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Liechtenstein: Law & Practice

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Niedermüller Attorneys-at-Law

LIECHTENSTEIN

Law and Practice

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Contents

Niedermüller Attorneys-at-Law is an independent boutique law firm based in Vaduz and mainly represents international clients in the areas of complex cross-border litigation and arbitration matters, asset recovery, foundation and trust law, corporate litigation and international white-collar crime. Niedermüller Attorneys-at-Law is known for its long-term expertise, particularly in solving complex international litigation matters. The team regularly advises and represents family offices and private clients in all matters of foundation and trust law, in addition to regularly advising on set-up and structuring as well as restructuring and reorganisation of large privately owned corporate structures. The firm has a strong banking and finance department and regularly represents private and institutional clients such as banks, asset managers, trust offices and fund administrators. Recently, Niedermüller Attorneys-at-Law managed to acquire the first new banking licence in Liechtenstein in almost a decade. The firm's permanent aim is to exceed the expectations and demands of its clients by finding creative solutions and making the seemingly impossible possible.

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1. Fraud Claims

1.1 General Characteristics of Fraud Claims

General Definition of Fraud Under Liechtenstein Law

Despite fraud also being highly relevant in civil law matters, civil law in Liechtenstein does not provide a legal definition of fraud. Instead, only the Criminal Code (*Strafgesetzbuch*) provides for a legal definition of fraud. Therefore, to assess whether certain acts by a person can be considered as fraudulent misbehaviour, one must refer to the legal definition of fraud as set out in Section 146 of the Criminal Code.

Criminal Fraud

Criminal fraud requires the fulfilment of several elements that must be met cumulatively with intent, as follows:

- the offender deceives another person regarding facts;
- the other person is misled and deceived;
- the deceit results in actions that cause damage to the deceived persons; and
- finally, the offender has the intention to enrich themselves or a third party unjustly through the actions of the deceived.

Attempted fraud is also a punishable act (Section 15 of the Criminal Code).

The Criminal Code provides for increased punishment in more serious cases of fraud. Depending on the amount of the economic damage, the offender can be punished with a prison sentence of up to ten years.

Selected Other Offences

False statement

A false statement made by a witness or, if made under oath, by a party before court can be punished with a prison sentence of up to five years (Section 288 of the Criminal Code).

Corruption, bribery, and related offences

In cases where a public official or an arbitrator is either claiming, taking or being promised an advantage in return for the performance or omission of an official act in breach of duty, they can be punished with a prison sentence up to ten years. The same applies to an official expert for producing an incorrect expert report (Section 304 of the Criminal Code) (passive bribery). Additionally, Section 304 of the Criminal Code punishes cases of receiving advantages without breach of duty of the recipient.

Thus, offering, promising or granting a public official or an arbitrator an advantage for oneself or a third party for carrying out or failing to carry out an official act in breach of duty is punishable with a prison sentence of up to ten years. The same applies to an official expert for producing an incorrect expert report (Section 307 of the Criminal Code) (active bribery). Section 304 of the Criminal Code also punishes cases of offering or granting advantages without breach of duty of the recipient.

Furthermore, under the Criminal Code an employee or agent of a company claiming, taking or being promised an advantage in return for the performance or omission of a legal act in breach of duty is punishable with a prison sentence of up to five years (Section 309 of the Criminal Code) (passive private bribery).

Conspiracy

Liechtenstein law does not recognise the offence of conspiracy in a similar manner to common law countries. Rather, conspiracy in Liechtenstein refers to conspiring by two or more offenders in order to conduct specific severe felonies (eg, murder, slave trade, blackmailing, kidnapping or robbery), which is punishable with a prison sentence of up to five years (Section 277 of the Criminal Code).

Misappropriation

Depending on the specific misbehaviour of the offender, the general term "misappropriation" can relate to different provisions of Liechtenstein criminal law.

Embezzling an entrusted asset for oneself or a third person with the intention to unjustly enrich oneself or the other person is punishable with a prison sentence of up to ten years (Section 133 of the Criminal Code). Also embezzling another person's goods, which became available to the offender without their own intervention, is punishable with a prison sentence of up to five years (Section 134 of the Criminal Code).

Further intentional abuse of powers (ie, the authorisation to dispose of another person's assets or to represent and oblige another person, thereby damaging the principal) is punishable with a prison sentence of up to ten years. Abuse of power means the breach of rules serving the protection of the assets of the other person (Section 153 of the Criminal Code).

Relevance for Liechtenstein

Owing to its liberal corporate law and its favourable tax regime, Liechtenstein hosts a vast number of asset preservation and protection structures – in particular, foundations and trusts – as well as asset management relationships.

This leads to a large number of legal entities being managed by professional trustees, board members and other persons entrusted with the authority to represent a principal and dispose of other persons' or entities' assets. Committing misappropriation as a professional trustee is considered an aggravating circumstance by Liechtenstein courts. Misappropriation claims are highly relevant in the context of asset recovery in Liechtenstein.

Fraud Claims in Liechtenstein Under Civil Law

There are no specific provisions in Liechtenstein civil law dealing explicitly with fraud. Nonetheless, fraud claims also play an important role in a civil law context and form a powerful basis to obtain compensation. However, damaged parties can assert claims of different kinds. The main claims are as follows.

Damages claims

Based on the general rule of Section 1293 of the Civil Code, a damaged party can assert claims for damages against the damaging party in the following circumstances:

- material or immaterial damage is suffered by the damaged party;
- damage is caused by an action or omission committed or made by the damaging party;
- the damaging action or omission is committed unlawfully, thus in violation of a statutory or contractual provision (note: violations of Criminal Code provisions, in particular, qualify as such unlawful acts); and
- personally culpable conduct by the damaging party.

