THE ASSET TRACING AND RECOVERY REVIEW

SIXTH EDITION

Editor
Robert Hunter

THE LAWREVIEWS

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PREFACE

'Fraud' is a word that people find easier to use than to define. Partly for this reason, it is difficult for lawyers to summarise the way in which their particular jurisdictions deal with it. Some of the sources of their laws will be domestic and will have evolved over time. Others will be recent international conventions, where regard must be had to the decisions of other jurisdictions.

But these difficulties aside, the problems that fraud generates pose unique challenges for the legal system of any country. First, there will be forensic issues: to what lengths should the court go to discover what actually happened? Here different jurisdictions place different priorities on what their courts are for. Some treat the court process as an almost sacrosanct search for truth. The courts of my own jurisdiction tend towards this end of the spectrum. Others regard it as a means of resolving disputes efficiently and providing certainty for the litigants. Often courts in this category allow no witness evidence and no procedure for disclosure of documents, regarding both as disproportionately burdensome for any benefit they might provide.

Second, there is the question of whether the court should mark conduct that is 'fraudulent' as particularly abhorrent, in civil proceedings. All will criminalise fraudulent behaviour, but not all will penalise fraudulent conduct by enhancing the victim's compensation or by depriving the fraudsters of arguments that might have been available to them if they had been careless rather than dishonest.

Third, there is the question of innocent parties: to what extent should victims of fraud be given enhanced rights over 'victims' of ordinary commercial default? In some jurisdictions, it is said that victims of fraud part with their assets – at least to some extent – involuntarily while commercial counterparties take risks with their eyes open. Hence, victims of fraud can, in some circumstances, be allowed to retrieve assets from an insolvency before ordinary trade counterparties or 'general creditors' do so.

Lawyers have been mulling over the rights and wrongs of solutions to the problems that fraud presents for centuries. They will never stop doing so. The internationalisation of fraud in the past 40 years or so, however, has meant that they argue about these problems not only with lawyers of their own country, but also with lawyers from other jurisdictions. Rarely nowadays will a fraudster leave the proceeds of fraud in the jurisdiction in which they were stolen. The 1980s and early 1990s saw quite pronounced attempts by fraudsters to 'arbitrage' the various attitudes and priorities of different jurisdictions to retain what they had taken. Perhaps the highest-profile example of this was the use of jurisdictions in which banking secrecy was a priority as a conduit to which the proceeds of fraud would be transmitted. Another well-known strategy was the use of corporate devices and trusts as a means of sheltering assets from those who deserved to retrieve them.

A number of factors have served to make this more difficult. The growth of international conventions for the harmonisation of laws and enforcement of judgments is clearly one factor. Perhaps more notable, however, has been the international impetus to curb money laundering through criminal sanctions. These have, however, been first steps, albeit comparatively successful ones. There is still a huge amount to be done.

I have specialised in fraud litigation – virtually exclusively – since the late 1980s. My chosen area has brought me into contact with talented lawyers all over the world. I remain as fascinated as I was at the outset by the different solutions that different countries have to the problems fraud creates. I am sometimes jealous and sometimes frustrated when I hear of the remedies for fraud that other jurisdictions offer or lack. When I talk to lawyers who enquire about my own jurisdiction, I frequently see them experiencing the same reactions too. The comparison is more than a matter of mere academic interest. Every month brings some study by the government or private sector tolling the cost of fraud to the taxpayer or to society in general. My own interest goes beyond ordinary 'balance-sheet' issues. When I deal with fraudsters, particularly habitual or predatory ones, I still retain the same appalled fascination that I experienced when I encountered my first fraudster, and I share none of the sneaking admiration for them that I sometimes see in the media; they are selfish, cruel and immature people who not only steal from their victims, but also humiliate them.

