

DISPUTE RESOLUTION

Liechtenstein



Dispute Resolution

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into litigation, arbitration and alternative dispute resolution (ADR) worldwide, including court systems; judges and juries; limitation issues; pre-action behaviour, starting proceedings and timetable for proceedings; case management; evidence; remedies; enforcement; public access; costs; funding arrangements; insurance; class action; appeals; foreign judgments and proceedings; the role of the UNCITRAL Model Law on International Commercial Arbitration; choice of arbitrator; arbitration agreements and arbitral procedure; court interventions in arbitrations; awards; types of ADR; requirements for ADR; other interesting local features; and recent trends.

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LITIGATION

Court system

What is the structure of the civil court system?

The Principality of Liechtenstein is a hereditary constitutional monarchy on a democratic and parliamentary basis and is a civil law jurisdiction.

The laws governing dispute resolution are primarily the Code of Civil Procedure (CPC), the Jurisdiction Act (JA) and the Enforcement Act (EA). Non-contentious proceedings are governed by the special Act on Special Non-Contentious Proceedings in Civil Matters.

The organisation of the courts is governed by the Court Organisation Act. The civil courts all have their seat in the capital Vaduz. In general, there are three levels and only three civil courts in Liechtenstein.

- the Princely District Court (DC);
- the Princely Court of Appeal (COA); and
- the Princely Supreme Court (SC).

In addition, the Liechtenstein Constitutional Court is established as a separate instance to protect constitutional rights.

Also, in dispute resolution matters access to the following international courts of law is possible under certain requirements:

- EFTA Court in Luxembourg (equivalent to the European Court of Justice (ECJ) in the EU); and
- European Court of Human Rights in Strassbourg, France.

The DC is the first instance for all civil law and also criminal law matters and is composed of 15 single judges of which four are acting as investigating judges in criminal proceedings and two are mainly dealing with Foundation supervisory matters. Certain matters in simplified proceedings such as foreclosure, probate and guardianship cases, can also be handled by specially trained non-judicial officials of the DC who are bound by instructions of the judges. There are no juries in civil proceedings.

Both the COA and the SC are collegiate courts and consist of three, respectively two senates. Each senate of the COA is composed of three judges, ie, a senate chairman and two senior judges whereas the senate of the SC is composed of a senate chairman and four most senior judges.

There are not yet any special courts installed for specific matters however currently discussions are ongoing on a reform of the court system which also could include the implementation of special courts for Foundation law and Trust law.

The majority of the judges must have Liechtenstein citizenship. Also, traditionally the SC is composed of professors and experienced supreme court judges from abroad. The judges are selected by a selection committee composed of the Reigning Prince and members of the Parliament.

Law stated - 14 June 2023

Judges and juries

What is the role of the judge and the jury in civil proceedings?

The civil proceeding is governed by certain principles which define the relationship between the court and the parties and their duties (principle of party disposition, principle of party presentation, investigation principle, principle of ex officio proceedings and duty of instruction). As opposed to the common law system the judge in a civil law system generally has a far more active role when it comes to taking the evidence.

The principle of party disposition gives the parties largely control over the lawsuit. The parties decide whether, when and to what extent civil proceedings shall be initiated, what the subject matter of the proceedings shall be and which evidence shall be taken but merely has to ascertain the truth based on the evidence presented by the parties. The parties also are obliged to present their evidence and the judge does not have a duty to ascertain facts on its own. In case corresponding facts have been alleged by a party, the judge may collect additional evidence that has not been requested by the parties. However, including documents and the hearing of witnesses is not permitted if both parties object to taking such evidence.

Also, the parties decide the way and point in time the proceeding shall end such as withdrawal, acknowledgement, settlement or court decision. Thus, the judge is bound by the motions of the parties and is barred from deciding on matters that go beyond the subject matter defined by the parties.

Due to the duty of instruction the judge is obliged to instruct the parties if their pleadings are unclear, incomplete or lack precision and give possibility for an improvement. Also, the judge is obliged to discuss the factual and legal pleadings with the parties and may not base the decision on any legal ground that the parties obviously were not aware of without giving the parties opportunity for making statements beforehand.

In some proceedings such as in foundation supervisory proceedings and non-contentious matters in general, the investigation principle applies which gives the judge largely control over the subject matter of the proceedings and in particular the ability to decide on evidence to be taken and to even go beyond the scope of applications of the parties when deciding on the matter.

Also, the court has to determine and apply the law ex officio. The principle of iura novit curia applies also in all proceedings but only with regards to domestic law. The courts also take into account foreign law, but in case foreign law applies the parties of the proceedings are obliged to present the foreign law and submit evidence, eg, by presenting the statutory law or by expert witnesses.

Law stated - 14 June 2023

Limitation issues

What are the time limits for bringing civil claims?

Liechtenstein law treats limitation periods as a matter of substantive law, not procedural law. The general limitation period is 30 years after a claim arises. However, for certain types of contractual claims, the limitation period is five years (eg, claims for delivery of goods or performance of work or other services in a trade, business or other enterprises, claims for rent, claims of employees etc.) or less (eg, three years for the right to challenge a testamentary disposition).