According to Liechtenstein law, all provisions intended to protect other persons' assets are considered to be protective laws under Section

1311 of the Civil Code. Notably, most provisions of criminal law also qualify as protective laws. A damaged person can therefore invoke the violation of protective laws in order to obtain full compensation from the damaging person, even without any contractual relationship. Thus Section 1311 of the Civil Code in combination with the provisions of the Criminal Code provide the main basis for tort claims under Liechtenstein law.

Claims against unjustified enrichment

The result of fraud is the shift of assets from the deceived party to the offender or a third party. As the shift of assets was caused by a deceit, the law aims to reinstate the situation preceding the deceit by nullifying the transaction and making the recipients unlawful holders of assets. Depending on the circumstances, Liechtenstein general civil law provides for specific instruments enabling the deceived party to claim for the return of the assets from the counterparty. Specifically, claims can be asserted based on Section 877 of the Civil Code (condictio sine causa), which covers the unwinding of actions resulting from cancellation of a contract. Further, Section 1431 of the Civil Code (condictio indebiti) allows a party to claim for the return of the assets from the counterparty, asserting that the original payment was made without legal grounds or in error.

In contrast to damages claims, claims against unjustified enrichment generally do not require culpable conduct of the counterparty. Asserting claims for damages, however, does not prevent the claimant from asserting claims for restitution of unjustified enrichment as well. Therefore, both kinds of claims can be asserted in parallel.

Claims for unauthorised use

As a subcategory of claims against unjustified enrichment, Section 1041 of the Civil Code covers claims by a party where the counterparty was enriched not by an act of the other party but by using assets of the other party without legal grounds. As with claims against unjustified enrichment, in most cases the lengthy limitation period of up to 30 years applies.

Claims for challenging contracts

A contract based on fraud is concluded by one party deliberately deceiving the counterparty. As a result, Liechtenstein civil law aims to enable the deceived party to challenge or amend with retroactive effect the contract before court, asserting that the contract is the outcome of fraud and needs to be cancelled by a judgment declaring the contract null and void with retroactive effect (Section 870 et seq of the Civil Code).

Subsequent to a cancellation of a contract based hereon, the challenging party can reclaim the assets transferred under the cancelled contract based on unjustified enrichment claims (Section 877 of the Civil Code).

Liability claims against directors

Section 218 of the Persons and Companies Act provides the basis for companies to claim damages against their former and current directors or corporate bodies for intentional as well as negligent conduct. For more details see below.

Enforcement of claims against fraudulent conduct

Claims against fraudulent conduct of the counterparty can be brought before court by filing a lawsuit in accordance with the Civil Procedure Code.

1.2 Causes of Action After Receipt of a Bribe

A principal whose agent has received a bribe is entitled to claim compensation vis-à-vis the agent if the general requirements for a claim for compensation under Liechtenstein civil law as set out in **1.1 General Characteristics of Fraud Claims** are met.

Further, the receipt of a bribe may be reported to the public prosecutor's office under Section 307 et seq of the Criminal Code.

1.3 Claims Against Parties Who Assist or Facilitate Fraudulent Acts

As a general rule, Section 1301 of the Civil Code orders that all persons who directly or indirectly assist or facilitate fraudulent acts are jointly liable for the damage caused. In such case, every single person is liable for the relevant share and degree of culpability (pro rata) if an allocation of contribution is possible. If the ratio of their contribution cannot be assessed, every single damaging person is jointly liable for the entire damage caused (Section 1302 of the Civil Code).

As a result, the damaged party may include one or all co-perpetrators of a fraudulent and damaging action in a single lawsuit for the whole damage.

1.4 Limitation Periods

Liechtenstein civil law provides a general rule pursuant to which a damaged person is required to bring claims against the fraudster as the damaging party before court within three years, starting from the knowledge of the damage and the damaging party (Section 1489 of the Civil Code). However, if the damage occurred based on a criminal act punishable with more than three years' imprisonment, the statute of limitation is 30 years from the damaging act.

In cases where the damaging party is a person or entity licensed by and under supervision by the Liechtenstein Financial Market Authority (*Finanzmarktaufsicht*, or FMA), there is an absolute limitation period of ten years besides the above-mentioned three-year period (Section 1489a of the Civil Code). In contrast, claims against unjustified enrichment generally have a long statute of limitations of 30 years from the time in which the enrichment took place.

If the conditions to challenge a contract asserting fraud or error are met, the public claim must be filed within 30 years (cases under Section 870 of the Civil Code) or three years (Section 871 of the Civil Code).

1.5 Proprietary Claims Against Property

Property Claims in General

As a core principle of Liechtenstein property law (rights in rem) as stipulated in the Property Act, the owner (proprietor) of an asset is entitled to exercise the right to property generally at their own discretion and without any legal restrictions (Section 20 of the Property Act). As a result, the owner is entitled to prevent anyone else from disposing of owned assets. Consequently, the owner can claim the return of an asset from anyone by rei vindicatio, unless the other person is entitled to have the asset in possession.

To secure a valid transfer of property rights from a transferor to a transferee, valid grounds for the transfer (titulus) and a mode of transfer and handover (modus) is required. Depending on the type of asset, Liechtenstein civil law provides for different requirements of contractual form (formless, orally, in writing, certified, or by public document) and mode of transfer (transfer from hand to hand or by entry into the books or a public register).

Contracts that violate a legal prohibition or the protection of the public are considered invalid by law (Section 879(1) of the Civil Code). Thus, a transfer of property rights did not take place effectively and a fraudster did not become the owner of the asset. As a result, a fraudulent party to a contract is not entitled to keep an asset received by fraud. The deceived party can assert invalidity of the contract for an unlimited period of time and claim the return of the asset based on Section 877 of the Civil Code within a 30-year limitation period.

