the parties (Section 182a ZPO).

Ordinary appeals

Liechtenstein civil procedure distinguishes between judgments and orders.

Each judgment passed by the LG may be appealed to the OG within four weeks. In appellate proceedings, the OG gives its decision either by confirming the judgment of the LG or by setting it aside and referring the matter back to the LG, or by itself amending the contents of the judgment. In general the OG does not conduct an oral hearing on the appeal. An oral hearing only takes place on specific request by one of the parties or if the OG considers it necessary because of the specific circumstances. To specify the grounds for avoidance, new facts and evidence may be submitted as long as the claim remains identical (novation is not prohibited before the second instance court). However, the court may refuse to accept new pleadings or take further evidence if it concludes that the new pleadings or evidence have negligently not been brought forward in first instance proceedings (Section 452(3) ZPO). Moreover, the parties may also contest procedural errors or the LG's factual and legal findings. Procedural errors regarding the form of procedural measures, however, may only be contested if they have already been contested in first instance right after the violation happened (Section 196 ZPO).

Judgments of the OG may, in general, be appealed to the OGH within four weeks. An appeal to the OGH is, however, not possible, and the judgment of the OG is final in the

15 However, the court may refuse to accept the pleadings or take further evidence if it concludes that the new pleadings or evidence have not been brought forward earlier owing to gross negligence, and if their admission would considerably extend the proceedings (Section 179(1) ZPO).

16 An order regarding the production of documents is not enforceable by the court. However, the court may, on its own discretion, take into consideration a party's non-compliance with such an order in the weighing of the evidence pursuant to Section 307(2) ZPO.

following cases: small-claims proceedings (values in dispute up to 5,000 Swiss francs; Section 471(1) ZPO in connection with Section 535(1) ZPO); and generally,[17] cases with values in dispute up to 50,000 Swiss francs in which the OG has confirmed the decision of the LG.

The OGH conducts a non-public hearing and is solely concerned with legal errors. Fact-finding by the lower level courts can, therefore, no longer be contested (novation is prohibited). Accordingly, the parties may only raise points of law on material or procedural issues, but new evidence or pleadings are not allowed.

Most orders by the LG, such as an order to lodge a security for costs and fees or a refusal to accept jurisdiction, may be appealed to the OG within two weeks. In general, decisions by the OG may be appealed to the OGH as follows: an order overturning the decision of the LG may be appealed to the OGH within 14 days. Where an order of the OG confirms an order of the LG, no further appeal to the OGH is possible. Pursuant to the revised ZPO there are, however, certain exceptions from this general rule with respect to orders concerning the sequence of the proceedings that can, in any event, only be appealed to the OG and not to the OGH (also in cases in which the OG does not confirm the decision of the LG, but overturns it).

An appeal against a judgment to the OG or to the OGH has suspensive effect, which means that the appealed decision has no res judicata effect and cannot be enforced (Section 436 ZPO). In contrast, an appeal against a court order does not, in principle, have suspensive effect (Section 492(1) ZPO). Upon application of the appealing party, the court may, however, grant suspensive effect to the appeal (Section 492(2) ZPO).

Extraordinary appeal to the StGH

Decisions of the OGH or the OG that are final and ultimately determine a matter (i.e., which are, for example, not merely referring a matter back to the lower instance) may be appealed to the StGH within four weeks for alleged violation of fundamental rights granted by the Constitution or by international conventions such as the European Convention on Human Rights. An appeal to the StGH does not have the effect of staying a judgment unless such stay is specifically granted by the StGH, acting through its president, upon request of one of the parties. The StGH can only quash a challenged order or judgment; it cannot pass a new decision on the merits. The ordinary courts are, however, bound to the legal considerations of the StGH and have to revise the quashed decision in accordance with the same.

ii Procedures and time frames

The duration of proceedings before the first instance obviously depends on the subject matter and complexity of the case at hand. If extensive evidence has to be taken, for example, by hearing a large number of witnesses, or if the court needs to appoint an expert witness for special questions of fact or if a witness needs to be heard abroad via letters rogatory,[18] the duration of the oral proceedings before the LG may take up to one year, and in complex cases even longer. As a general rule, a decision of the LG may be expected within one year. A final

17 Some exceptions apply.

18 To avoid delays the revised ZPO provides for the opportunity of hearing a witness in a video-conference instead of hearing the witness abroad via letters rogatory (Section 283(4) ZPO).

decision that may only be obtained from the OGH can take up to three years. If a matter is of great complexity and if decisions of the lower instances are lifted and the matter handed down to the lower instance for a new decision, proceedings may also take considerably longer.