No book sufficiently brief to be useful could ever contain all the laws of any one jurisdiction relating to fraud. The challenge, unfortunately, for a contributor to a book like this lies as much in what to exclude as in what to say. This guide contains contributions from eminent practitioners the world over, who have, on the basis of their experience, set out what they regard as critical within their own jurisdictions. Each chapter is similarly structured for ease of reference with similar headings to enable the reader to compare remedies with those in other jurisdictions, and each contributor has been subject to a strict word limit. Despite there being a huge amount more that each would have been perfectly justified in including, I still believe this book to be an enormous achievement.

Once again, we have some of the foremost experts in the area from an impressive array of jurisdictions contributing. I have often thought that true expertise was not in explaining a mass of details but in summarising them in a meaningful and useful way. That is exactly the skill that a work like this requires and I believe that this edition will continue the high standard of the previous four. I have come across a number of the authors in practice, and they are unquestionably the leaders in their fields. I hope that other readers will find the work as useful and impressive as I do.

Robert Hunter
Edmonds Marshall McMahon Ltd
London
September 2018

Chapter 21

LIECHTENSTEIN

Thomas Nigg[1]

I OVERVIEW

Although the principality of Liechtenstein is one of the smallest countries in the world, the financial sector of Liechtenstein has gained a respectable international reputation in recent decades. Therefore, it comes as no surprise that funds from other countries are often channelled through Liechtenstein and that some of these funds have criminal origins.

Liechtenstein is not a common law country. Case law does exist, but it does not create binding precedent. Therefore, it does not play as important a role as it does in Anglo-American jurisdictions.[2]

As a result, fraud obligations in Liechtenstein arise from legislation. Liechtenstein law does not distinguish between civil and criminal fraud. Fraud is a crime pursuant to Section 146 of Liechtenstein's Penal Code (STGB), dated 24 June 1987. In addition, persons who have suffered damage as a result of fraud in accordance with Section 146 of the STGB are entitled to claim damages from the perpetrator under Liechtenstein's Civil Code (ABGB), dated 1 June 1811.

Liechtenstein's civil law does, however, set out special provisions regarding fraud. By way of example, the ABGB provides special terms to protect persons who have agreed to enter into a contract as a result of the fraudulent behaviour of the other party.[3]

II LEGAL RIGHTS AND REMEDIES

Before outlining the legal rights and remedies in Liechtenstein, a short introduction should be given to the definition of fraud according to Liechtenstein's Penal Code. Fraud, pursuant to Liechtenstein law, requires the deliberate deception of a person in relation to facts.[4] Deception can be committed in relation to certain circumstances, legal situations and relationships, and even concerning the true intentions of the deceiving person.

The deception can take place by an act of deception as well as by leading the victim to a false conclusion. The perpetrator has to have the intent to enrich him- or herself by inducing the victim to act, to acquiesce to or to fail to do something. As a result of the inducement, the victim suffers pecuniary damage while the fraudster enriches him or herself. The cause of action is completed by pecuniary damage to the victim.

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1 Thomas Nigg is a senior partner at Gasser Partner Attorneys at Law.

2 Batliner/Gasser (eds), *Litigation and Arbitration in Liechtenstein*, second edition, Berne/Vienna 2013, p. 14 et seq.

3 Section 870, Paragraph 1 of the ABGB.

4 Section 146 of the STGB.

Deception can be committed through false assertions; fraudulent documents, such as false attestations, or forged or falsified deeds; or other fraudulent behaviour.

The deception must misled the deceived person either by causing the misapprehension; or exploiting or supporting an already existing misapprehension.

Deception can also be committed by a breach of one's duty to resolve an existing misapprehension.

A contract is not binding on a party that has been induced to enter it by trick or by established fear. The cause of action based on civil fraud is similar to the cause of action based on criminal fraud.

'By trick' means that the defrauded contracting party has to be induced to enter a contract by the deception of the other party. Contrary to the cause of action in the Criminal Code, the defrauding party is not required to have the intent to enrich him or herself according to the Civil Code. The trick can be initiated by fraudulent representation or wilful misrepresentation of the facts. As a result, the trick must influence a party's legal will. A party can also trick another by deliberately reinforcing the existing misapprehension of the other party.