Acquisition in Good Faith

However, a third party not involved in the fraud may become the rightful owner of an asset acquired from the fraudster if it was in good faith concerning the fraudster's right to dispose of the asset (Section 512 of the Property Act; bona fide acquisition). In such case, the original owner lost the property right and is not entitled to raise proprietary claims against said person. However, in cases where a third party knew or must have known that the fraudster was not entitled to dispose of the asset (bad faith, mala fide), a reclaim is possible.

Mixing of Lawfully and Unlawfully Acquired Funds

Mixing funds received via fraud with funds from legal sources results in the acquisition of property to the whole funds. Consequently, the former owner of the fraudulently transferred funds is not entitled to raise propriety claims but is limited to claims for compensation and restitution for unjustified enrichment.

Protection of Property in Insolvency Proceedings

If a debtor falls bankrupt and insolvency proceedings are opened before court in accordance with the Liechtenstein Insolvency Act (*Insolvenzordnung*, or IO), generally all assets attributed to the debtor are affected by the proceedings (Section 5(1) of the IO).

However, assets attributed to other persons are not affected. As a result, the owner of assets that are factually in possession of the debtor but not in the debtor's ownership – irrespective of whether lawfully or unlawfully – are entitled to claim segregation of the assets from the assets owned by the debtor (*Aussonderungsrecht*) in the insolvency proceeding.

In addition, persons lawfully claiming a limited right in rem on an asset of the debtor – in particular, rights of pledge – can claim for separate privileged settlement from these assets (*Absonderungsrecht*). As a result, such privileged creditors are entitled to receive preferential settlement of their receivables from the realisation proceeds of such assets before other creditors.

Gains From Fraudulently Acquired Funds

Generally, the profits a fraudster generated from investing fraudulently obtained funds are considered to be property of the proprietor and thus of the fraudster. However, if the general requirements for a compensation claim (Section 1293 of the Civil Code) are met, the damaged person can claim compensation for actual damages as well as for lost profits. In addition, claims for restitution of unjustified enrichment by unauthorised use of the funds (Section 1041 of the Civil Code) can be asserted. Thus, effectively the victim of a fraudster can also reclaim the profits the fraudster obtained.

Confiscation of Profits

The rule of Section 20 of the Criminal Code and the skimming-off of the enrichment provides that all profits and benefits obtained from the offence (including fraud) are skimmed off. Confiscation

pursuant to this provision also applies to utilisations (proceeds – for example, interest rates, dividends, or rental incomes) and substitution values of the assets declared confiscated (Section 20(2) of the Criminal Code). Substitution values cover assets by which the profits or benefits of the offence are replaced (eg, return on sales).

1.6 Rules of Pre-action Conduct

Liechtenstein law does not have any specific procedural rules of pre-action conduct before asserting claims arising from fraud. If, however, a lawsuit is filed without any prior assertion out of court and the defendant would accept the claim entirely without any objection, the claimant may not obtain reimbursement of the procedural costs but the claimant has to bear the costs.

1.7 Prevention of Defendants Dissipating or Secreting Assets

Relevance of Interim Measures

In comparison with other continental jurisdictions, in Liechtenstein the use of interim or injunctive measures to prevent further dissipation of assets and secure repayment from the debtor is of high relevance.

This is mainly due to the effectiveness of such measures, which enable all possible assets of a debtor located in Liechtenstein – including all claims and rights that indirectly allow access to assets – to be effectively seized and frozen by civil law injunctions within a short period of time and a priority pledge on such assets to be obtained.

Procedural Aspects

Interim measures are covered by the provisions of the Enforcement Act, based on which a creditor may apply the court to order measures bot in rem or in personam prior to or after the entering into regular civil proceedings.

The purpose of interim measures (injunctions) is to secure monetary claims via restraining orders (*Sicherungsbot*) (Section 274 of the Enforcement Act) and other (non-monetary) claims by so called official orders (*Amtsbefehl*) (Section 277 of the Enforcement Act).

For monetary claims, relief can be obtained by seizing the debtor's movables and putting them into the court's safekeeping. Furthermore, the debtor can be prohibited from fulfilling an obligation or from surrendering any objects that are due to the debtor. By these means, all claims and assets held by the debtor in bank accounts as well as all receivables of the debtor located in Liechtenstein can be seized and secured.

Further Liechtenstein law also allows the seizure of all rights and claims that only indirectly grant access to assets – for example, instruction rights, founders rights and principal rights – from custodians and trustees, etc. In Liechtenstein, unlike in other jurisdictions, the injunction also grants the creditor a statutory pledge with a priority right.

As regards other claims, the court can order the objects in possession of the debtor at which the claim for restitution is aimed to be deposited at court. Furthermore, the court can order to uphold the status quo and prohibit specific actions suitable to amend the status quo.

If an injunction is issued against a party, there are orders made against the so-called third-party debtors (*Drittschuldner*) as well – ie, those persons or entities against whom the debtor has a claim (eg, banks, asset managers, and entities). These third-party debtors are prohibited by court orders from making any payments to the debtor and from taking any action that may jeopardise

the effective enforcement of the seized claims of the debtor.

If third-party debtors act against such orders, they are liable for damages of the creditor (Section 280(2) and (3) of the Enforcement Act). The third-party debtors thus are served with the order that also makes the seizure and pledge effective.

Material Aspects

In cases of regular freeze orders, the creditor needs to make plausible (ie, a lower level of burden of proof) their claim against the debtor by means of evidence. In applications for injunctions, affidavits may also be used as a means of evidencing the facts.

Further, the creditor needs to make plausible that the later enforcement of their claim may be endangered (endangerment) without the injunction. The law here also provides for an assumption of endangerment to the benefit of the creditor if the claims would have to be pursued abroad or the debtor is resident outside Liechtenstein (objective endangerment).