Both before the opening of a lawsuit and during litigation, and even during the execution proceedings, interim injunctions may be issued (Article 270 EO).[19] They serve to secure the right of the party complainant if, in the absence of a protective injunction, there is the risk that a future execution will be prevented or made difficult; for instance, if a claim has to be enforced outside Liechtenstein. Interim injunctions may take the form of a protective order to secure money claims, or of an official order to secure other claims. The applicant must furnish prima facie evidence both of his or her claim and of the risk that may render future executions more difficult.[20] Therefore, the only effect of the interim injunction is that it temporarily maintains the status quo (protective injunction). An interim injunction is normally issued *ex parte* within two to three days. It is up to the court to decide if the defendant shall be heard prior to the passing of the interim injunction. Under Liechtenstein law, it is not possible to obtain a freestanding[21] injunction.[22] This is because in all cases where an interim injunction is granted, the court will set a time limit for the claimant to file a statement of claim and commence ordinary civil proceedings. If that time limit is not adhered to, the injunction will be lifted.[23]

iii Class actions

Generally, class actions are not included in Liechtenstein procedural laws. Section 11 et seq. ZPO contain provisions regarding the joinder of parties (either as joined plaintiffs or joined defendants). Pursuant to these provisions, several persons may act as joint claimants or joint defendants if their rights are based on the same legal and factual grounds. The Liechtenstein Consumer Protection Act (KSchG) enables certain consumer protection organisations to claim on behalf of several individuals, for example, against terms and conditions of businesses that are disadvantageous to consumers (Article 41 et seq. KSchG). However, these are not class actions in the strict sense.

iv Representation in proceedings

The civil procedure law of Liechtenstein does not provide for compulsory representation: irrespective of the amount claimed or the object in dispute or the instance, every person may represent himself or herself or be represented. In practice, however, it rarely occurs that parties act without representation before the courts.

19 In urgent matters, Article 272 EO provides for the possibility to issue provisional security measures. The applicant has to apply for an interim injunction at court within two days of being notified of the security measure (Article 272(4) EO).

20 The court may order the provision of a security if, for example, it does not consider the prima facie evidence for the alleged claim to be sufficient (Article 283 EO). According to Article 287 EO, the applicant has to reimburse any pecuniary loss suffered by the defendant if, for example, the applicant loses the main proceedings.

21 The term 'free-standing injunction' refers to an injunction granted by a court pending the resolution of a dispute before a foreign court.

22 According to new case law, it is possible to obtain a free-standing injunction if a lawsuit is pending in Austria and Switzerland and the decision rendered there could be recognised in Liechtenstein (see Section III.vi).

23 Article 284(4) EO.

v Service out of the jurisdiction

Although Liechtenstein is not a member of the Hague Treaty on International Service, service on foreigners is regularly performed via letters rogatory to the competent court where the defendant resides. The rules regarding service out of the jurisdiction are contained in Article 13 of the Law regarding the Service of Official Documents. In the absence of any international treaties, service has to be effected in the way provided for by the laws or other legal provisions of the country in which a court document has to be served, or alternatively, as permitted by international custom, or where necessary via the diplomatic route. The LG will request the foreign court to which the letter rogatory is addressed to provide a confirmation of service. The rules of service for natural and legal persons do not differ.

vi Enforcement of foreign judgments

The levying of execution or the performance of individual acts of execution on the basis of a foreign judgment (or other foreign enforceable instruments) is possible in Liechtenstein according to Article 52 et seq. EO only if this is provided for in treaties or if reciprocity is guaranteed to the government by treaties or government policy statements. There have not been any such statements guaranteeing reciprocity so far.