There is no distinct cause of action in relation to conspiracy to defraud in Liechtenstein civil law, but conspiracy to defraud can be qualified as a distinctive form of inducing a party to enter into contract by trick.

Whether fear was 'established' has to be determined by the extent of fear, the possibility of imminent danger, as well as by the physical and psychological condition of the induced person.

i Civil and criminal remedies

Civil remedies

Generally, persons who have suffered damage as a result of fraud are entitled to claim damages, restitution and compensation for resulting loss of profit from the perpetrator,[5] or from persons who assisted him or her to commit the fraud.[6]

In addition, it is possible for someone who has entered into a contract because of another party's deliberate deception to contest the contract by applying for declaratory relief as to the status of the contract.[7] It is also possible for the deceived person to apply to the court to specifically amend the contract. The amendment, however, also requires that the other party initially had entered into the amended contract.[8]

The calculation of damages resulting from unlawful acts depends on whether the wrongdoer acted deliberately, with gross negligence or merely with negligence. If the wrongdoer acts deliberately or with gross negligence, causing harm to a person, he or she must compensate the victim for the damage caused. Such damage is called positive damage and includes real damage incurred as well as any expenses incurred to redress the harm caused. In addition to compensating for positive damage, the wrongdoer must further compensate the harmed person for any loss of profit caused by the unlawful behaviour. If the wrongdoer acts merely negligently, he or she must compensate the harmed person only for the positive damage incurred.[9]

5 Sections 874 and 1295ff of the ABGB.

6 Section 1301 of the ABGB.

7 Section 870, Paragraph 1 of the ABGB.

8 Pletzer in Kletečka/Schauer, *ABGB-ON 1.01*, Section 870, Rz 28 (www.rdb.at).

9 Section 1293 et seq. of the ABGB.

The calculation of damages for (civil) fraud corresponds to the above basic calculation of damages in cases of unlawful behaviour. The deceiver must always act deliberately in fraud cases and, therefore, damages are calculated including positive damage and loss of profit.

In cases under Section 870, Paragraph 1 of the ABGB, the person fraudulently causing someone to enter into a contract must put the deceived person back in the position as if the harm had not occurred. As Section 870, Paragraph 1 of the ABGB requires that the deceiver acts deliberately, the deceiver must compensate the harmed person for both the positive damage incurred as well as for any loss of profit.[10]

Compared with trials in other jurisdictions, Liechtenstein justice is fairly swift. There is no rule requiring criminal cases to be granted priority. Once the relevant briefs are filed, a trial is scheduled within weeks. The average time from commencement of a lawsuit to judgment is 12 months, but it may be longer if the case is complex and international. The paperwork involved, and the time taken to prepare the initiation of proceedings or the application for an injunctive or interim relief, depends on the complexity of the case.

Proceedings must be filed with the Court of Justice of the Principality of Liechtenstein. There are no particular procedural rules for civil fraud obligations. The general rules for civil proceedings that are stated in the Liechtenstein Civil Procedure Law are applicable.

Pleading fraud can pierce the corporate veil. Piercing the corporate veil in relation to civil claims for damages in cases of fraud is possible if the perpetrator has established and used a company with the intention of committing fraudulent acts and to deceive other persons.[11]

The perpetrator can also be a company. If the company is insolvent, the victims still have the opportunity to file a claim against the organs of a company since the corporate veil can be pierced.

Criminal remedies

The Liechtenstein Code of Criminal Procedure dated 18 October 1988 (STPO) does not contain special provisions concerning criminal remedies in fraud matters. Instead, the general remedies to retrieve the victim's property in criminal matters apply.

According to Section 32, Paragraph 1 of the STPO, anyone whose rights are violated by a criminal act has the right to join the criminal investigations and proceedings initiated by the public prosecutor as a private participant. Instead of being the initiator of a lawsuit, as in civil matters, the investigating judge and the public prosecutor prepare the criminal proceeding and the private person only has to specify the extent of the damage. If, however, the damage to the private person is not obvious, it has to be demonstrated by the private person.