Claims for damages become time-barred within three years after the damaged party has become aware of the damage, the damaging party and the causal relation of both. For claims against a financial intermediary in connection with a financial services transaction, the absolute time limit is reduced to 10 years after the claim arises. In all other cases, the absolute limitation period is 30 years after the occurrence of the harmful event. In any event, however, if the damage is caused by a criminal offence punishable with imprisonment of more than three years, the limitation period

for such claim is always 30 years.

Law stated - 14 June 2023

Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

In Liechtenstein, there is no compulsory conciliation proceeding necessary before the filing of a legal action or application.

Anyhow, a party may apply for a conciliation attempt and the summons of the opponent for this purpose. However, this is very unusual, entirely voluntary and only possible if the opponent resides in Liechtenstein. The nonappearance of the opponent has no consequences.

Law stated - 14 June 2023

Starting proceedings

How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

Civil proceedings are initiated by filing a legal action or application with the DC, which includes an outline of the jurisdiction of the court, the set of facts on which the claim or application is based, the evidence that shall be taken to prove the facts and the relief sought. A legal outline is not required, however, in most cases, it is recommended to be included for clarification purposes.

Provided the court accepts the jurisdiction, the defendant is then notified by being served with the legal action or application ex officio after the court fees have been paid. If the defendant is not domiciled in Liechtenstein, service of the action and the claim documents is regularly effected by a letter rogatory in civil matters via the competent court at the domicile of the defendant.

In case the civil proceeding is initiated by an application for an injunction which pursues the purpose of securing the claims, a different process applies.

Liechtenstein courts are widely known to be highly efficient and able to handle also high caseload of complex and demanding cases with international aspects. Also, they are known to have a very short overall duration of proceedings when compared with other jurisdictions.

Law stated - 14 June 2023

Timetable

What is the typical procedure and timetable for a civil claim?

After the filing of the legal action the court the court fees have to be paid by the applicant. Thereafter the court serves the claim documents to the defendant and sets a date for the first oral hearing. At the first oral hearing, the defendant may raise formal objections (such as lack of jurisdiction) and apply for an order for a security deposit for costs in case the claimant is a foreign person or a legal entity.

After the security deposit has been made or it is clarified that no deposit applies, the court orders the defendant to provide a counterstatement to the claim.

Thereafter the court schedules a case management hearing where it is determined based on the submissions of the

parties whose evidence shall be taken. The court also passes an order as to which evidence shall be taken.

The case is then heard in one or more oral hearings where the parties can present their arguments, witnesses are examined, and also expert opinions are obtained. If the judge holds that sufficient facts have been taken that allow a decision to be made, the judge closes the taking of evidence, potentially dismisses outstanding further evidence taking which it considers to be irrelevant and thereafter delivers the written judgment.

Generally, factual pleadings and new evidence may be put to the court by the parties until the closing of the oral hearing. The court however may refuse to take evidence in case the evidence has been negligently brought forward and if the taking would considerably extend the proceedings.

The duration of the taking of evidence in the first instance highly depends on the subject matter and the complexity of the case. If an extensive taking of evidence is required (eg, a large number of witnesses, hearing of witnesses abroad by letter rogatory, expert witness reports), the taking of evidence at the DC can be up to one year, in complex cases even longer.

Generally, a decision of the DC can be obtained within one year. The appeal proceeding before the COA usually would take three to six months. In case of a further appeal to the SC, a decision can also be expected within three to six months.

Law stated - 14 June 2023

Case management

Can the parties control the procedure and the timetable?

Generally, the judge has control over the case management and in particular on the sequence of taking the different evidence offered, when hearings shall take place and when the taking of evidence shall be closed and a decision be rendered. However, judges usually also try to accommodate the preferences of the parties in case they agree on certain conduct.

In case of delays in the case handling caused by the other party, applications for setting time limits for taking the evidence may be filed, which the judge has to decide upon based on the general procedural principles. In case of substantial delays in the case handling caused by the judge, the parties may apply with the supervisory judge for setting deadlines or file disciplinary complaints.

Law stated - 14 June 2023

Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Other than in several common law jurisdictions, Liechtenstein law neither knows any discovery proceedings nor a duty of parties to preserve evidence in view of an upcoming or pending trial. Only certain licensed entities have an obligation to maintain and archive files for a certain period, however without being obliged to generally disclose them to the opposite party. Thus, each party generally has to ensure to have its own documentation relevant to the claim.

Parties are also not obliged to present documentation that may be contrary to their interest. This rule is limited by the principle that each party is obliged to make true, correct and complete statements in the proceeding. Under certain conditions, parties may request the edition of documents in the possession of the opposing party or a third party. This is in particular the case if a party refers to a document or it is a mutual document.

Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Parties and witnesses are generally obliged to appear and testify. However, there are also certain exceptions under which witnesses may refuse testimony.

This in particular applies in cases of legal secrecy obligations of a lawyer. Section 321 of the CPC provides that the lawyer is entitled to refuse to give testimony on all information entrusted to him or her by the client. This privilege must also not be circumvented by other means such as the examination of employees or an order to produce certain documents. The privilege includes client-attorney correspondence irrespective of where and in whose possession the correspondence is. The above applies for Liechtenstein and foreign lawyers alike. Thus, foreign lawyers who are members of a bar association may invoke the same principles for the client-attorney relationship. The secrecy obligations of an attorney are additionally protected by criminal procedure laws. Thus client-attorney documentation also generally is exempt from seizures in criminal proceedings.