The few bilateral and multilateral treaties concluded by Liechtenstein and the enforcement of foreign judgments in the absence of an enforcement treaty are discussed below.

Bilateral treaties

On 25 April 1968, Switzerland and Liechtenstein concluded a treaty on the recognition and enforcement of court decisions and arbitration awards in civil law matters.[24] On 5 July 1973, Liechtenstein concluded a treaty on the same subject matter with Austria.[25] The treaty with Austria also covers the reciprocal recognition of settlements and public documents.

Both treaties require all of the following conditions to be met in order to recognise a judgment:

a recognition of the judgment must not be contrary to the public order of the state in which the judgment is asserted and a plea of res judicata must not be possible;

b the judgment must have been passed by a court with jurisdiction relating to the subject matter according to the principles set out in the treaty;

c the judgment must have entered into legal force according to the law of the state where it has been passed; and

d in the case of a default judgment, the writ of summons, by which proceedings are instituted, must have been served on the party in default personally or on a proper representative.

24 Published in LGBl 1970/14.

25 Published in LGBl 1975/20.

Multilateral treaties

In 1972, Liechtenstein ratified the Convention of 15 April 1958 concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children,[26] and in 1997 the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.[27]

The Liechtenstein Parliament consented to the signing of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 on 19 May 2011. The New York Convention was then ratified and entered into force on 5 October 2011.[28]

Currently, Liechtenstein has not signed or become a party to any other multilateral treaty or instrument. In particular, it is not a party to the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 1988/2007 or Council Regulation (EC) No. 44/2001 of 2000 resp. Regulation (EU) No. 1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels-I Regulation resp. Brussels-Ia Regulation).

Enforcement of a foreign judgment in Liechtenstein

As mentioned above, foreign judgments may generally not be enforced in Liechtenstein. Consequently, a judgment creditor must obtain a Liechtenstein enforceable instrument against the judgment debtor before he or she can successfully levy execution in Liechtenstein. A foreign judgment is sufficient to be granted what is called *Rechtsöffnung*, in other words, simplified proceedings to obtain a Liechtenstein enforceable instrument.[29] On account of the *Rechtsöffnung*, the creditor who has obtained a default summons[30] or other decision within summary proceedings[31] may have the debtor's opposition or legal proposal annulled by the court if the claim he or she has put forward is based on a Liechtenstein or foreign public instrument.[32] The respondent in such proceedings may avoid an enforceable instrument only by bringing an action for denial.[33] Once an action for denial has been brought, the merits of the case are decided upon in contentious proceedings before a court of law. In practice, this means that if the opponent does not want a foreign judgment to be validated by *Rechtsöffnung*, the whole case has to be re-tried on the merits before the Liechtenstein courts.

vii Assistance to foreign courts

The provisions of Section 17 et seq. JN provide assistance to foreign courts. Pursuant to Section 27 JN, the LG has to grant legal assistance unless the requested act does not fall within the competence of the LG or if an act is requested that is prohibited by Liechtenstein law or if reciprocity is not given. Where the LG doubts the existence of reciprocity, it has to obtain a binding declaration from the OG in this respect.[34]

26 LGBl 1972/55.
27 LGBl 1997/110.
28 LGBl. 2011 No. 325.
29 Articles 49–53 Liechtenstein Code of Securing Legal Rights (RSO).
30 *Zahlbefehl* according to Section 577 et seq. ZPO.
31 *Rechtsbot* according to Section 592a et seq. ZPO.
32 Article 49(1) RSO.
33 *Aberkennungsklage* according to Article 53 RSO.
34 Section 27(2)(3) JN.

The most common cases of legal assistance for a foreign court in civil proceedings are the service of documents and the examination of witnesses. The court has to provide legal assistance in accordance with the Liechtenstein procedural laws pursuant to Section 28(1) JN.

viii Access to court files

As a rule, court hearings in civil cases are open to the public. However, in specific cases, where the public interest or the protected interests of a person are directly affected, the public may be excluded. Written submissions in civil proceedings are not made available to the public. Therefore, non-parties are not granted access to the court files unless the parties to the lawsuit agree to grant information to a third party or such third party can prove some legal interest (for example, if the information is required for a lawsuit) and is granted access through a court decision. Judgments may be requested by anyone, but are only made available in anonymised form.

ix Litigation funding

There are no rules in Liechtenstein regarding litigation funding by disinterested third parties. It is in principle up to the litigating parties how they fund their litigation.[35] Parties may therefore use third-party funding to pay the legal costs to reduce their risks. Litigation funding usually occurs in large arbitration and litigation disputes or when a number of people suffer losses with a common cause (so that in aggregate, those losses are significant).