Moreover, private participants in criminal proceedings have many effective rights during the investigations of the public prosecutor: they have the right of access to the court files if there are no conflicts of interests, and the right to deliver anything that could help convict the accused person and verify the enumerated damage to the public prosecutor. At the court proceeding, private participants are also allowed to ask questions.[12]

Finally, in the event of the dismissal of an investigation by the investigating judge and the public prosecutor without conviction against the accused person, a private participant is

10 Section 874 of the ABGB.

11 See, for example, the decision of the Liechtenstein Supreme Court, 3 November 2005, 11 UR 2005.48 (LES 2006, 373).

12 Section 32, Paragraph 2 of the STPO.

able to bring a public accusation against the accused person in lieu of the public prosecutor.[13] If an accused person was not found guilty or the private participant does not retrieve the (entirety of the) victim's property by the court's decision, the private participant always has the opportunity to bring a lawsuit against the fraudster in a civil proceeding (see above).

ii Defences to fraud claims

Limitation is a bar to relief for fraud. The limitation period for damage claims in civil proceedings because of unlawful acts causing harm to a person (such as fraud) is generally three years. This limitation period starts as soon as the injured party has knowledge of the damage incurred as well as of the perpetrator's identity. This limitation period also applies for damage claims based on fraud under Section 870 of the ABGB. The limitation period can only be extended beyond three years in cases of serious criminal fraud causing particularly severe damage, in which case the limitation period is 30 years.[14]

However, the limitation period to contest a contract (or to apply for the amendment of a contract) entered into because of the other party's deception is 30 years from the date of conclusion of the contract.[15]

Moreover, a harmed person cannot claim relief for fraud if he or she has not acted in good faith. The deception must make the harmed person act under a misapprehension of the actual situation. If the injured party knows of the deception, then no fraud exists. In addition, in relation to calculating damages incurred by fraud, the amount of damages to which the harmed person is entitled is reduced relative to the degree to which the damages caused arise through the harmed person's own fault.

III SEIZURE AND EVIDENCE

i Securing assets and proceeds

Civil proceedings

There are no special provisions concerning securing assets in cases of civil fraud. Instead, the general provisions for securing assets apply. Before the start of a lawsuit and during litigation, it is possible to apply for interim injunctions in the form of either a security restraining order, which aims to secure pecuniary claims, or an official order, which deals with any claims other than those of a pecuniary nature.[16]

The option chosen depends on the nature of the claim. Primarily, both injunctions temporarily maintain the state of affairs prevailing at that time (e.g., to freeze the assets that are subject to litigation). In this context, the enforcement measures are limited to the custody and administration of chattels; the prohibition of alienation and pledging; and in the case of claims, the prohibition of payment and collection. These interim injunctions provided by the Liechtenstein Enforcement Act are usually issued and enforced at the expense of the

13 Section 32, Paragraph 4 of the STPO.

14 Section 1489 of the ABGB.

15 Pletzer in Kletečka/Schauer (eds), *ABGB-ON 1.01*, Section 870, Rz 31 (www.rdb.at).

16 Articles 270 ff. of Liechtenstein's Enforcement Act (EO) dated 24 November 1971.

applicant. Upon service of the injunction, the applicant can be required to pay in advance to the court the amount of money required for the enforcement of the issued injunction. The enforcement of the injunction may not be effected until that amount has been paid.[17]

Criminal proceedings

According to Section 97a of the STPO, there are several ways in which to seize or secure assets on request by the public prosecutor. The court can, for example, order the seizure, administration and depositing of movable assets, including cash, or prohibit the seizure or the disposal of movable assets.[18] The most important instrument in securing assets, however, is the freezing of bank accounts.[19] If a bank account is frozen, the potential fraudster has no way to drain the assets of the bank account. The problem is often that the bank account has to be known to the public prosecutor or to the private participant in the investigation. In this regard, due diligence reporting obligations play an important role, as bank accounts may be brought to the public prosecutor's attention in this way.