However, in-house lawyers do not enjoy the same protection under procedural law as they are formally not acting as an attorney at law within the meaning of procedural law and the Act on Attorneys.

Additionally, Liechtenstein law also knows a similar secrecy obligation for professional trustees with regard to all information they have been entrusted with by their client.

Law stated - 14 June 2023

Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

As opposed to many common law jurisdictions, Liechtenstein Law does not have any general duties to preserve evidence or any pretrial discovery obligations.

The CPC only allows for the preservation of evidence under certain conditions. If the conditions apply, certain witnesses or parties may be heard before the commencement of the case – particularly if the danger is given that the evidence may not be available any more in the future.

Law stated - 14 June 2023

Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

There are five main types of evidence under Liechtenstein procedural laws, namely documentary evidence, witness testimony, expert witness testimony, inspection on the spot and party testimony. These types of evidence, however, are not exhaustive. Procedural law also accepts other types of evidence such as tape and video recordings, electronic data, biological evidence, etc. Also, as opposed to other jurisdictions, evidence that has been obtained by unlawful acts is permitted in civil proceedings.

The general rule is that each party must evidence the facts that form the basis of the respective position and are favourable to the respective party. Based on the principle of immediacy and orality of proceedings, judges shall obtain

an immediate impression of the evidence. Thus, only what has been brought forward in an oral hearing may form the basis of a decision. Therefore, witnesses must testify orally and will be questioned by the court and the parties. Expert witnesses may provide written expert statements and are only heard based on the application of either party.

Records of witness statements made in other court proceedings are only admissible as evidence if all parties agree or if all parties were involved in the other court proceedings and the evidence is no longer available.

Witnesses that are not willing or able to appear before the court in Liechtenstein may be interrogated by a foreign court based on a letter rogatory proceeding. Also, since January 2019 a witness may be heard by means of video conference instead of letter rogatory proceedings under certain requirements.

Law stated - 14 June 2023

Interim remedies

What interim remedies are available?

According to the applicable rules of the EA interim injunctions may be issued upon application prior to, during the course of a proceeding or even in an enforcement proceeding to secure the claims and rights of the claimant in case the absence of an injunction would lead to the risk that the claims asserted by the claimant could not successfully be enforced in the future based on the court decision that shall be obtained in the main proceeding. This applies in case the future court decision ordering a payment would have to be enforced abroad.

Injunctions for instance may secure monetary claims by putting a lien on certain assets of the defendant located in Liechtenstein which the applicant would have to identify in the application. In this regard, it is noteworthy that also overall rights and claims can be seized that only grant indirect access to certain assets, such as instruction rights, voting rights etc. Injunctions also may serve as a means to preserve a certain status quo which shall be adhered to until termination of the proceeding. It is however not possible to search for and pledge undefined assets of a debtor. Search warrants are only possible in the context of criminal proceedings.

The applicant must provide prima facie evidence for his claim and the endangerment of his claim that makes the injunction necessary. An endangerment is given, if the claimant without an injunction would have to enforce the asserted claims abroad or if the claims could not be effectively enforced.

Based on a recent decision of the ECHR as a general rule, the court has to hear the defendant before issuing the injunction. However, if the hearing of the defendant before issuing the injunction may jeopardize the effectiveness of the injunction, such as that it leads to the risk of disposal or moving of the assets, the injunction may still be issued on an ex parte basis. In such cases, an injunction usually can be obtained within one to two weeks.

Generally, an injunction may exist as a standalone measure but must be justified by a main proceeding in which a claimant pursues his main claim. The main proceeding can be a proceeding in Liechtenstein or any other proceeding abroad which leads to a decision enforceable in Liechtenstein. Arbitration proceedings can also serve as the justifying main proceeding.

When granting the injunction, the court also sets a time limit within which the initiation of the main proceeding has to be evidenced or otherwise the injunction be lifted. In case a main proceeding is already pending, the court determines that this proceeding serves as the justification proceeding.

In the injunction, the court may also order the applicant to provide a security deposit for costs or damages if the court holds that the applicant was not able to sufficiently attest to the claims. Further, the injunction is always granted at the risk of the applicant who, in case of loss of the main proceeding, is liable for all loss and damage of the defendant caused by the injunction.

In very urgent cases also so-called super-provisional injunctions can be obtained within a day which then has to be

followed up with an application for an injunction within two days thereafter.

Law stated - 14 June 2023

Remedies

What substantive remedies are available?

For contractual and tort claims the principles of damages law foresee a restitution in kind (specific performance) as the primary remedy. If restitution in kind is not feasible, regular monetary damages apply. Further, a claimant can also ask for specific performance under a certain agreement as well as for omissions.

However, punitive damages cannot be asked for in Liechtenstein as they are against the principle that only the damage and loss suffered shall be remedied. Thus, for the same reason, decisions of foreign courts ordering punitive damages are not enforceable in Liechtenstein as far as they exceed the actual damage suffered.