Finally, the creditor needs to make plausible the asset of the debtor located in Liechtenstein that shall be seized for the benefit of the creditor. Thus, a sufficient identification of the asset that shall be seized is required.

In cases of other injunctive measures such as official orders, additional requirements may apply.

Non-compliance by the Defendant

The freeze order prevents the debtor from disposing of the assets affected by the statutory pledge (eg, shares, bank deposits, and other rights via-à-vis third parties). If the debtor acts against this prohibition – for example, by transferring seized assets or rights to a third party – such action is null and void.

Ex Parte Proceedings

According to the latest jurisprudence of the European Court of Human Rights, generally an application for granting an injunction will be served to the defendant before the decision to grant the defendant the right to be heard (Article 6 of the European Convention on Human Rights (ECHR)). However, settled case law of the Liechtenstein Constitutional Court provides an exception from this general rule where the purpose and effectiveness of the injunction may be jeopardised or put at risk if the debtor is made aware of the application before the injunction is issued.

Thus the court may issue an injunction in an ex parte proceeding without hearing the debtor. The applicant has to outline why serving the application to the defendant may lead to jeopardising the effectiveness of the injunction. In most cases, the courts follow such applications and thus also an effective ex parte measure is possible.

If the injunction was granted ex parte, the debtor can raise an appeal but also a so-called objection against the injunction. Therein the debtor may also provide material facts and offer evidence as to why the asserted claim does not exist. Based on the objection, the court usually holds an oral hearing at which the parties and witnesses offered by both parties are heard. After the objection hearing, the court issues a new decision on the injunction application – this time considering the entire evidence offered by the defendant as well.

Costs

Interim measures are always made at the cost of the applicant. The court fees vary depending on the amount in dispute and are up to CHF8,500 for each application.

Entering Regular Proceedings

Injunctions generally must be justified by a subsequent or already pending main proceeding whereby the applicant pursues their claim. The injunction also orders a so-called justification period, within which the claimant has to initiate the main proceeding that then justifies the existence and upholding of the injunction. Usually the court orders a period of four weeks in which to initiate such main proceeding. Foreign proceedings can be accepted as main proceedings if the foreign decision to be obtained may later be enforced in Liechtenstein.

2. Procedures and Trials

2.1 Disclosure of Defendants' Assets

Civil Law Aspects

The Civil Procedure Code generally leaves the collection and submission of evidence to the parties. Liechtenstein law does not provide rules for the compulsory discovery of pre-trial evidence.

However, in a proceeding there is limited possibility for a party to obtain evidence from the opposite side. A party may apply to the court to order production of a document to be used as evidence that is held by a public authority or in the custody of a notary and which the party is unable to obtain itself by direct intervention. If this application is granted, the court will make the appropriate orders to obtain the document. The presentation of documents by the opposing party can only be ordered in exceptional cases (Sections 303—308 of the Civil Procedure Code).

If a party claims that a relevant document is in the hands of the opposing party, the court may order the opposing party to produce the document. The requesting party must state the content of the document and the facts that are to be proven by the document. Likewise, the circumstances that make the possession of the document by the opposing party probable must be stated. However, the other party is allowed to simply refuse to present specific documents.

Presentation is only mandatory if:

- the opposing party has referred to the document as evidence in the proceeding;
- the opposing party is obliged under civil law to hand over or produce the document; or
- the content of the document is common to both parties.

The submission of other documents may be refused if:

- the contents concern matters of family life;
- the opposing party would violate a duty of honour by submitting the document;
- the disclosure of the document would cause dishonour to the party (or third parties) or risk criminal prosecution;
- by submitting the document, the party would violate a State-recognised duty of confidentiality from which they have not been validly released or an artistic or trade secret; or
- there are other equally important reasons that justify the refusal to produce the document.

If one of the above-mentioned reasons only concerns individual parts of the content of a docu-

ment, a certified extract of the document must be submitted.

If the opponent is ordered to produce documents but illegally refuses to comply with the order, there is no possibility to force the production. In that case, the court must assess such refusal at its discretion. An unjustified refusal to comply with such court order therefore usually results in the court assuming the facts to the detriment of the refusing part.

Additionally, certain documents are protected by the secrecy rights of certain persons and thus may not serve as evidence unless the person that is entitled to invoke the secrecy rights does not make use of these rights. Therefore, in particular, documents falling under client–attorney privilege, the trustee secrecy, tax secrecy and banking secrecy are generally protected in civil proceedings.

Despite the lack of pre-trial discovery, Liechtenstein law offers other means to obtain evidence required to assert and pursue claims. By way of example, claims for information and disclosure may be raised against contractual parties or based on other special legal relationships (eg, beneficiary status).

Criminal Proceedings

In contrast to civil court proceedings, criminal proceedings aim to clarify the suspected criminal activity and pursue the perpetrators. For this purpose, the criminal authorities conduct effective and far-reaching investigations and also impose coercive measures such as house searches, seizing documents, freezing assets, and interrogating witnesses and suspects. Such investigations prove to be very effective in clarifying an uncertain set of facts.

Thus, in cases where criminal activity is suspected, a creditor often also initiates criminal proceedings, which may lead to substantial discovery of documents in the course of criminal investigation. The results of the investigations and, in particular, the seized documents then become accessible to a damaged private party as well as to an interested party and may then be freely used to pursue the civil claims against all possible defendants.

2.2 Preserving Evidence

The preservation of evidence may be applied for at any stage of the legal dispute – even before the commencement – if it is feared that the evidence would otherwise be lost or its use made more difficult.

In such case, any party of a pending and also future proceeding may apply to the court for preservation of the following categories of evidence:

- on-site inspection by the court;
- witness testimony; and
- expert witness statement and opinions.

The requesting party must state the facts with regard to which evidence is to be taken, as well as the means of evidence (eg, witness or expert) and also the opposing party.

