PANORAMIC

DISPUTE RESOLUTION

Liechtenstein

LEXOLOGY

Dispute Resolution

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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 Strasbourg, France.

The DC is the first instance for all civil law and 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 senates of the SC are 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 implementation of special courts for Foundation law and Trust law.

The majority of the judges must have Liechtenstein citizenship. In addition, traditionally the SC is composed of professors and experienced Supreme Court judges from abroad. The judges are selected by a selection committee comprising the Reigning Prince and members of the Parliament.

Law stated - 15 Mai 2024

Judges and juries

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

Civil proceedings are governed by certain principles that 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). In contrast to common law, the judge in a civil law jurisdiction generally has a far more active role when it comes to taking evidence.

The principle of party disposition largely gives the parties 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 the truth must be 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. If corresponding facts have been alleged by a party, the judge may collect additional evidence not requested by the parties. However, including documents and the hearing of witnesses is not permitted if both parties object to taking such evidence.

Further, 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 the possibility for an improvement. In Addition, the judge is obliged to discuss the factual and legal pleadings with the parties and may not base the decision on any legal ground of which the parties obviously were not aware without giving the parties the opportunity to make 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 extensive 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.

Further, 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 shall also take into account foreign law, but if 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 - 15 Mai 2024

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 enterprise, 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 of the damaged party becoming 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 - 15 Mai 2024

Pre-action behaviour

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

In Liechtenstein, there are no compulsory conciliation proceedings necessary before 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 non-appearance of the opponent has no consequences.

Law stated - 15 Mai 2024

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? Do the courts charge a fee for starting proceedings or issuing a claim?

Civil proceedings are initiated by filing a legal action or application with the DC which includes an outline on 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 its jurisdiction, the defendant is 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 executed by letter rogatory in civil matters via the competent court at the domicile of the defendant.

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

Liechtenstein courts are widely known to be highly efficient and also able to handle a 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 - 15 Mai 2024

Timetable

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

After filing of the legal action, the court fees are due for payment by the applicant. After payment of court fees, 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 person from abroad or a legal entity.

After the security deposit has been made or it is clarified that an exemption from the 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 which evidence shall be taken. The court also passes an order as to which evidence is expected to be taken.

Subsequently, the case is heard in one or more oral hearings where the parties can present their arguments, witnesses are examined, and expert opinions are obtained as well. If the judge holds that sufficient facts have been taken allowing a decision to be made, the judge closes the taking of evidence, dismisses outstanding further evidence that it considers irrelevant, if any, and finally issues the written judgment.

Generally, factual pleadings including defence and counterclaims for set-off and new evidence (eg documents) can 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 extend the proceedings considerably. Until first instance proceedings are closed, the respondent can file a formal statement of counterclaim, too.

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.

Usually, 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 the case of a further appeal to the SC, a decision can also be expected within three to six months.

Law stated - 15 Mai 2024

Challenging the court's jurisdiction

Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

If a defendant intends to challenge court's jurisdiction he is obliged to do so during the first hearing before court at the latest, otherwise the right to challenge jurisdiction has lapsed. Accordingly, a respondent who omitted to challenge the jurisdiction of the court is considered to accept court's jurisdiction. Granting the challenge of jurisdiction results in the rejection of the claims.

Liechtenstein civil procedure law does not provide for anti-suits orders in the meaning of orders against a natural or legal person, personally prohibiting them from starting or continuing court proceedings. However the rules and measures of the EA grant the possibility to apply for injunctions prohibiting persons from all type of actions, thus also from initiating certain steps such as civil proceedings. Notwithstanding the foregoing, if a claim was or still is subject matter of a lawsuit, the parties involved are prevented from bringing it before court in course of further proceedings (***res judicata*** or ***lis pendens***).

Law stated - 15 Mai 2024

Case management

Can the parties control the procedure and the timetable? Can they extend time limits?

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

In the case of delays in the case handling caused by the other party, applications for setting time limits for taking evidence can be filed, which the judge decides upon the general procedural principles. In the 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.

Some of the time limits are extendable and some are not. Time limits set by the judge are generally extendable. Upon application and when good reason is provided, an extension is granted at the discretion of the judge. Such extension generally cannot be challenged by the opposing party. Time limits set by the law, however, such as limits for filing appeals, cannot be extended.

Law stated - 15 Mai 2024

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 must ensure it has its own documentation relevant to the claim.