Law stated - 14 June 2023

Enforcement

What means of enforcement are available?

The EA provides for a broad array of enforcement means and the applicability depends on the underlying claim that shall be enforced.

Decisions ordering payments allow the seizure and auctioning of all kinds of assets of the debtor. A lien can be put on all kinds of claims and rights of the debtor that have any monetary value. In particular, claims and rights that only indirectly grant access to assets can be attached and transferred to the claimant. Also, forced administration of companies or other properties is a possible means of enforcement.

In case the decision to be enforced orders a party for a personal act or omission for the benefit of another party enforcement can be made by ordering personal actions of the debtor subject to fines or imprisonment of up to 12 months in case the action cannot be taken by a third person. If the act can also be performed by a third party, the court will order such act to be taken by the third party at the cost of the debtor.

Law stated - 14 June 2023

Public access

Are court hearings held in public? Are court documents available to the public?

In civil proceedings, generally, the oral hearings and announcements of the decision are public. Under certain conditions, however, the public may be excluded from hearings such as in case it is required to protect business secrets. Also, some types of proceedings are generally not open to the public such as injunction hearings and hearings in non-contentious proceedings regarding very private and family matters. Recordings of public hearings however are not permitted even if they are public.

The entire written documentation regarding the court case such as the submissions, evidence documents and decisions are also not accessible to the public. However, individuals that can show legal interest in the content of the case file may be granted access to the file based on a reasoned application. The court decisions of lower instances are not published. Only certain relevant decisions of the SC are published however on an anonymous basis.

Law stated - 14 June 2023

Costs

Does the court have power to order costs?

The general rule is that the losing party has to reimburse the costs of the successful party according to the applicable lawyer's tariff. In case a party is only partly successful, only parts of the costs are reimbursed based on the quota of success. The law, however, also provides for several exceptions and special rules. The lawyer's tariff defines the costs based on the amount in dispute and certain procedural actions. In the case of lower amounts in dispute, the procedural costs the losing party has to reimburse often do not correspond to the effective procedural costs the party has to bear vis a vis the engaged lawyer.

A foreign claimant further is obliged to provide for a security deposit for the presumed procedural costs of the defendant in case the claimant is resident in a country where a cost decision of a Liechtenstein court could not be enforced. Legal entities acting as claimants also generally are obliged to provide a security deposit for presumed procedural costs. However, also exemptions apply, such as if the entity is able to show sufficient funds within Liechtenstein or another country where Liechtenstein cost decisions are enforceable. Also, exemption from the obligation to provide a security deposit can be obtained based on an application for legal aid in case the claimant and in case of legal entities also the persons potentially benefiting from the claim are not able to provide for the deposit. Legal aid is granted only, if the litigation is not considered vexatious or futile.

The security deposit can be provided by wire transfer or also by a bank guarantee of any bank within the EU/EEA.

With the decision on the matter the court also passes an order to reimburse the necessary and appropriate costs based on the principles defined in the CPA. These principles also allow for refusal to grant reimbursement of costs for certain actions, in particular if they were unnecessary for the pursuit of the claim. In certain types of proceedings such as non-contentious proceedings, the court has wider discretion on the principles of allocating costs to either of the parties. The amount of the costs is always defined by the lawyer's tariff.

Law stated - 14 June 2023

Funding arrangements

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Due to the rules of the Attorneys Act lawyers are generally prohibited from entering into quota litis agreements or from taking over and pursuing claims at their own risk and cost. Thus, attorneys may also not act as litigation funders. Thus, 'no win, no fee' agreements or other types of contingency fees are generally not permissible. An attorney may however agree on a basic fee with an additional success fee depending on the success of the case whereas the conditions and amount must be precisely defined.

The limitations under the Attorneys Act however do not apply to other persons who do not qualify as Attorneys. Therefore, litigation funding generally is permitted and also widely used in Liechtenstein, in particular in international complex asset recovery matters or arbitration proceedings. Additionally, in cases of mass claims professional litigation funders are getting engaged. Thus, a claimant of a civil case may also shift his risk of the proceeding to a third party for a share in the outcome of the proceeding. Due to commercial reasons, litigation funding however in practice is only interesting in case of larger amounts in dispute and only for the side of the claimant.

Insurance**Is insurance available to cover all or part of a party's legal costs?**

There are different types of insurance possible to obtain insurance coverage for protection against the financial risks associated with civil cases as a claimant and a defendant and also associated with other types of proceedings. However, depending on the terms of the insurance policy there may be substantial restrictions on the coverage in terms of scope and amount covered (insurance sum). Further restrictions may also apply regarding the hourly rates covered by the insurance. However, a restriction on the selection of an attorney is not permitted.

Further D&O insurance may also provide for coverage not only of the procedural costs but also the financial obligations towards the other party. Insurances are thus more likely to be utilised in the role of a defendant in a case.

*Law stated - 14 June 2023***Class action****May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?**

Liechtenstein law does not know an institute similar to the class actions under common law.