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

The duty to avoid any conflict of interest is one of the crucial duties of a lawyer and is stipulated in Article 17 of the Act on Lawyers (RAG). Where a lawyer has represented the opposing party in the same matter or in a matter connected thereto, he or she must not accept the mandate. Likewise, a lawyer must not advise both parties in the same case. These duties are specified in the Professional Conduct Guidelines. Section 18 of the Professional Conduct Guidelines provides that a lawyer must not advise, represent or defend more than one client in the same matter if a conflict of interest or the immediate danger of a conflict of the interest of these clients exists. If such a conflict arises or if there is a danger of a violation of the duty of secrecy or if the lawyer's independence is at risk, the lawyer has to lay down his or her mandate with regard to all clients. Pursuant to Section 19 of the Professional Conduct Guidelines, a lawyer must not accept a mandate if the danger of a violation of his or her duty of secrecy in respect of information entrusted by a former client or the knowledge of the affairs of a former client could present a disadvantage to the former client or an unjustified advantage for the new client. The same requirement to avoid conflicts of interest applies to different lawyers of the same law firm, who are, for this purpose, regarded as one and the same lawyer.[36] The duty of a lawyer to exercise his or her profession independently is of utmost importance, as the client needs to be sure that he or she is advised independently and

35 A limitation only results from Article 23(3) RAG, which provides that *quota litis* agreements or the assignment or pledging of the disputed claim or object are not permitted.

36 Section 19(2) Professional Conduct Guidelines.

in a manner free from conflicts of interest.[37] With a view to this duty and the rules relating to the avoidance of conflicts of interest, Chinese walls are principally not permissible in Liechtenstein.

ii Money laundering, proceeds of crime and funds related to terrorism

To the extent that lawyers provide tax advice to their clients or assist in the planning and execution of financial or real estate transactions concerning:

a the buying and selling of undertakings or real estate;
b the management of client funds, securities or other assets of the client;
c the opening or management of accounts, custody accounts or safe deposit boxes;
d the procurement of contributions necessary for the creation, operation or management of legal entities; or
e the management of trusts, companies, foundations or similar legal entities, lawyers are subject to the Due Diligence Act (SPG) and are obliged to:
- identify and verify the identity of their contractual partner;
- identify and verify the identity of the beneficial owner;
- identify and verify the identity of the recipients of distributions of legal entities established on a discretionary basis and of the beneficiaries of life assurance policies and other insurances with investment-related objectives;
- establish a profile of the business relationship; and
- carry out adequate monitoring of the business relationship for risk.

In conducting due diligence, lawyers must immediately report in writing to the Liechtenstein Financial Intelligence Unit (FIU) where there is suspicion of money laundering, a predicate offence of money laundering, organised crime or terrorist financing. They must not execute any transaction unless refraining in such a manner is impossible or would frustrate efforts to pursue a person suspected of being involved in money laundering, predicate offences of money laundering, organised crime or terrorist financing. The representation of a client in litigation or arbitration matters is not subject to the SPG.

iii Data protection

By a decision of 6 July 2018, the European Economic Area (EEA) Joint Committee announced the incorporation of the General Data Protection Regulation (GDPR)[38] into the EEA Agreement, making the GDPR directly applicable to Liechtenstein as of 20 July 2018. Besides this, the Data Protection Act (DSG) applies, which has been completely revised. The new DSG entered into force on 1 January 2019.