In addition, parties are 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, inter alia, applies if a party refers to a document or it is a mutual document.

Law stated - 15 Mai 2024

Evidence – privilege

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

In general, parties and witnesses are obliged to appear and testify. However, there are also certain exceptions under which witnesses may refuse testimony.

This particularly applies in cases of legal secrecy obligations of a lawyer. Section 321 of the CPC provides that a lawyer may refuse to give testimony on all information entrusted to him by the client. This privilege must 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. This applies to 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 law. Thus, client–attorney documentation is also generally exempt from seizure 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 provides for a similar secrecy obligation for professional trustees with regard to all information they have been entrusted with by their client, too.

Law stated - 15 Mai 2024

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. Given the conditions are met, certain witnesses or parties may be heard before the commencement of the case – particularly, if the danger is given that the evidence may no longer be available in the future.

Law stated - 15 Mai 2024

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 law, namely documentary evidence, witness testimony, expert witness testimony, inspection on the spot and party testimony. This list, however, is not exhaustive. Procedural law accepts other types of evidence such as tape and video recordings, electronic data, biological evidence, etc. Further, as opposed to other jurisdictions, evidence that has been obtained by unlawful acts is permitted in civil proceedings.

As a general rule, 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 must 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 testify orally and are questioned by the court and the parties. Expert witnesses can provide written expert statements and are only heard upon party request.

Records of witness statements from 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 not willing or able to appear before a court in Liechtenstein can be interrogated by a foreign court based on letter rogatory proceedings. In addition, As of 2019, a witness may be heard by means of video conference instead of letter rogatory proceedings under certain requirements.

Law stated - 15 Mai 2024

Interim remedies

What interim remedies are available?

Under the EA, interim injunctions can be issued upon application prior to, during civil proceedings, or even during enforcement proceedings 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 could not successfully be enforced in the future based on the court decision expected to be obtained in the main proceeding. This applies if the future court decision ordering a payment would have to be enforced abroad.

Injunctions for instance can secure monetary claims by putting a lien on certain assets of the defendant located in Liechtenstein that the applicant must identify in the application. In this regard, it is noteworthy that, overall, rights and claims can be seized that only grant indirect

access to certain assets, such as instruction rights, voting rights, etc. Injunctions can serve to preserve a certain status quo that shall be adhered to until termination of the proceeding. However, it is not possible to search for and pledge undefined assets of a debtor. Search warrants are only applicable in relation to criminal proceedings.

The applicant must provide prima facie evidence for his claim and the endangerment of the claim that makes the injunction necessary. 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 shall hear the defendant before issuing the injunction. However, if such hearing before issuing the injunction might jeopardise the effectiveness of the injunction, such that it leads to the risk of disposal or moving of the assets, the injunction can still be issued on an ex parte basis. If so, an injunction usually is obtained within one or two weeks.

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

Granting the injunction, the court sets a time limit within which the initiation of the main proceeding shall be evidenced, otherwise the injunction be lifted. If the main proceedings are already pending, the court determines that they serve as justification for the injunction.

In the injunction, the court can order the applicant to provide a security deposit for costs or damages if it holds that the applicant was not able to sufficiently attest the claims. Further, the injunction is 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, so-called super-provisional injunctions can be obtained within a day, which have to be followed up with an application for injunction within two days thereafter.

Law stated - 15 Mai 2024

Remedies

What substantive remedies are available?

For contractual and tort claims, the principles of damages law provide for 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 can 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 - 15 Mai 2024

Settlement

Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

Generally, procedural law provides that the court shall attempt a settlement at the oral hearing with the parties being present. Liechtenstein law, however, does not provide specific rules governing the process to achieve a settlement. Thus such a settlement process remains rather formal and is highly dependent on the efforts and skills of the presiding judge and the involvement and willingness of the parties. A settlement can be reached out of court or in a court hearing. If a settlement can be reached in a court hearing with the involvement of the judge, the settlement is noted in the minutes of the court hearing. Such settlement then constitutes an enforceable public deed with the same effect and enforceability as a judgment.

The parties also can reach out of court settlements that, however, do not in themselves have the effect of a court decision unless they are also documented in a public deed by a notary.

Law stated - 15 Mai 2024

Enforcement

What means of enforcement are available?

The EA provides for a broad array of enforcement means. 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. Further, forced administration of companies or other properties is a possible means of enforcement.