The procedural law however allows for a joinder of claimants or defendants under certain requirements. Parties may act as joint claimants or defendants if their claims are based on the same or at least similar factual and legal grounds and the claims fall under the jurisdiction of the Liechtenstein courts. In such cases, the case of the joint parties is heard together.

Further, it is also possible to formally join several independent cases together into one case for the taking of evidence. In such cases, however, separate final decisions are rendered.

However, in any event, it is required that a certain party actively participates in the proceeding and it is not possible to render decisions for or against persons or entities that were not formally party of the proceeding.

The Consumer Protection Act however allows consumer protection organisations to file claims for omission on behalf of several individuals for example against the terms and conditions of businesses that are disadvantageous to consumers. However, these claims are not class actions in the strict sense as they are limited to determining that certain conduct or clauses are not in accordance with the law and omission is ordered.

*Law stated - 14 June 2023***Appeal****On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?**

Judgements of the DC may be appealed to the COA within four weeks. The COA may then either confirm or amend the decision or annul the decision and remand the matter back to the first instance for further taking of evidence or correction of procedural errors and rendering a new decision. An oral hearing at the COA is only conducted upon application of one of the parties or if the COA itself considers it to be necessary. The procedural law allows for new facts and evidence to be presented in the appeal submission as long as the underlying claim that is asserted remains

identical. An amendment of the claim is generally not possible. The COA may also refuse to permit further facts or evidence if it concludes that they were negligently brought forward with delay. In the appeal, the factual findings, procedural errors and the legal assessment may be contested. For some procedural errors, a prior rebuke in the oral hearing is required in order to permit a later contesting in the appeals proceeding.

Unless explicitly excluded in the law all other decisions of the DC that are not judgments, such as orders, may be appealed to the COA within 14 days. Exceptions from a separate appeal are procedural orders on the conduct of the proceeding or other decisions that may be appealed together with the main decision.

Decisions of the COA also generally may be appealed to SC whereas some limitations apply. Judgments of the COA may be appealed within four weeks. However, an appeal to the SC is excluded in cases of low amounts in dispute (up to 5,000 Swiss francs) or in cases where the COA has fully confirmed the decision of the DC (up to 50,000 Swiss francs amount in dispute). The appeals proceeding before the SC is in writing only.

Orders of the COA generally may be appealed within 14 days subject to limitations. Orders of the COA that confirm orders of the DC may not be further appealed. Also, orders related to any question of costs may not be appealed to the SC, but the COA is the last instance regarding costs.

The SC also only deals with the legal questions and procedural errors of the COA but not with any questions on facts. Also, no new facts are allowed in the proceeding. The SC decides in writing without a prior oral hearing.

Decisions of the final instance that also are conclusive on a certain item and thus are not merely remanding a matter back to a lower instance may be appealed to the Liechtenstein Constitutional Court within four weeks after service of the decision that shall be appealed.

In the appeal, only violations of constitutional rights may be asserted such as violation of constitutional rights granted by the Liechtenstein Constitution and the European Convention on Human Rights. The Constitutional Court only may annul the appealed decision and remand back for a new decision in adherence with the constitutional rights. The ordinary courts are then bound by the legal considerations of the Constitutional Court.

Appeals against judgments to the COA and the SC have suspensive effect and the underlying decision does not become enforceable until becoming final and binding. However, appeals against orders do not have any suspensive effect and orders of the courts generally are enforceable right after being issued – though upon application, the higher instance may grant suspensive effect.

An appeal to the Constitutional Court also does not have any suspensive effect by itself but can be granted by the Constitutional Court upon application if the conditions for suspensive effect are given.

Law stated - 14 June 2023

Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

Liechtenstein is not a member state of any multilateral treaties on the enforcement of court decisions such as the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 1988/2007 or the Council Regulation (EC) No. 44/2001 of 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels I Regulation). Thus, foreign decisions only may be enforced in Liechtenstein to a limited extent.

The only exception for multilateral treaties is the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 to which Liechtenstein is a member.

According to the EA decisions of foreign courts are generally only recognised and enforceable in Liechtenstein in case it is provided for in bilateral treaties or if reciprocity is guaranteed to the government. Given that no such reciprocity

declarations have been provided, the latter rule is irrelevant.

Liechtenstein has only concluded bilateral treaties on the recognition and enforcement of court decisions in civil law matters with Switzerland and Austria. Under the treaties the following requirements further have to be met to allow for recognition:

- the recognition must not be contrary to the public policy of Liechtenstein and the objection of *res iudicata* must be observed (no prior Liechtenstein decision on the same matter);
- the deciding court must have had jurisdiction based on one of the principles set out in the treaty (eg, mere jurisdiction based on assets would not suffice);
- the judgment must be final and binding according to foreign law; and
- in the case of a default judgment, the writ of summons initiating the proceeding must have been served on the party in default personally or on a proper representative.