In short, personal data obtained through any professional activity has to be kept secret without prejudice to other legal secrecy obligations unless there is a legally permissible reason for the transmission of the entrusted data. It follows from this that the strict secrecy requirements stipulated by the RAG provide complete protection of personal data provided

37 Article 11 RAG and Section 4 Professional Conduct Guidelines.

38 General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC).

by the client to the lawyer. Therefore, a lawyer can neither grant access to data that may contain personal data of a client to any third party; nor can he or she share such data with other law firms.

The violation of the strict professional secrecy obligations that cover all aspects of the lawyer's relationship with his or her client provided in the RAG is punishable pursuant to Section 121 of the Criminal Code and represents a disciplinary offence.

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

The legal privilege of lawyers is stipulated in Article 15 RAG. A lawyer is obliged to keep confidential all affairs entrusted to him or her, and all other facts that have become known to him or her in his or her professional capacity and that have to be kept secret in the interest of his or her client. The law provides that the lawyer has a right to this professional secrecy privilege in all court and other official proceedings in accordance with the applicable procedural laws. The procedural laws contain provisions allowing the lawyer to preserve secrecy. In particular, Section 321(1)(4) ZPO provides that the lawyer is entitled to refuse to testify as a witness regarding information entrusted to him or her by his or her client. This privilege must not be circumvented by other means; for example, through the examination of employees of the lawyer (Article 15(2) RAG).

Legal privilege extends, in particular, to correspondence between a lawyer and a client, irrespective of where and in whose possession this correspondence covered by the professional secrecy protection is (Article 15(3) RAG).

In-house lawyers are not protected because they are not lawyers in the sense of the RAG. A lawyer who is admitted to a foreign bar may invoke professional secrecy obligations like a Liechtenstein lawyer, and therefore the same level of legal privilege applies to such lawyers.

In a regulatory context, a lawyer has to provide information only to the Financial Market Authority, the FIU and the Office of Justice, and only when the lawyer carries on activities that are subject to the SPG. The information the lawyer has to provide is limited to information and documents that the regulatory authorities require to fulfil their tasks (Article 15(4) RAG). Since the representation of a client in a dispute resolution matter or, more specifically, in court proceedings is not an activity subject to the SPG, this provision is not of great significance in dispute resolution practice.[39]

ii Production of documents

There is no disclosure process or pretrial discovery in Liechtenstein, and yet, in specific and narrowly defined circumstances, the taking of evidence as a form of precautionary measure prior to trial is possible. While third parties or authorities must produce relevant documents in their possession, unless they have a right to refuse to testify under Liechtenstein law, there is no effective means of asking the court to order disclosure of documents from a party for use in the proceedings.[40]

39 See Section IV.ii.

40 Section 304 ZPO.

That is because according to Section 307(2) ZPO, even in relation to documents the production of which has been ordered by the court, a defendant cannot be forced effectively to produce such documents. If he or she refuses to present the documents, the court, in its discretion, may only take this into consideration in the weighing of evidence. The difficulty a plaintiff faces in this respect is that he or she often does not know what documents that might assist his or her case are in the hands of the defendant.

VI ALTERNATIVES TO LITIGATION

i Overview of alternatives to litigation

While arbitration is seen as the main alternative dispute resolution mechanism to ordinary state court litigation, mediation proceedings have less practical importance.

ii Arbitration

Liechtenstein passed new legislation regarding arbitration proceedings with effect from 1 November 2010.[41] The new arbitration legislation generally follows the Austrian model, which again is based on the Model Law on International Arbitration (UNCITRAL Model Law). However, Liechtenstein arbitration law departs in certain aspects from its model to make it more attractive and effective.

The new arbitration law practically[42] permits the submission of all types of disputes in relation to trusts, foundations or companies to arbitration, including, in particular, the removal of trustees (or foundation council members); the challenging of resolutions of trustees (or the foundation council); and the appointment of extraordinary auditors.