Generally, a decision on the application will be made without prior oral hearing. However, the opposing party will be heard unless there is imminent danger. The order granting the application may not be appealed.

The costs are to be borne by the requesting party and become procedural costs of a later proceeding.

The civil law rules for preservation of evidence, however, do not allow for physical searches for documents at the defendant's residence or place of business. Such activities only can be conducted in criminal proceedings.

2.3 Obtaining Disclosure of Documents and Evidence From Third Parties

Liechtenstein civil proceedings follow a two-party system and include rules on permissive and compulsory joinder of additional parties. Therefore, generally, it is the obligation of each party to provide the evidence that is beneficial to its procedural position.

Nonetheless, third parties may also be summoned to testify as witnesses. In such testimony, witnesses are obliged to answer the questions comprehensively and truthfully, provided they do not have a right to refuse based on secrecy obligations. In cases where such witnesses are resident abroad, they are heard via letter rogatory proceedings.

If an evidence document is in the hands of a third party, such party may be ordered by the court (with or without prior oral hearing) to produce the documents under certain conditions outlined in Section 308 of the Civil Procedure Code. Such order is also enforceable against the third party.

In cases where evidence must be preserved, special legal provisions apply (see **2.2 Preserving Evidence**). Independently thereof, documents may be seized in the course of criminal investigations. As opposed to many common law countries, Liechtenstein procedural laws do not impose restrictions on the use of such evidence.

2.4 Procedural Orders

Ex Parte Measures

The right to be heard is a constitutionally guaranteed procedural principles. As such, each party must have the opportunity to make a statement of all documents and evidence of the proceeding, irrespective of whether these documents originate from the other party or from third parties or authorities.

Thus each party also has the right to participate in the entire proceedings and, in particular, in any taking of evidence. Therefore, the taking of evidence without at least due notification of the defendant is not generally allowed.

Proceedings for interim injunctions are typically two-sided in order to adhere to requirements of Article 6 of the ECHR. However, in specific circumstances (particularly if the effectiveness of an injunctive measure requires an ex parte decision), the hearing of the opposite party before the rendering of the decision may be omitted (see **1.7 Prevention of Defendants Dissipating or Secreting Assets**). Thus, in such cases, the need for an effective implementation of an injunction prevails. This is decided on an individual case-by-case basis.

2.5 Criminal Redress

Procedural Rights of Private Parties in Criminal Proceedings

Parties damaged by criminal conduct often make use of criminal proceedings to obtain redress for their damage suffered. The Criminal Procedure Code provides for several measures to support damaged parties.

According to Section 31a and 32 of the Criminal Procedure Code, victims inspect the files and participate in hearings of witnesses, in addition

to asking questions of the suspects in the final hearing.

Joining Criminal Proceedings as Private Participants

Further, anyone whose rights have been damaged by an offence under investigation – and thus derive from the criminal offence under investigation – may join the criminal proceedings as a private party by declaration of joinder.

In simple cases, the criminal court may also render a decision granting compensation for the civil claims in connection with a conviction of the offender and spare the victim a civil proceeding. This, however, is rarely the case.

Interplay Between Civil and Criminal Proceedings

Civil and criminal proceedings often run in parallel to each other. Nonetheless, there are strong interconnections that may be utilised to the benefit of the client.

The declaration of joinder of a civil damaged party in the criminal proceeding interrupts the limitation period of civil claims against the suspect that derive from the criminal offence under investigation. However, there is no interruption of claims against persons or entities that are not suspects in the proceeding.

There are often good reasons to initiate civil proceedings in parallel – in particular, to obtain injunctions against assets of suspects who provide priority pledge prior to all other creditors and also prior to criminal freeze orders.

Civil proceedings are regularly suspended (interrupted) until the criminal investigations are concluded. In cases where the facts are already clear enough to judge on the civil law questions independently of the outcome of the investigations, civil proceedings are running in parallel.

In any event, the results of criminal investigations conducted – in particular, the results of seizures and house searches – often provide valuable evidence for the damaged party of the criminal offence. In this regard, it is worth noting that neither criminal nor civil procedural laws provide for prohibition of the use of documents and information that a damaged party obtained in the course of an inspection of criminal files.

2.6 Judgment Without Trial

Civil Proceedings

The court must duly summon the parties to a hearing. A judgment without hearing the defendant is therefore only possible if a party fails to participate in the proceedings by their own decision or fault.

Upon application of the claimant, the court renders a default judgment if the defendant fails to appear at a court hearing to which summoned correctly. Such default judgment is then based on the content of the statements of the claimant alone (Articles 396 et seq of the Civil Procedure Code) (*Versäumungsurteil*).

Further, the law provides for a fast-track proceeding for payment orders (*Schuldentriebverfahren*). Upon application, the court issues a payment order without hearing only based on the allegations of the claimant. The defendant may nullify the payment order by mere opposition without reasons within 14 days. Thereafter, the claimant has to initiate a regular civil proceeding or – if the claimant has strong evidence by deeds – file an application to lift the objection in an annulment proceeding.

The default judgment and the payment order have the same effects as other judgments once they are final and binding.

2.7 Rules for Pleading Fraud

Liechtenstein law does not have specific fraud-related claims.

In cases of fraud, the claimant can opt to seek for damages (Section 1293 of the Civil Code), declare a contract null and void because it was concluded as a result of criminal fraud (Section 146 of the Criminal Code et al, Section 879 of the Civil Code), contest or revise a contract that has only been concluded because of trickery, lying or concealing (Section 877 of the Civil Code), or claim against unjustified enrichment (Section 1431 of the Civil Code et al).