In most cases, foreign decisions cannot be enforced in Liechtenstein. Thus, a foreign creditor must obtain an enforceable Liechtenstein decision to be able to enforce claims into assets located in Liechtenstein. A foreign final and binding decision can serve as a means to allow the creditor to obtain an enforceable Liechtenstein decision in a fast-track proceeding. The foreign creditor would first obtain a payment order of the DC against the debtor. In case the debtor files an objection against this payment order within the 14-day time limit, the creditor may then obtain an annulment of the objection in a summary proceeding by utilising the foreign final and enforceable decision (*Rechtsöffnung*). If the requirements are met the DC then declares the annulment of the objection and reinstates the payment order. The debtor then may initiate a revocation proceeding within 14 days which is an own regular contentious proceeding in which the debtor may relitigate the matter. However, the roles of the claimant and defendant are reversed, whereby the debtor must act as the claimant and has the burden to prove the non-existence of the claim.

Law stated - 14 June 2023

Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

With regard to legal assistance in civil matters, Liechtenstein has signed the European Convention on Information Relating to Foreign Law and the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.

Further, the provisions of the Jurisdiction Act provide that the DC must grant legal assistance unless the bilateral agreements do not provide differently. Legal assistance however has to be refused in case the act requested does not fall into the competence of the DC, is prohibited by Liechtenstein law or if reciprocity is not given. In the case of doubt on the question of reciprocity, a binding declaration of the COA is to be obtained.

Further, the DC must adhere to the Liechtenstein procedural laws when providing legal assistance.

The most common cases of legal assistance for a foreign court in civil matters are the service of documents and the examination of witnesses.

Law stated - 14 June 2023

ARBITRATION

UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

Liechtenstein arbitration generally follows the Austrian model, which is based upon the Model Law on International Arbitration (UNCITRAL). In order to make the law more attractive and effective the Liechtenstein arbitration law however included several amendments.

In general, all claims arising from rights involving an economic interest that are usually decided by domestic courts are arbitrable. All other claims are arbitrable if the parties are capable of reaching a settlement on the subject matter of the dispute.

Further all types of disputes in relation to trusts, foundations or companies to arbitration, including disputes among participants of a trust or Foundation, the removal of trustees of a trust or members of the foundation council or the challenging of resolutions of trustees of a trust or the foundation council.

However, matters that by mandatory law fall within the scope of the foundation supervisory court such as the removal of trustees or members of the foundation council for gross breach of duties, or proceedings that are initiated by a public authority ex officio (eg, the Princely District Court (DC) or the Foundation Supervision Authority) are exempt from arbitration.

Law stated - 14 June 2023

Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement must be in writing and must be contained either in a written document signed by both parties or in letters, telefaxes and emails or other means of transmitting messages between the parties that provide a record of the agreement. Also, a contractual referral to a document containing an arbitration agreement such as a reference to general terms and conditions constitutes an arbitration agreement. Usually in practice the arbitration clauses and agreements define the applicability of the Liechtenstein Arbitration Rules of the Liechtenstein Arbitration Association (LIS) which provides for a detailed and concise set of arbitration rules similar to the Rules of Arbitration, administered by the ICC International Court of Arbitration.

Law stated - 14 June 2023

Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Unless otherwise provided in the arbitration agreement, the number of arbitrators according to the provisions of the Code of Civil Procedure (CPC) is three whereas each party appoints one arbitrator which then in turn appoints a third arbitrator as chairman. If a party fails to appoint an arbitrator within time after having obtained the request the arbitrator shall be appointed by the court upon further request of a party. The appointment of an arbitrator may only be challenged if circumstances exist that give rise to justifiable doubts on impartiality or independence or do not have the qualifications agreed upon by the parties.

Law stated - 14 June 2023

Arbitrator options

What are the options when choosing an arbitrator or arbitrators?

Generally, the parties may freely determine the composition of the arbitral tribunal and also may freely agree on the number of arbitrators and the appointment process. By law, only full-time judges of the Liechtenstein courts are excluded as arbitrators. If the parties have agreed on an even number of arbitrators, they must appoint a further person as chair. A person approached for possible appointment as an arbitrator must disclose any circumstances relevant to the questions of impartiality or independence. After appointment, an arbitrator must disclose any such circumstances to the parties without delay, unless they have already been informed and consented to the continuation on this informed basis.

Even if a formal legal education is not required to be eligible as arbitrator parties are of course well advised to choose a person that has the legal and professional expertise for the specific dispute as well as the skills and capacities to handle the process. In practice often lawyers from the large pool of local and international members of the LIS are selected as they are able to meet the requirements also for complex arbitration cases.

Law stated - 14 June 2023

Arbitral procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The arbitral tribunal adjudicates the dispute pursuant to the statutory provisions or other provisions as agreed upon by the parties.

Unless the parties have agreed otherwise, any agreement on the applicable law or the legal system of a state shall be construed as referring to the respective substantive law and not to its conflict of laws rules.

In the absence of a choice of law, the arbitral tribunal shall apply the statutory provisions or rules of law it considers appropriate which are the provisions that have the closest connection to the dispute.

Subject to the mandatory provisions of section 611 et seq CPC (such as the right to be heard), the parties are also free to agree on procedural rules. The parties may also refer to other rules of procedure. Failing such agreement, the arbitral tribunal, subject to the provisions of the applicable law, must conduct the arbitration in such manner as it considers appropriate.

Often the arbitration clauses refer to or the parties separately agree to apply Liechtenstein Rules issued by the Liechtenstein Arbitration Association which provide for a detailed and concise set of procedural rules and thus clarity and certainty.