The freezing of bank accounts also plays a very important role in international matters. In cases of applications of mutual assistance from abroad, the public prosecutor or the foreign authority often requests that the Liechtenstein court freeze bank accounts according to Section 97a of the STPO.

ii Obtaining evidence

Civil proceedings

A Liechtenstein judge is confined to appraising the facts pleaded by the parties. There are five different types of evidence mentioned in the Liechtenstein Civil Procedure Act (ZPO), dated 10 December 1912: documentary evidence, hearing of witnesses, evidence by experts, evidence by inspection of the court and evidence by party interrogation.[20] None of these means has greater weight than the others. Under Liechtenstein civil procedure law, a judge is free to weigh and consider the evidence submitted by the parties according to the conviction he or she has acquired during the proceedings. The court has the power to draw its conclusions from witness statements, regardless of the number of witnesses presented by one side, relying on the credibility, clarity and sureness of a witness statement, as well as any correspondence between different pieces of evidence and witness statements.[21]

For persons familiar with US litigation, it may be difficult to accept that there is no comparable provision for compulsory pretrial discovery under Liechtenstein law. In the course of a civil procedure, it is, however, possible to obtain an order that forces the defendant to produce certain types of documents. Notably, the same may also be obtained from the plaintiff or other parties to a trial.

The order will be limited to cases where the documents are in the possession of a party who refers to it previously before the court, or where the party under the burden of proof is entitled by law to inspect the document. The order also applies where the document has

17 Article 286, Paragraphs 1 and 3 of the EO.

18 Section 97a, Paragraph 1, Subparagraphs 1 and 2 of the STPO.

19 Section 97a, Paragraph 1, Subparagraph 3 of the STPO.

20 Section 292 et seq. of the ZPO.

21 Batliner/Gasser (eds), *Litigation and Arbitration in Liechtenstein*, second edition, Berne/Vienna 2013, p. 45 et seq.

been prepared for the benefit of the moving party, or where the document sought will serve as evidence for the legal relationship between the parties or serves to demonstrate factors underlying that relationship.[22]

If a party fears that the evidence in question may be difficult to obtain in the future, an order for the preservation of evidence is possible (inspection of perishable goods, deposition of a witness who is about to die, etc.). A party may at any time file a petition for preliminary proceedings to take evidence on facts that the party intends to bring into evidence in pending or future court proceedings.[23]

Criminal proceedings

In criminal investigations and proceedings, the investigating judge has the duty to obtain evidence on request by the public prosecutor and subsequently to hand over the results to the public prosecutor.[24] The investigating judge has several options by which to obtain evidence.

In matters of fraud, house searches and the seizure of documents and other objects are very important.[25] In the case of bank documents, Liechtenstein has always had very robust banking secrecy laws (as in Switzerland), but in criminal investigations banking secrecy is no longer protected by law and so bank documents can be seized. Certain legally privileged documents, such as correspondence between a lawyer and an accused party, cannot, however, be sequestrated.[26]

IV FRAUD IN SPECIFIC CONTEXTS

i Banking and money laundering

There are no special features of law, regulation and practice in Liechtenstein relating to the recovery of assets and to pursuing claims in banking and money laundering matters. Therefore, the general rules of law for recovery and pursuing claims apply.

ii Insolvency

The Liechtenstein Criminal Code contains special provisions for the criminal prosecution of persons who have committed frauds in insolvency matters.[27] An example of a fraud in insolvency matters is the unfair disadvantage of creditors.

According to the Liechtenstein Code of Securing Legal Rights (RSO), dated 9 February 1923, it is possible to revoke certain acts of the insolvent party. According to Article 64 et seq. of the RSO, legal actions made by the debtor for the purpose of harming creditors of the debtor can be appealed. With this feature of law, it is possible to submit certain assets to the debt collection proceeding.

