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Liechtenstein

LIECHTENSTEIN: An Introduction to Dispute Resolution: White-Collar Crime

Contributed by Niedermüller Rechtsanwälte

Overview

Despite being the fourth smallest state in Europe with only 160 km² and approximately 40,000 inhabitants, the Principality of Liechtenstein has quite an important international role due to its attractive legal system as center for international top holding and asset protection structures (eg, trusts and foundations) and a stable financial market that in particular provides direct market access to the EU/EEA and the Swiss Economic Area at the same time. Accordingly, due to the strong international orientation Liechtenstein also has points of contact with international white-collar crime cases which not only lead to domestic criminal investigations but in particular letter rogatory proceedings from and to all possible jurisdictions of the world. Often, such procedures come along with or lead to international asset recovery efforts of damaged parties in which Liechtenstein structures are directly or indirectly affected. It is fair to say that, due to the nature of Liechtenstein as a finance and holding location, white collar crime has the dominant role.

Criminal investigations in Liechtenstein are usually initiated by reports of damaged parties, letter rogatories of foreign authorities or reports of the Financial Intelligence Unit (FIU) as the central authority for obtaining and analysing information necessary to detect money laundering, predicate offences to money laundering, organised crime and terrorist financing.

In particular, in international asset recovery cases the damaged parties often not only initiate criminal proceedings but in particular focus on tracing assets and initiating measures to secure their claims related to the suspected white collar crime activities such as obtaining injunctions to freeze assets and claims located in Liechtenstein. It should be emphasised that, as opposed to other jurisdictions, the victim is not only able to get a lien and thus priority satisfaction on such assets but also that also all kinds of rights and claims can be attached with injunctions that only grant indirect access on certain assets. Thus, there often is a strong overlap of white collar crime investigations and asset recovery matters.

In the recent past there was generally an increase focus in investigations on bankruptcy offences such as fraudulent bankruptcy, favoring creditors and obstruction of enforcement of creditors and thus an increased focus on protecting creditors.

Recent Developments: National Criminal Law

Liechtenstein criminal law is based on a reception of the Austrian Criminal Code, whereby partial reference was also made to the Swiss and German Criminal Codes. According to the law in action, principles applied by the Supreme Court the provisions of the criminal law shall be interpreted in the same manner as in the country of reception unless important reasons speak against such interpretation.

Given the needs of society and criminal policy, criminal law is subject to constant change. Accordingly, some recent relevant developments in relation to white collar crime are highlighted below.

Release of frozen assets for administrative costs

In the past, case law of the Liechtenstein Supreme Court based on the constitutional rights for an effective appeal and access to justice granted legal entities whose assets were frozen the opportunity to apply for partial release from the frozen assets to not

only cover the costs of defence in a criminal investigation but also administrative costs to secure the existence of the entity. This proved to be of relevance in confiscation and legal assistance proceedings. Under this past case law, it was also not of relevance whether the beneficial owner was able to provide for coverage of these costs.

The case law on release of frozen assets for administration costs recently underwent a fundamental change and tightening as now a partial release of the frozen assets for coverage of the administration costs is only permissible if the legal entity does not have sufficient other freely disposable assets and if additionally the beneficial owners of the legal entity are not capable of providing these funds, whereas even discretionary beneficiaries of an entity are considered as beneficial owners. Thus, only essential representation costs of legal entities are covered, additional administrative costs are no longer included.

Under current case law, a legal entity is still able to apply either for release of blocked funds for covering the costs of defence or alternatively for legal aid. In the process for obtaining legal aid all beneficial owners would have to fully disclose their financial situation.

However, it is to be noted that in both cases only costs according to the legal tariff can be obtained which only make up for a small fraction of the effective costs of defence which would neither allow a legal entity to retain an experienced firm nor to defend in an effective manner.

Thus, the recent development provides for a substantial aggravation of the possibilities of the suspected entity to effectively defend during a criminal investigation or letter rogatory proceeding. Accordingly, a legal entity that does neither have other funds available nor beneficial owners that can provide for sufficient funding would be unable to effectively defend its rights in an investigation.

Criminal offence of breach of trust

The criminal offence of breach of trust (Section 153 of the Criminal Code) which is an important offence in connection with the directorship of legal entities recently underwent an amendment which entered force on 1 October 2019. Under the new law the terms of abuse of power and damage caused by breach of trust were clarified and the provision was eased. Also, the value limits for qualifications were increased.

The current law states that an abuse of power is only given if a person in an unjustifiable manner violates provisions and rules that serve the protection of the assets of the beneficial owner. Thus, only unjustifiable misconduct shall be relevant under criminal law and further only assets of the beneficial owner shall be protected. Based on this amendment in particular no criminal breach of trust is given if an act that led to a damage of an entity was taken with the consent of the beneficial owner or lead to a benefit of the beneficial owner.

Thus, in particular for service providers acting as directors or trustees of trusts this amendment leads to substantial relief. The past, stricter law in extreme situations led to the unjustifiable result that a director was held criminally liable because of damaging a legal entity while at the same time the beneficial owners benefited from such conduct (eg, transfer of assets from one structure to another structure of the same beneficial owner where one structure was damaged and the other benefited).

Recent Developments: Prevention and Suppression of Money Laundering and Terrorist Financing

As a member of the EEA, Moneyval and as a financial hub, Liechtenstein has an active role in combating money laundering and terrorist financing. In adherence with international provisions, Liechtenstein already implemented the 4th and 5th EU Money Laundering Directives as well as the Regulation on information accompanying transfers of funds.