Law stated - 14 June 2023

Court intervention

On what grounds can the court intervene during an arbitration?

Generally, the arbitration agreement establishes an exclusion of the jurisdiction of the national courts. If a court is approached with a claim that is subject to an arbitration agreement, the court has to reject the claim, unless the defendant enters into the claim by making submissions on the matter itself without objecting to the jurisdiction. If the court however establishes that there is no valid arbitration agreement or that it cannot be performed, the court may also hear the case.

Also, as a general rule, when an arbitration proceeding is pending, no parallel other arbitration case or court case in the same matter may be commenced and any other such claim must be rejected. Some minor exceptions apply.

However, the law provides that even in case of valid arbitration agreements, the regular courts, in particular, still have competence on the following items which also cannot be overridden by agreement:

- Decisions on applications on interim measures in connection with the arbitration case (602 CPC);
- Appointment, rejection or early dismissal of an arbitrator under certain preconditions (604 et seq CPC);
- Enforcement of provisional measures validly ordered by the arbitral tribunal (610 CPC); and
- Decisions on applications to set aside the arbitration award (628 CPC).

Law stated - 14 June 2023

Interim relief

Do arbitrators have powers to grant interim relief?

Unless otherwise agreed by the parties in the arbitration agreement, the arbitral tribunal upon request of a party may order provisional or protective measures against a party in relation to the subject matter of the dispute in case otherwise the enforcement of the claim would be frustrated or substantially more difficult or if there is a risk of irreparable damage. Before imposing such measures, the arbitral tribunal is obliged to hear the other party and also may request the applying party to provide security for potential costs and damages in connection with the demanded interim measure (610 CPC).

As outlined above the power to enforce an interim measure against the other party however solely remains in the competence of the civil courts under the respective domestic laws.

It is noteworthy that according to the Liechtenstein Rules the competence to order interim measures shall be only with the arbitral tribunal and the parties shall not address the regular courts with applications for interim measures after the arbitral tribunal has been established.

Law stated - 14 June 2023

Award

When and in what form must the award be delivered?

Once the arbitral tribunal holds that the facts are duly presented and the matter is ready for decision, it will close the proceedings and render the arbitral award.

The award shall be made in writing and signed by the arbitrators. Unless agreed otherwise, the signatures of the majority of members of the arbitral tribunal shall suffice, provided that the chairman or another arbitrator shall indicate on the award the obstacle to the absence of signatures. Unless not agreed otherwise by the parties, the award must give the reasons that form the basis of the decision, the date on which it was rendered and the seat of the arbitral tribunal (612 CPC). A copy of the award signed by the arbitrators shall be sent to each party.

The award and the documentation on its service are joint documents of the parties and the arbitrators. The arbitral tribunal must agree on the safekeeping of the award and the documentation of its service with the parties. Upon request of a party, the chair is obliged to confirm that the award is final and enforceable (623 CPC).

Law stated - 14 June 2023

Appeal

On what grounds can an award be appealed to the court?

An arbitral award and also awards ruling on the jurisdiction of the arbitral tribunal may only be appealed with an action filed with the COA within four weeks following the rendering and receipt of the award. The action may only apply to set aside the award. The COA has the jurisdiction as first and last instance, notwithstanding a possible extraordinary appeal to the Constitutional Court for alleged violations of constitutional rights.

According to Liechtenstein law, the arbitral award may be set aside only for the following reasons:

- There is no valid arbitration agreement in place, or the arbitral tribunal has denied jurisdiction despite the existence of a valid arbitration agreement;
- A party was not given proper notice of the appointment of an arbitrator, the arbitral proceedings or was for other reasons unable to present its case;
- the award decides on a dispute not covered by the arbitration agreement, or contains decisions on matters that are beyond the scope of the arbitration agreement or the applications of the parties;
- the arbitral tribunal was not constituted in accordance with the provisions of the law or the applicable arbitration agreement of the parties;
- the arbitral proceeding was conducted in a manner that conflicts with the Liechtenstein public order;
- the requirements under which an action for reopening could be filed against a court judgment are met;
- the subject matter of the dispute is not arbitrable under Liechtenstein law; and
- the arbitral award conflicts with the Liechtenstein public order.

Law stated - 14 June 2023

Enforcement

What procedures exist for enforcement of foreign and domestic awards?

Liechtenstein has adopted the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention). Thus, arbitral awards that have been obtained before the arbitral tribunal and in proceedings in accordance with the New York Convention constitute enforcement titles and can be enforced in Liechtenstein without re-examination of the merits of the case.

The enforcement of arbitral awards lies solely in the competence of the state courts and is governed by the provisions of the Enforcement Act. For an enforcement, an original or certified copy of the award along with the confirmation of the arbitrators is required that the award is final and enforceable. In the case the award is in a foreign language, a translation is required as well.

Law stated - 14 June 2023

Costs

Can a successful party recover its costs?