The advantages of arbitration are the following:

a the composition of the arbitration tribunal and the appointment of its members may be freely determined;[43]

b the seat of the arbitration tribunal and the language of the arbitration proceedings may be freely determined;[44]

c speedy proceedings, as there is only one instance and the arbitral award may only be challenged before the OG on very limited formal grounds;[45]

d arbitration proceedings are confidential; and

e special provisions have been enacted to provide for extra confidentiality of the proceedings before the OG in cases where the arbitral award is challenged.[46]

41 Sections 594–635 ZPO; LGBl. 2010/182.

42 Exceptions are matters falling within the public supervision of foundations (Report and Motion of the Government No. 53/2010, p. 13) and, in general, proceedings that are initiated *ex officio* or by a public authority (i.e., the LG, the Foundation Supervision Authority or the Attorney General) and based on mandatory law (Section 599(3) ZPO, for instance, removal of trustees in cases of gross breach of duty or incapacity).

43 Sections 603 and 603 ZPO.

44 Sections 612 and 613 ZPO. This allows the appointment of, for example, English trust law experts as arbitrators or the use of English language documents.

45 Section 628 ZPO. Theoretically, the decision of the OG may be challenged with the extraordinary remedy of an appeal to the StGH for alleged violation of constitutional rights.

46 Section 633(2), (3) and (4) ZPO. This was necessary as the proceedings before the OG are generally public. In this respect, it should be noted that, for example, supervisory court matters are generally heard in private to protect the privacy of the involved parties.

iii Mediation

The rules governing mediation in Liechtenstein are contained in the ZMG. The commencement and proper continuation of mediation suspends the statute of limitations in relation to the rights and claims subject to mediation (Article 18(1) ZMG). The suspension of the statute of limitations is effective if one of the parties files a legal action with the LG within 14 days from the termination of the mediation (Article 18(3) ZMG). A settlement reached in a mediation is not binding on the parties and cannot be enforced. Mediation is available for all types of civil law matters. Mediation procedures are of minor importance in Liechtenstein, since Liechtenstein lawyers usually attempt to bilaterally settle a case (without the involvement of a mediator) before formal proceedings are initiated.

iv Other forms of alternative dispute resolution

Another form of alternative dispute resolution available in Liechtenstein is the Conciliation Board, with one mediator. It has been created to deal with conflicts between clients and various financial service providers such as asset management companies, banks, professional trustees and others. The Conciliation Board is regulated in the Ordinance Regarding the Extrajudicial Conciliation Board in the Financial Services Sector (FSV). It is up to the parties to refuse the conciliation proceedings or to abandon them at any time (Article 13 FSV). Conciliation proceedings come to an end if the motion is repealed, the parties reach an agreement, the Conciliation Board makes a proposal for a settlement, the rejection of the motion is obviously abusive or if a court or arbitration tribunal is seized of the matter. If no agreement is reached between the parties, they have to be referred to ordinary legal proceedings (Article 19(2) FSV). In practice, such conciliation proceedings do not play an important role. This is, among other reasons, probably due to the fact that parties may practically decide to abandon the proceedings at any time.

Furthermore, Liechtenstein implemented the EU Directive on Consumer ADR[47] in the Act on Alternative Dispute Resolution in Consumer Matters according to which participation in such proceedings is voluntary. However, companies domiciled in Lichtenstein are obliged to inform consumers about the opportunity of ADR proceedings if they cannot reach an agreement in the case of a dispute.

VII OUTLOOK AND CONCLUSIONS

On 1 January 2021, the second and last partial amendment of the EO in recent years and a major part of an overall amendment of the Liechtenstein Insolvency Act (KO) entered into force in Liechtenstein. Both the EO and the KO were originally based on the respective provisions from the Austrian legal system. These amendments are intended to follow corresponding developments in Austrian law. First, this makes it easier to refer to Austrian literature and case law. Secondly, tried and tested contemporary instruments of execution and insolvency law will now also be available for application in Liechtenstein.

The second and last partial amendment of the EO in recent years pursues two main objectives. On the one hand, open questions concerning the exequatur procedure from the

47 EU Directive on Consumer ADR (Directive 2013/11/EU).

first partial amendment of the EO in 2018 are addressed. On the other, wage garnishment and compulsory auction as well as forced administration of real estate are newly regulated and, if possible and useful, adapted to the Austrian reception template.