If the decision to be enforced orders a party for a personal act or omission for the benefit of another party an enforcement can be made by ordering personal actions of the debtor subject to fines or imprisonment of up to 12 months if 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 - 15 Mai 2024

Public access

Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

In general, oral hearings and the announcement of a decision in civil proceedings are public. Under certain conditions, however, the public may be excluded from hearings such as if it is

required to protect business secrets. Some types of proceedings are not open to the public such as injunction hearings and hearings in non-contentious proceedings regarding very private and family matters. However, recordings of public hearings 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 who can show legal interest in the content of the case file can 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, though, on an anonymous basis.

As a general principle under constitutional law, hearings in civil court proceedings are public. However, civil procedure law provides for exceptions, particularly where the public order is in danger, family affairs are at issue, or business secrets are concerned. In such cases, the court decides upon application to exclude the public from the court hearing. The court documents themselves, such as submissions, minutes, judgments or orders, however, are never public.

Law stated - 15 Mai 2024

Costs

Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

As a general rule, the losing party must reimburse the costs of the successful party according to the statutory lawyer's tariff. If a party is partly successful, parts of the costs are reimbursed based on the level of success. The law, however, also provides for several exceptions and special rules. The lawyers' 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 to be reimbursed often do not cover the actual costs the party has to bear vis-àvis the engaged lawyer.

To protect a defendant's position on costs, given the claimant is resident in a country where a costs award issued by a Liechtenstein court could not be enforced a foreign claimant must provide a security deposit for the presumed procedural costs of the defendant. Generally, legal entities acting as claimants must provide a security deposit for presumed procedural costs. If it turns out during proceedings that the paid security deposit does not suffice to cover the procedural costs, the defendant can request for an additional security deposit. The obligation to make a security deposit also applies in case of appeals of a foreign party or a legal entity.

However, exemptions apply, such as if the entity shows sufficient funds in Liechtenstein or another country where Liechtenstein cost awards are enforceable. Another exemption is provided for cases of legal aid if the claimant and in the case of legal entities the persons potentially benefiting from the claim may not make the deposit. Legal aid is granted only if the litigation is not considered vexatious or futile.

Further, in some proceedings, the rules on security deposits do not apply, such as Foundation supervisory proceedings.

The security deposit can be provided by wire transfer or by a bank guarantee of any EU/EEA-based bank.

In 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 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.

The rules on the reimbursement of costs do not apply during proceedings following the application for an injunction. Cost awards are usually issued with the main decision deciding on the material application or relief sought.

Law stated - 15 Mai 2024

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 both the Attorneys Act and the Liechtenstein Civil Code, lawyers are 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 not permissible. However, an attorney can 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.

However, the limitations under the law do not apply to other persons who do not qualify as Attorneys. Therefore, litigation funding is permitted and 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 can shift his or her 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.

Law stated - 15 Mai 2024

Insurance

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

There are different types of insurance possible to obtain coverage for protection against the financial risks associated with civil cases as claimant or defendant and associated with other types of proceedings. However, depending on the terms of the insurance policy there can be substantial restrictions on the coverage in terms of scope and amount covered (insurance

sum). Further restrictions can apply regarding the hourly rates covered by the insurance. However, a restriction on the selection of the attorney is not permitted.

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

Law stated - 15 Mai 2024

Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

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

However, procedural law allows for a joinder of claimants or defendants under certain requirements. Parties can 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. If so, the case of the joint parties is heard together.

Further, it is possible to formally join several independent cases together into one case for the taking of evidence. However, even if so 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 to 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 - 15 Mai 2024

Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Judgments of the DC can be appealed to the CoA within four weeks of receipt. The CoA either confirms, amends or annuls the decision and remands 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 necessary. 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 not possible. However, the CoA can refuse to permit further facts or evidence if they were negligently brought forward with delay. In the appeal, the factual findings, procedural errors, and legal assessment can be contested. For some

procedural errors, a prior rebuke in the oral hearing is required to permit a later contesting of the appeals proceeding.

Unless explicitly excluded by law, decisions of the DC other than judgments, such as orders, can be appealed to the CoA within 14 days of receipt. Exceptions from a separate appeal are procedural orders on the conduct of the proceeding or other decisions that can be appealed together with the main decision.

In general, decisions of the CoA can be appealed to SC whereas some limitations apply. Judgments of the CoA can 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 francs amount in dispute). Appeals proceedings before the SC are in writing.