Once the arbitral proceeding is terminated, the arbitral tribunal shall decide on the obligation to reimburse costs, unless the parties have agreed otherwise. When deciding on the costs the arbitral tribunal shall, at its discretion, take into account the circumstances of the individual case, in particular the outcome of the proceeding. The obligation to reimburse costs may include all costs reasonable for the purpose of legal prosecution or legal defence.

Together with deciding on the obligation to reimburse costs, the arbitral tribunal shall fix the amount of the costs to be reimbursed, as far as this is possible and the costs are not set off against each other. The decision on the reimbursement of costs and the amount shall be made in the form of an award.

Law stated - 14 June 2023

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

The most important alternative dispute resolution means are arbitration (governed by the Code of Civil Procedure) and mediation proceedings (governed by the Law regarding Mediation in Civil Law Matters) whereas arbitration has a much more important role and mediation is seen as less practical and important.

Liechtenstein also implemented the EU Directive on Consumer alternative dispute resolution (ADR). Even if participation is voluntary, Companies in Liechtenstein have to inform consumers about the opportunity for ADR proceedings in the case of a dispute. Liechtenstein also offers a Conciliation Board for conflicts with financial service providers, such as asset management companies, banks, professional trustees and others. Given that these ADRs are voluntary, they do not have an important role in dispute resolution.

Further, Liechtenstein law knows ADR means in case of disputes on the change of the professional trustee that administrates a foundation and other company. Here the Liechtenstein Chamber of Trustees conducts a proceeding and renders recommendations for a handover of the administration in case of conflicts of interest. Not following the recommendations of the Chamber of Trustees could lead to disciplinary consequences for a trustee.

Law stated - 14 June 2023

Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Conducting and participating in ADR is voluntary. Thus, neither a court nor an arbitral tribunal can compel parties to participate in an ADR process. An exception is only given for disputes about parental custody.

Law stated - 14 June 2023

MISCELLANEOUS

Interesting features

Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

In cases of asset recovery or complex commercial litigation civil litigation is often combined with criminal investigation proceedings as the civil claims often are based on suspected criminal activity of the counterparty. Criminal investigations give the creditor and claimant the possibility to obtain additional information and documentation as a private damaged party in case house searches and seizures are conducted in the course of the investigations.

Law stated - 14 June 2023

UPDATE AND TRENDS

Recent developments and future reforms

What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

Currently, discussions are underway for a reform of the court system that aims to speed up the process and further professionalise the court system. The discussions also include a proposal for the merger of the Court of Appeals with the Supreme Court. However, the larger part of the proposals in their current form is widely rejected by the courts and legal practitioners alike as being insufficiently conceived and unnecessary.

An aspect of the proposals that however may get wider acceptance is the proposal to introduce a specialised senate at the Court of Appeals for proceedings in foundation and trust law matters in order to further professionalise the courts and increase the expertise in these important areas of law.

There have been a few landmark decisions of the Princely Supreme Court (SC) in relation to foundation law in the past. One landmark decision of 2018 deals with the restructuring of Foundations and clarifies the requirements and rules under which the entire assets of a foundation could be transferred to a new foundation such as in cases of restructurings.

A further landmark decision clarified under which conditions and circumstances a beneficiary can be considered as an entitled beneficiary that has a claim on the foundation assets or merely as a discretionary beneficiary. The decision clarifies that the judgment must be made on a case-by-case basis and is highly dependent on the statutes, bylaws and overall circumstances.

Further, the SC recently passed a landmark decision that is relevant for asset protection matters when it confirmed that a foreign insolvency administrator has no active standing in a parallel domestic insolvency proceeding and in particular may not appeal the decision or demand handover of the Liechtenstein assets.

Law stated - 14 June 2023

Jurisdictions

	Armenia	Concern Dialog Law Firm
	Australia	Kalus Kenny Intalex
	Austria	OBLIN Attorneys at Law
	Bahrain	Newton Legal Group
	Belgium	White & Case
	Bulgaria	Georgiev Todorov & Co
	Cayman Islands	Campbells
	China	BUREN NV
	Cyprus	AG Erotocritou LLC
	Denmark	Lund Elmer Sandager
	Egypt	Soliman, Hashish & Partners
	Germany	Martens Rechtsanwälte
	Greece	Bernitsas Law
	Hong Kong	Hill Dickinson
	India	Cyril Amarchand Mangaldas
	Indonesia	SSEK Law Firm
	Israel	Lipa Meir & Co
	Japan	Anderson Mōri & Tomotsune
	Liechtenstein	Niedermüller Rechtsanwälte Attorneys at Law
	Malaysia	Shearn Delamore & Co
	Monaco	Donald Manasse Law Offices
	Panama	Patton Moreno & Asvat
	Philippines	Ocampo, Manalo, Valdez & Lim Law Firm
	Romania	Zamfirescu Racoți Vasile & Partners
	Serbia	Stankovic & Partners NSTLaw

	South Korea	JIPYONG LLC
	Spain	Ontier
	Sweden	TIME DANOWSKY Advokatbyrå AB
	Thailand	Pisut & Partners
	United Arab Emirates	Kennedys Law LLP
	United Kingdom - England & Wales	Latham & Watkins LLP
	USA - California	Ervin Cohen & Jessup LLP
	USA - New York	Dewey Pegno & Kramarsky LLP