22 Section 304 of the ZPO.

23 Section 384 et seq. of the ZPO.

24 Section 41 of the STPO.

25 Section 91a et seq. of the STPO.

26 See, for example, the decision of the Constitutional Court of Liechtenstein, 28 February 2000, STGH 1999/23 (LES 2003, 1).

27 Section 156 et seq. of the STGB.

Furthermore, pleading fraud can pierce the corporate veil. Piercing the corporate veil in relation to civil claims for damages in cases of insolvency is possible if the perpetrator has established and used a company with the intention of committing fraudulent acts and deceiving other persons.[28]

iii Arbitration

The rules for arbitral proceedings in Liechtenstein are regulated in the ZPO.[29] In addition, there are the Liechtenstein Rules, which apply whenever parties agree on them. According to Section 598 of the ZPO, contractual and non-contractual proprietary matters are arbitral. Therefore, arbitral tribunals can preside over disputes in fraud matters as in civil proceedings if the parties concluded an arbitration agreement regarding the matter involving the fraud.

iv Fraud's effect on evidentiary rules and legal privilege

As stated in Section III.ii, correspondence between a lawyer and an accused person is legally privileged and cannot be sequestrated. Therefore, correspondence between a lawyer and an accused person in fraud matters cannot be used as evidence in criminal proceedings.

V INTERNATIONAL ASPECTS

i Conflict of law and choice of law in fraud claims

In Liechtenstein, the Private International Law Act (IPRG), dated 19 September 1996, deals with legal issues involving foreign countries.

The IPRG does not contain any special provisions for fraud matters. Therefore, the general conflict rules of the general law of obligations apply, as fraud in civil proceedings is an issue of law of obligations according to the Civil Code.[30] In matters of the law of obligations, the parties may expressly or coherently determine their choice of law and, consequently, parties in fraud matters can do so as well.[31]

If no choice of law exists in matters of the law of obligations by the parties involved, Article 52 of the IPRG applies. In this case, the proceeding on matters of the law of obligations, and in consequence also fraud proceedings, would be judged according to the law of the country in which the fraud has been committed. If, however, the parties involved both bear a stronger relation to another country than the country in which the fraud has been committed, the law of this other country will be applicable.

ii Collection of evidence in support of proceedings abroad

Civil proceedings

Liechtenstein is a signatory to the Convention of Taking Evidence Abroad in Civil or Commercial matters, dated 18 March 1970 (Hague Evidence Convention). Therefore,

28 See, for example, the decision of the Liechtenstein Supreme Court, 3 November 2005, 11 UR 2005.48 (LES 2006, 373).

29 Sections 594 to 635 of the ZPO.

30 See Section II.

31 Article 39, Paragraph 1 of the IPRG.

Liechtenstein assists in the service of judicial documents, as well in as the obtaining of evidence, such as through local inspections, taking statements from witnesses and parties, production of documents and providing expert opinions.

Liechtenstein does, however, also provide jurisdictions that are not party to the Hague Evidence Convention with mutual assistance, but the extent of the assistance has to be evaluated in each case by the responsible judge.

Criminal proceedings

Liechtenstein is a signatory to the European Convention on Mutual Assistance in Criminal Matters (ECMA) of 20 April 1959. Therefore, Liechtenstein will assist with collecting evidence according the ECMA if the request for assistance comes from a signatory of the ECMA.

For other countries, the rules of the Liechtenstein Mutual Legal Assistance Act (RHG), dated 15 September 2000 apply. The purpose of the RHG is to assist foreign authorities to detect and investigate crime and criminal activities, and so Liechtenstein provides foreign authorities with possible evidence such as documents or witness statements. In the context of fraud and other crimes in financial matters, the confiscation of bank documents is also very important (see Section III.ii).