The overall amendment of the KO focuses on facilitating the restructuring of companies. For this reason, a reorganisation plan may enable a debtor to make a new economic start. To reduce the stigma of bankruptcy and insolvency to a large extent, the debtor should be able to achieve reorganisation proceedings by submitting an appropriate reorganisation plan even before the opening of insolvency proceedings. If the subsequent proceedings are well prepared, the debtor may even be entitled to self-administration under the supervision of a reorganisation administrator, which should be a further incentive for the debtor to seek the opening of insolvency proceedings in good time. In general, this is also in the best interest of the creditors.

Apart from the above legislative developments, no substantive changes in the legislation governing dispute resolution in Liechtenstein are envisaged in the near future. Because of the liberal legislation relating to companies, foundations and trusts, cases involving foundations and trusts play an important role, in general, as do commercial and company law cases in Liechtenstein. The attractive arbitration law in combination with the New York Convention on the Recognition and Enforcement of Arbitral Awards makes Liechtenstein an attractive place for arbitration.

Appendix 1

ABOUT THE AUTHORS

STEFAN WENAWESER

Marxer & Partner Attorneys-at-Law

Stefan Wenaweser, born in 1972, studied law at the University of Innsbruck, the University of Paris Val-de-Marne (Erasmus) and the University of Edinburgh. He received an LLM from King's College London and a *Dr iur* degree from the University of Innsbruck. He has practised law since 2000, passed the Bar exam in 2003 and became a partner of Marxer & Partner in 2008. He specialised in the law of trusts and company law during his studies, and in his practice he regularly advises clients in foundation law, trust law and litigation. Moreover, he is a specialist in the defence of white-collar crime cases and legal assistance in criminal matters. He frequently speaks at conferences and regularly writes contributions to renowned publications on trust law, wealth and estate planning, litigation and white-collar crime. In addition, he functions as a member of the board of the Liechtenstein Institute of Professional Trustees and Fiduciaries.

CHRISTIAN RITZBERGER

Marxer & Partner Attorneys-at-Law

Christian Ritzberger, born in 1984, studied law and economics at the University of St Gallen (HSG) first, where he earned an MA degree in law and economics in 2010. He then graduated from the Private University of the Principality of Liechtenstein (UFL) in Triesen with a *Dr iur* degree in 2016. In 2017, he was awarded the qualification Liechtenstein fiduciary expert by the University of Liechtenstein, Vaduz. In 2018, he earned a certificate in national and international tax law from the University of Liechtenstein. He went in for the Liechtenstein Bar examination in 2013, and before joining Marxer & Partner Attorneys-at-Law in 2016 he worked for the internationally operating Ivoclar Vivadent AG in Schaan as a law clerk at the Princely Court in Vaduz and as a legal associate with major Liechtenstein law firms. He focuses on foundation, trust and company law. Moreover, he is a specialist in the defence of white-collar crime cases and legal assistance in criminal matters. In addition, he regularly writes contributions for renowned publications on wealth and estate planning and litigation.

LAURA NEGELE-VOGT

Marxer & Partner Attorneys-at-Law

Laura Negele-Vogt, born in 1990, studied law at the University of Lucerne and the Northwestern Pritzker School of Law (student exchange programme). She joined Marxer & Partner Attorneys-at-Law in 2014 and passed the Bar exam in 2017. She is part of the litigation team of Marxer & Partner Attorneys-at-Law.

EDGAR SEIPELT

Marxer & Partner Attorneys-at-Law

Edgar Seipelt, born in 1989, studied law and finance at the University of Innsbruck and the University of Bern (student exchange programme). He currently holds a master's degree in finance and a *Dr iur* degree in law. Before joining Marxer & Partner Attorneys-at-Law in 2019 he served as a law clerk at the Higher Regional Court of Innsbruck. He currently focuses on dispute resolution matters.

MARXER & PARTNER ATTORNEYS-AT-LAW

Heiligkreuz 6
PO Box 484
9490 Vaduz
Liechtenstein
Tel: +423 235 81 81
Fax: +423 235 82 82
stefan.wenaweser@marxerpartner.com
christian.ritzberger@marxerpartner.com
laura.negele@marxerpartner.com
edgar.seipelt@marxerpartner.com
www.marxerpartner.com

an LBR business

ISBN 978-1-83862-770-6