In the implementation of the above among others, the Liechtenstein Due Diligence Act and the Due Diligence Ordinance were amended which lead to a considerable strengthening the combat of money laundering. The scope of applicability of the Act was extended and there was a harmonisation of the enhanced due diligence obligations regarding high risk third countries and measures to be applied were further specified. Further, a central account register was established enabling FIUs and competent authorities a timely access to information on bank holder identities, payment accounts, safe deposit boxes as well as the identity of authorised holders and beneficial owners.

In the course of this implementation, the cooperation between national and international authorities has been strengthened and

enhancing the protection of reporting persons against adverse measures.

Furthermore, the Act on the Register of Beneficial Owners of Legal Entities (VwbPG) entered into force on 1 April 2021 as well as the associated Ordinance (VwbPV) implementing requirements to register beneficial owners of legal entities, ie, also trusts and foundations. Until this act it was only necessary to enter individuals exercising control which in particular in the case of foundations and trusts led to not all beneficial owners being listed.

In order to protect the interests of beneficial owners the rights of inspection were limited for foundations and trusts. Now domestic authorities, foreign authorities, domestic and foreign financial institutions, domestic persons subject to due diligence and third parties may inspect the register under different conditions. In particular, for third parties strict limitations apply.

The recently published 5th Country Report of Moneyval (June 2022) also confirmed that Liechtenstein applies and enforces highest standards, maintaining a comprehensive understanding of money laundering and terrorist financing risks, and pursues a strong supervisory approach.

Dispute Resolution

Dispute Resolution
Leading Firms
Band 1
Batliner Wanger Batliner Rechtsanwälte AG
Gasser Partner Attorneys at Law
paragraph 7
Schurti Partners Attorneys at Law Ltd
Band 2
Marxer & Partner
Müller & Partner Rechtsanwälte
Seeger, Frick & Partner AG
Band 3
advocatio Attorneys at Law Grabher Dür
NSF Rechtsanwälte
Walser Rechtsanwälte AG
* Indicates individual with profile.
◇ (ORL) = Other Ranked Lawyer.
Alphabetical order within each band. Band 1 is highest.

Band 1

Batliner Wanger Batliner Rechtsanwälte AG

What the team is known for Batliner Wanger Batliner is a distinguished and sizeable Liechtenstein law firm, best known for its work in domestic litigation. Its lawyers possess ample experience in civil law matters as well as domestic and international arbitration proceedings, where the team offers expertise as both counsel and arbitrators. The law firm is also well regarded for its experience in administrative proceedings and additionally represents clients in white-collar crime cases.

Strengths

"Batliner Wanger Batliner is a good litigation firm."

Dispute Resolution
Senior Statespeople & Eminent Practitioners
Senior Statespeople: distinguished older partners
Sele Hugo NSF Rechtsanwälte
Wolff Peter paragraph 7
Eminent Practitioners
Batliner Andreas Walser Rechtsanwälte AG
Leading Individuals
Band 1
Gasser Johannes Gasser Partner Attorneys at Law
Reithner Nicolas W Seeger, Frick & Partner AG *
Schurti Andreas Schurti Partners Attorneys at Law Ltd
Wanger Ralph Batliner Wanger Batliner Rechtsanwälte
Band 2
Blasy Moritz Schurti Partners Attorneys at Law Ltd
Bruckschweiger Christoph paragraph 7
Müller Roland Müller & Partner Rechtsanwälte
Schreiber Jochen Marxer & Partner *
Wille Markus Batliner Wanger Batliner Rechtsanwälte AG
Band 3
Auer Sebastian Gasser Partner Attorneys at Law
Grabher Johannes advocatio Attorneys at Law Grabher
Lorenz Bernhard Lorenz Nesensohn Rabanser (ORL) ◇
Mumelter Karl paragraph 7
Niedermüller Matthias Niedermüller (ORL) ◇ *
Nueber Michael Gasser Partner Attorneys at Law
Rehholz Helene paragraph 7
Roth Patrick Roth+Partner Rechtsanwälte AG (ORL) ◇
Schierscher Peter Ritter Schierscher (ORL) ◇
Schneider Robert Marxer & Partner *
Walser Manuel Walser Rechtsanwälte AG
Zechberger Florian paragraph 7

"The firm houses well-known and good lawyers."

Notable practitioners

Ralph Wanger is among the best-known litigators and enjoys a strong standing in the Liechtenstein market for his long-standing and well-rounded practice. He is highly experienced and active in civil litigation and extrajudicial disputes. He also has expertise in arbitration proceedings as well as administrative and constitutional law. Ralph Wanger enters the White-Collar Crime rankings, based on market praise for his experience and his additional focus on criminal proceedings.

Strengths: "Ralph Wanger is just as active on the civil side as on the criminal side." **Markus Wille** represents clients in a variety of civil proceedings, including arbitration as well as litigation before administrative and constitutional courts.

Gasser Partner Attorneys at Law

What the team is known for Gasser Partner is an acclaimed law firm that offers established litigation expertise alongside experience in arbitration and mediation. It comes highly recommended for complex disputes involving Liechtenstein wealth structures, often representing trusts, board members or beneficiaries. Its lawyers additionally offer assistance with debt enforcement proceedings, asset freezing and criminal cases. The law firm primarily acts on cross-border disputes and covers the Liechtenstein parts of multi-jurisdictional cases, including proceedings on the recognition of foreign arbitration awards. In addition to wealth management cases, Gasser Partner has experience in commercial litigation and insolvency disputes.