In order to successfully assert damages, the claimant needs to present and specifically prove:

- the unlawful conduct – a breach of trust or contract, deceit, or any infringement of a norm intended to protect legally acknowledged interests;
- the damage inflicted, referring to positive damage caused to already-existing legal interests as well as the loss of future profits;
- the causal connection between the fraud and the claimed damage; and
- the personal fault of the defendant, which needs to be intentional conduct for fraud in general or must be minor or gross negligence in other circumstances.

Protective norms are most provisions of the Criminal Code (eg, fraud, breach of trust, or embezzlement), in particular, but also the provisions on money laundering. Thus, if these norms are violated (at least with negligence), the damaged person may successfully assert damages.

The calculation of damages depends on the level of faulty behaviour (intent or negligence). Intentional or grossly negligent conduct leads to compensation of damages and loss of profit. Slight negligence only tocompensation of damages.

These provisions provide effective means to trace stolen funds and hold liable persons involved in the tracing chain, even without intentional actions and a conviction in criminal proceedings.

2.8 Claims Against "Unknown" Fraudsters

Under Liechtenstein law, a civil claim may not be filed against unknown persons. The law requires a precise designation of the defendant. Consequently, one defendant must be identified as a pre-condition for legal action.

Therefore Liechtenstein law does not allow John Doe proceedings such as other jurisdictions may allow. In such cases, criminal investigations are most effective and useful to allow a precise identification of the suspect and defendant, given that criminal proceedings may also be initiated against unknown perpetrators. In the course of such investigations, the suspect and perpetrator is identified by investigative measures and the victim may inspect the files of the criminal proceeding.

2.9 Compelling Witnesses to Give Evidence

As opposed to parties, witnesses in a civil proceeding may be compelled to appear before court and give evidence. Generally, a refusal by a witness to give evidence may lead to sanction of imprisonment for up to six weeks.

However, certain persons are exempt from giving evidence, such as mediators or those civil

servants who have not been released from their official secrecy obligations.

Additionally, witnesses may also refuse to give evidence in response to questions where answering would:

- disgrace the witness, their spouse/partner or their relative, or would put them at risk of criminal prosecution;
- cause direct pecuniary prejudice to the witness or one of the aforementioned persons;
- disclose facts that underly a statutory confidentiality obligation insofar as the witness has not been validly released from this duty;
- disclose facts underlying attorney secrecy or notary secrecy; or
- disclose business secrets or art secrets.

3. Corporate Entities, Ultimate Beneficial Owners and Shareholders

3.1 Imposing Liability for Fraud on to a Corporate Entity

Comprehensive Liability of Companies and Foundations

A legal entity has its own legal personality and thus is an independent point of reference for rights and obligations as well as for compensation obligations.

As a rule, no one is liable to pay compensation for damage caused through no fault of their own or by an involuntary act.

Attribution of Acts of Representation

Legal entities act through their representatives and their liability arises therefrom, because directors and other persons with power of representation are entitled to perform legal acts on behalf of the company (Section 187 et seq PCA). Thus, in general legal entities are liable for all acts of representation by their representatives and their knowledge is attributed without limitations. This applies to all types of legal entities.

According to statutory law there are some limitations of representation and thus there is liability, according to Section 187a of the Persons and Companies Act. In addition, a company is also liable for the actions of its employees and assistants without powers of representation – albeit only in connection with contractual obligations. The company is only responsible for other damages if it is at fault for choosing a specific untrustworthy or dangerous person.

Attribution of Knowledge to Legal Entities

In company law, mainly the knowledge of directors but also other representatives and agents is attributed to legal entities. The scope of attribution of knowledge varies depending on the role of the respective person.

According to settled case law, all knowledge of directors of a company is also knowledge of the company. In cases of joint representation, the knowledge of one person (eg, director) is sufficient. Further, it is irrelevant where this knowledge comes from. Even private knowledge of directors – ie, knowledge which such persons have acquired outside the performance of their duties on behalf of the legal entity – is completely attributed to the company.

In contrast to this, the knowledge of members of supervisory boards is that of the company only if the advisory board is competent in this matter. Private knowledge of its members in general is not attributed to the company.

Knowledge of other representatives, such as attorneys and agents, is attributed if it concerns their specific area of responsibility and if they were actually involved in a specific matter. Private knowledge is not attributed. This also applies to all employees and assistants working for a company.

Finally, knowledge of factual directors is attributed to a company. As such, so is knowledge of persons that factually take a leading role.

Reverse Piercing of the Corporate Veil

Liechtenstein case law recognises reverse piercing of the corporate veil for situations when an ultimate beneficial owner (UBO) wants to set aside assets by contributing them to a legal entity (eg, a foundation) with the intent to abuse the principles of separation to the detriment of other parties.

Reverse piercing means that claims against a debtor can also be asserted directly against the legal entity of which the debtor is the UBO or that was abused by the debtor to prevent access of creditors to such assets held by the company and thus is considered an abuse of rights according to Section 2 of the Persons and Companies Act. Hence, in case of reverse piercing of the corporate veil, the company is regarded as the alter ego of the debtor.

Further Limitation of Liability

A legal entity will not be liable for acts of directors that absolutely exceed the powers of any such director or the whole business purpose of the company.

Internal regulations (ie, statutes, articles of association, rules and resolutions) do not limit external liability, unless the other party knew or should have known that a director or other representatives act against the law and internal rules but still co-operated with them.

Additional contractual exclusions and limitations of liability are possible to a wide extent.

In cases of wilful damage such as fraud, an exclusion or limitation is never valid – regardless of whether it is conducted by someone themselves or representatives (see **1.4 Limitation Periods**).

Criminal Proceedings Against Corporate Entities

According to Liechtenstein law, legal entities are even liable and subjects to criminal law for felonies and misdemeanours committed by their managers. In the case of a conviction, the company is ordered to pay a fine.

The company and the acting manager et al may be prosecuted and convicted separately for the same offence at the same time.