In general, orders of the CoA can be appealed within 14 days of receipt subject to limitations. An order of the CoA confirming an order of the DC cannot be appealed. This applies to cost awards rendered by the CoA in any case.

The SC only deals with the legal questions and procedural errors of the CoA instead of any questions on facts. No new facts are allowed to be entered into the proceeding. The SC decides in writing without a prior oral hearing.

Decisions of the final instance that are conclusive on a certain item and, thus, are not merely remanding a matter back to a lower instance can be appealed to the Liechtenstein Constitutional Court within four weeks of receipt.

In the appeal, only violations of constitutional rights can be asserted, ie, a violation of constitutional rights granted by the Liechtenstein Constitution and/or the European Convention on Human Rights. The Constitutional Court can only annul the decision at hand 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. In contrast, this does not apply to appeals against orders. Therefore, in general, orders are immediately enforceable after being issued and delivered – nonetheless, the higher instance can grant suspensive effect upon application.

An appeal to the Constitutional Court does not have any suspensive effect by itself, too, but such can be granted by its President upon application if conditions under the law are met.

Law stated - 15 Mai 2024

Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

Liechtenstein is not a member state party to 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. 1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and

Commercial Matters (Brussels Ia 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 of which Liechtenstein is a member.

Under the EA, decisions of foreign courts are generally only recognised and enforceable in Liechtenstein if 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 concluded bilateral treaties on the recognition and enforcement of court decisions in civil law matters only with Switzerland and Austria. Under the treaties, the following requirements further must be met to allow for recognition and enforcement:

- 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 the 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 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 can first obtain a payment order of the DC against the debtor. If the debtor files an objection against this payment order within the 14-day time limit, the creditor can obtain an annulment of the objection in a summary proceeding by utilising the foreign final and enforceable decision. If requirements are met the DC declares the annulment of the objection and reinstates the payment order. The debtor can initiate a revocation proceeding within 14 days, which is an own regular contentious proceeding in which the debtor can relitigate the matter. However, the roles of claimant and defendant are reversed, whereby the debtor must act as the claimant and has the burden of proving the non-existence of the claim.

Law stated - 15 Mai 2024

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 for that the DC grants legal assistance unless otherwise provided for by bilateral agreements. Legal assistance, however, is refused if 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 obtained.

Further, the DC adheres to Liechtenstein procedural law when providing legal assistance.

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

Law stated - 15 Mai 2024

ARBITRATION

UNCITRAL Model Law
Is the arbitration law based on the UNCITRAL Model Law?

In general, Liechtenstein arbitration follows the Austrian model based on the Model Law on International Arbitration (UNCITRAL). To make the law more attractive and effective Liechtenstein arbitration law, however, included several amendments.

As a rule, claims arisen from rights involving an economic interest that are usually decided by domestic courts are arbitrable. Other claims are arbitrable if the parties are capable of reaching a settlement on the subject matter of the dispute.

Further, disputes in relation to trusts, foundations, or companies can be brought 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 fall within the scope of the foundation supervisory court by law 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 - 15 Mai 2024

Arbitration agreements
What are the formal requirements for an enforceable arbitration agreement?

An arbitration agreement must be in writing and 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. A contractual referral to a document containing an arbitration agreement such as reference to general terms and conditions constitutes an arbitration agreement, too. Usually, in practice arbitration clauses and agreements define the applicability of the Liechtenstein Arbitration Rules of the Liechtenstein Arbitration Association (LIS), which provide 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 - 15 Mai 2024

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, who then in turn appoint a third arbitrator as chairman. If a party fails to appoint an arbitrator in time after having obtained the request, the arbitrator is appointed by the court upon further request of a party. The appointment of an arbitrator can be challenged if circumstances exist giving rise to justifiable doubts on the impartiality or independence or does not have the qualifications agreed upon by the parties.

Law stated - 15 Mai 2024

Arbitrator options

What are the options when choosing an arbitrator or arbitrators?

Generally, the parties can freely determine the composition of the arbitral tribunal and can 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 appoint a further person as chair. A person approached for possible appointment as arbitrator shall disclose any circumstances relevant to the questions of impartiality or independence. After appointment, an arbitrator shall 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 an arbitrator, parties are, of course, well advised to choose a person with 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 can meet the requirements for complex arbitration cases.