3.2 Claims Against Ultimate Beneficial Owners

According to the “separation principle”, only the company’s assets are liable for the liabilities of a legal entity. Under certain circumstances, it is necessary and permitted in the interests of creditors’ protection to have recourse to the UBO behind the legal entity and to call on them to fulfil the obligations that the legal entity cannot fulfil.

The mere (authorised) use of a corporate form provided by the legal system, however, does not constitute an abuse of rights. Rather, there must be also an intention to abuse the law. Notably, where legal entities have been used as vehicles to commit fraud, Liechtenstein case law recognises the concept of a piercing of the corporate veil. In such cases, the rights and obligations

of a legal person are attributed to the natural person behind it.

In Liechtenstein practice, the reverse piercing of corporate veil is more relevant.

3.3 Shareholders' Claims Against Fraudulent Directors

The strict liability law of the Persons and Companies Act is the balancing counterpart to the flexible and liberal company law in order to avoid use and abuse for dubious or even criminal activities by company bodies or directors who have neglected their duties.

Primary Claims of a Legal Entity and Subsidiary Claims of Shareholders Against Directors

Articles 218–227 of the Persons and Companies Act state that primarily the organs/directors of a company shall be liable for the damage to the legal person they have caused with intent or negligence.

For a liability of a director towards the company, the following is required:

- a damage has occurred;
- the director has culpably acted in breach of duties; and
- there is an adequate causal connection between the damage on the one hand and the conduct in breach of duties on the other.

According to the general rule set out by the Supreme Court, directors of a company must manage the business with diligence and are liable for observing the principles of prudent management and representation. If the de facto management is entrusted to other persons, the administration will have a duty of supervision to the extent that it keeps itself informed about the management, as well as a duty to obtain reports and – where there are doubts – to demand additional information and to clarify ambiguities.

Further, the director liability rules are not considered to be tort claims but rather considered as contractual obligations between the company and the director.

Joint Liability

It is particularly noteworthy that, according to Article 226(2) of the Persons and Companies Act, several directors of a company are jointly and severally liable with the others to the extent that the damage is personally attributable to them on account of their own culpability and the circumstances. In this regard, the Supreme Court also clarified that one director cannot as a rule invoke the contributory negligence of another director to their benefit.

Business Judgment Rule

In 2009, the Liechtenstein legislator codified the business judgment rule in Article 182(2) of the Persons and Companies Act in order to introduce a liability-free space for directors who regularly have to take business decisions that may lead to a damage of the company.

Based on this rule, if a director takes decisions on an adequate information basis, free from conflicts of interest and in good faith that the decision is in the best interest of the company, then the director is exempt from liability – even if the company was damaged by such actions.

Secondary Shareholder Claims

According to Liechtenstein law, the primary liability of a director/body is towards the company.

Shareholders may only claim compensation directly from directors if two conditions are ful-

filled cumulatively. Firstly, shareholders have to be injured directly by the fraudulent behaviour of directors of the legal entity without interposition of the entity itself. Secondly, the legal entity must have no claim against its own directors at all.

4. Overseas Parties in Fraud Claims

4.1 Joining Overseas Parties to Fraud Claims

Joining Civil Proceedings

Liechtenstein civil procedure law does not provide specific rules on joining civil proceedings for foreign parties. The requirements are identical for foreign and local parties. Every party with the intention to join civil proceedings before Liechtenstein courts as an intervening party is required to convince the court of their legal interest in joininh, if denied by a party to the dispute (Section 17 of the Civil Procedure Code).

If a party joined proceedings successfully, a potential costs award can grant reimbursement of their own costs if the party on whose side the joining took place won the litigation. In contrast, such party cannot be ordered to pay the opponent's costs in any event.

Joining Criminal Proceedings

Liechtenstein criminal procedure law provides for the right of a damaged party to join criminal proceedings at any stage prior to the end of the first instance. This applies to local and foreign parties alike. To join a proceeding, a declaration of joinder must be filed with the court, asserting the claims that have derived from the offence under investigation.

4.2 Service of Proceedings out of the Jurisdiction

In general, service of documents by Liechtenstein courts to recipients abroad is executed via diplomatic channels – ie, usually by way of letter rogatory proceeding through the Department of Justice and the Embassies of Liechtenstein and Switzerland. For some jurisdictions, direct communication channels between the courts are permitted based on bilateral agreements.

Unlike in common law jurisdictions, service of official documents via private delivery or service of process does not meet the requirements of a lawful service.

5. Enforcement

5.1 Methods of Enforcement

Enforcement of Local and Foreign Documents

Liechtenstein courts enforce public documents issued by local courts and authorities. Liechtenstein enforcement law also allows recognition and enforcement of foreign public documents such as orders, judgments, and other decisions issued by state and arbitral courts under certain conditions.

Such recognition is either based on bilateral or multilateral conventions. Only court decisions of Austrian and Swiss courts may be recognised and enforced based on existing bilateral agreements. Further, based on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "New York Convention"), all arbitral awards falling under this convention may be recognised and enforced.

However, Liechtenstein is neither a member of the Lugano Convention or the EU enforcement

and recognition regulation (Regulation (EU) No 1215/2012 (EuGVVO).

In cases where no direct recognition is possible, a foreign creditor may use a foreign final and binding decision as a means to obtain a Liechtenstein decision in a simplified proceeding.

Available Methods of Enforcement

For enforcement of monetary claims, the creditor may request the seizure and auctioning of a debtor's immovable and movable assets (Section 58 et seq and 168 et seq of the Enforcement Act). This includes also the seizure of any receivable or monetary claims of the debtor. Upon request, the court orders the seizure and transfer of receivables from the debtor to the creditor, as well as the authorisation of the creditor to execute the rights of the debtor (eg, as shareholder, settlor of a trust, holder of founder's rights, or beneficiary) in the same way as the debtor was formerly entitled to.

If the decision obliges the debtor to a specific performance, the application for enforcement can also include demanding an act or an omission of the debtor. If the act or omission is a matter of personal action by the debtor that may not be taken by a third person, the court may enforce the decision through threat of penalty, penalty payments and imprisonment (Section 257 of the Enforcement Act). If the action may also be taken by a third party, it will be taken at the costs of the debtor (Section 256 of the Enforcement Act).

6. Privileges

6.1 Invoking the Privilege Against Self-Incrimination

Right to Silence in Civil Proceedings

In general, defendants in civil proceedings are obliged to testify and do not have a right to silence. However, if they refuse to testify or even to appear before court, Liechtenstein law does not provide any direct sanctions or means of enforcement against them (Section 380(3) of the Civil Procedure Code).

If the defendant does not appear before court for the first hearing or at a later hearing, the court can hand down a default judgment. In addition, any refusal by a party to give evidence is taken into consideration by the judge within the scope of the free appraisal of evidence.

Privilege Against Self-Incrimination in Criminal Law

Liechtenstein criminal procedure law does not provide specific rules on the privilege against self-incrimination in criminal law (nemo tenetur se ipsum accusare). Irrespective of the kind of accusation, a suspect is allowed to remain silent as a fundamental principle in Liechtenstein criminal law. A suspect who invokes the principle against self-incrimination must not fear suffering any disadvantage.

6.2 Undermining the Privilege Over Communications Exempt From Discovery or Disclosure

Any kind of communication between clients and their lawyers is privileged in terms of confidentiality by law. Liechtenstein civil procedure law does not provide a legal basis for claiming discovery of such correspondence. Further, lawyers may refuse to give testimony in civil proceedings and invoke attorney-client privilege if they are

not released from their confidentiality obligation (Section 321 of the Civil Procedure Code).

Additionally, all attorney–client communication is protected under Liechtenstein law. Lawyers are also entitled to refuse to testify in criminal proceedings (Section 108(1)(1) of the Criminal Procedure Code).

Attorney-client secrecy must also not be circumvented by seizure of attorney–client communication or other measures. In case of seizure, the documentation may be sealed upon application. In such cases, the seized documents that are subject to attorney-client privilege are returned based on a court decision.

However, an exemption applies where there is reasonable suspicion that an attorney participated in the criminal offence of their client by aiding and abetting or as a co-perpetrator. In such cases, there is no further client-attorney privilege.

7. Special Rules and Laws

7.1 Rules for Claiming Punitive or Exemplary Damages

Liechtenstein civil law does not recognise the concept of punitive or exemplary damages. Instead, it aims to grant compensation to the damaged party for actual damages and losses suffered from damaging behaviour. There is no intention to legislate for economic punishment of the injuring party.

As a result, Liechtenstein courts also refuse to recognise and enforce claims under a foreign public document covering punitive or exemplary damages – given that recognition and enforcement would be considered not compliant with the local public order (ordre public).

7.2 Laws to Protect "Banking Secrecy"

In its Section 14, the Banking Act (in connection with the corresponding ordinance) provides statutory basis for banking secrecy. This protection also applies to investment firms. The Liechtenstein Constitutional Court has even qualified this as a "material fundamental right".

The members of the governing bodies of such companies, their employees and other persons working for such companies are obliged to maintain confidentiality with regard to facts that have been entrusted to them or made accessible to them on the basis of business relationships with clients. The duty of confidentiality is unlimited in time (Section 14(1) of the Banking Act).

However, the duty of confidentiality does not apply to testimony in criminal proceedings and regarding reporting obligations to supervisory bodies and the Financial Intelligence Unit (FIU), which is installed for reporting suspicions of money laundering (Section 14(2) of the Banking Act).

Given that banking secrecy does not apply in criminal proceedings, it is also not an obstacle to investigations in fraud cases. Rather, companies' bank documents and bank communications that document the suspect as the UBO are regularly seized during criminal investigations as one of the first steps besides freezing such assets.

7.3 Crypto-assets

Introduction of National Legal Provisions

Liechtenstein already has many years of experience with the regulation of crypto services and crypto-assets and also provides for an attractive company law and tax law. With the Token and

Trusted Technology Service Provider Act (TVTG), introduced in January 2020, Liechtenstein was the first country to have a comprehensive regulation on services related to crypto-assets. On the one hand, the law regulates civil law issues in relation to client protection and asset protection. On the other hand, supervision of the various service providers in the token economy was established. In addition, there are measures to combat money laundering by making service providers subject to AML/CFT rules. Furthermore, the law provides clarity on classifications of digital securities.

The TVTG also served as a role model for the Markets in Crypto-Assets Regulation (MiCAR), which provides for the comprehensive regulation of digital assets at EU level.

Legal Treatment of Crypto-Assets

Liechtenstein law does not have any restrictions on owning and using cryptocurrencies for transactions. Also, exchange between fiat currencies and cryptocurrencies is permitted. Even official authorities accept payments in some cryptocurrencies and the registered capital for formation of entities may be provided in cryptocurrencies.

To achieve coherent and consistent legislation, the law also stipulates that Liechtenstein law applies to any token issued by a Liechtenstein issuer or any token that the issuer opted for. Also, according to the national TVTG, all tokens issued under Liechtenstein law are considered to be assets located in Liechtenstein and thus enjoy the protection of Liechtenstein laws (including property law).

Freezing Crypto-Assets

In the course of one of the latest amendments of the Liechtenstein Criminal Procedure Code, the national legislator introduced virtual assets as assets that also can be made subject of a freezing order directing the transfer of the virtual assets to a wallet kept by the police to secure them for confiscation (forfeiture). This possibility is not limited to specific offences but, rather, applies in general. Therefore, also virtual assets obtained by fraud can be made the subject matter of confiscation.

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