Law stated - 15 Mai 2024

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 is 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 the 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 - 15 Mai 2024

Court powers to support the arbitral process

What powers do national courts have to support the arbitral process before and during an arbitration?

Generally, the arbitration agreement establishes an exclusion of the jurisdiction of state courts. If a court is approached with a claim that is subject to an arbitration agreement, the court rejects the claim, unless the defendant enters into the claim by making submissions on the mater 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 can hear the case.

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

However, the law provides that even in the case of a valid arbitration agreement, the state 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 (section 602 CPC);
- appointment, rejection or early dismissal of an arbitrator under certain preconditions (section 604 et seq CPC);
- enforcement of provisional measures validly ordered by the arbitral tribunal (section 610 CPC); and
- decisions on applications to set aside the arbitration award (section 628 CPC).

Thus the applicant and claimant may apply for injunctive measures before the national courts before or after initiation of an arbitration case. The arbitration case then serves as the justification proceeding.

Law stated - 15 Mai 2024

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 can order provisional or protective measures against a party in relation to the subject matter of the dispute if otherwise the enforcement of the claim would be frustrated or substantially more difficult or if there is a risk of irreversible damage. Before imposing such measures, the arbitral tribunal must hear the other party and can request the applicant to make a security deposit for potential costs and damages in connection with the demanded interim measure (section 610 CPC).

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

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

Law stated - 15 Mai 2024

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 is made in writing and signed by the arbitrators. Unless agreed otherwise, the signatures of most 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 agreed otherwise by the parties, the award must set out the reasons that form the basis of the decision, the date on which it was rendered and the seat of the arbitral tribunal (section 612 CPC). A copy of the award signed by the arbitrators is 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 confirms that the award is final and enforceable (section 623 CPC).

Law stated - 15 Mai 2024

Appeal or challenge

On what grounds can an award be appealed or challenged in the courts?

Arbitral awards as well as awards ruling on the jurisdiction of the arbitral tribunal can only be challenged with an action filed with the CoA within four weeks of receipt of the award. The action can 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 can be set aside 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 - 15 Mai 2024

Enforcement

What procedures exist for enforcement of foreign and domestic awards?

Liechtenstein is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention). Thus, arbitral awards 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 in the competence of the state courts and is governed by the provisions of the Enforcement Act. For enforcement, the original or a certified copy of the award along with the confirmation of the arbitrators is required that the award is final and enforceable. If the award is not in German, a translation is also required.

Law stated - 15 Mai 2024

Costs

Can a successful party recover its costs?

Once the arbitral proceeding is terminated, the arbitral tribunal decides on the reimbursement of costs, unless otherwise agreed by the parties. When deciding on the costs the arbitral tribunal at its discretion takes into account the circumstances of the individual case, in particular the outcome of the proceeding. The obligation to reimburse costs can 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 (costs award).

Law stated - 15 Mai 2024

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

Further, Liechtenstein law provides for ADR in the case of disputes on the change of the professional trustee that administrates a foundation and other companies. 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 - 15 Mai 2024

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 state court nor an arbitral tribunal can compel parties to participate in an ADR process. An exception is given for disputes about parental custody.

Law stated - 15 Mai 2024

MISCELLANEOUS

Interesting features

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

As regards asset recovery or complex commercial litigation, civil litigation is often combined with criminal investigation proceedings as civil claims can be 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 if house searches and seizures are conducted during the investigations.

Law stated - 15 Mai 2024

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 under way for a reform of the court system that aim to speed up the process and further professionalise the court system. The discussions 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 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, which was confirmed and specified in several decisions thereafter, 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.

In a 2023 landmark decision, the Constitutional Court held that, in addition to an actual gross breach of duty, conflicts of interest may also constitute an important reason for the dismissal of a member of the foundation council. Accordingly, it is not necessary for the member of the foundation board to have violated their duties due to a conflict of interest. Rather, the mere perception of a possible conflict of interest and a resulting abstract threat to the interests of

the foundation may be sufficient for the dismissal of the member. The court found that the conflict of interest of the dismissed board member manifested itself in several ways, one of which was the initiation of several civil and criminal proceedings against a beneficiary of the foundation (whether justified or not).

A further landmark decision clarified under which conditions and circumstances a beneficiary can be considered as an entitled beneficiary with 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, by-laws and the 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 - 15 Mai 2024