The freezing of bank accounts plays another important role in cases of mutual legal assistance (see Section III.i).

iii Seizure of assets or proceeds of fraud in support of the victim of fraud

To seize the assets of a victim of fraud, it would be necessary to initiate legal proceedings in Liechtenstein regarding interim injunctions. As Liechtenstein is not a party to the Lugano Convention[32] and, as in relation to the treaties regarding the enforcement of judgments with Austria and Switzerland,[33] the enforcement of interim injunctions is explicitly excluded, and the ordering of a foreign court to seize assets in Liechtenstein is not possible.

Criminal proceedings

According to the STPO, the public prosecutor may request freezing orders on bank accounts. In cases of mutual assistance, the public prosecutor often requests freezing orders to avoid the drain of money and, in consequence, the victim of fraud can be supported in recovering his or her assets (see Section III.i).

During investigation proceedings, the seizure of assets is ordered by the court upon request of the public prosecutor, as mentioned above. In general, the measures are the seizure of assets, search warrants and observations, as well as arrest and custody measures. The court may also order the seizure and administration or depositing of movable assets or prohibit the disposal of such assets, including cash. Moreover, the criminal court may declare assets to be 'forfeited'.[34]

32 The Lugano Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters of 1988.

33 Agreement on the acknowledgement and enforcement of judgments in civil-law matters between Liechtenstein and Switzerland, dated 25 April 1968; Agreement on the acknowledgement and enforcement of judgments in civil-law matters between Liechtenstein and Austria, dated 5 July 1973 (together, the Agreements).

34 Section 20 et seq. of the STGB.

iv Enforcement of judgments granted abroad in relation to fraud claims

Liechtenstein is not subject to European regulations on mutual acknowledgment of foreign jurisdiction; nor is Liechtenstein party to the Lugano Convention or other multilateral or international conventions on the acknowledgment and enforcement of foreign judgments. The only countries with which Liechtenstein has bilateral treaties on the acknowledgment and enforcement of foreign judgments are Austria and Switzerland.

Apart from the aforementioned exceptions, foreign judgments are not enforceable in Liechtenstein. Trying to enforce a foreign judgment regularly leads to a special procedure in which an entirely new proceeding on the claim will be initiated in Liechtenstein. The Liechtenstein court will newly opine on the facts, the Liechtenstein judge will take evidence him or herself, whereby the foreign judgment, including any and all results of the foreign procedure, will regularly be entirely ignored.[35]

Further exceptions are arbitral awards, as Liechtenstein recently signed the New York Convention, which entered into force on 5 November 2011. Liechtenstein thus recognises and enforces the awards of arbitral tribunals with domicile in another of the signatory states.[36]

v Fraud as a defence to enforcement of judgments granted abroad

As stated in Section V.iv, Liechtenstein is not subject to the Lugano Convention and therefore foreign judgments are generally not enforceable in Liechtenstein.[37] Concerning the enforcement of judgments from Switzerland and Austria, however, judgments can only be enforced in Liechtenstein if their recognition does not contravene public policy.[38] In these circumstances, it is conceivable that a judge would refuse to recognise and enforce a judgment from Switzerland or Austria if it is obvious that this judgment was obtained fraudulently.

VI CURRENT DEVELOPMENTS

With regard to relevant innovations and developments, reference should be made to the new forfeiture provisions, which have been in force since 1 June 2016. The core elements of the amendments were the replacement of the net principle by the gross principle, a new very broad understanding of the term 'assets', the extension of the forfeiture to include uses and replacement values, and the explicit inclusion of assets saved by committing a criminal offence in the decline of value. The first case law[39] on these new provisions shows that the objective of the amendment ('crime must not be worthwhile') has been achieved.

35 Batliner/Gasser (eds), *Litigation and Arbitration in Liechtenstein*, second edition, Berne/Vienna 2013, p. 85 et seq.

36 The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, dated 10 June 1958.

37 See the Agreements, footnote 33.

38 Article 1, Paragraph 1, Subparagraph 1 of the Agreement on the acknowledgement and enforcement of judgments in civil-law matters between Liechtenstein and Switzerland dated 25 April 1968 and the Agreement on the acknowledgement and enforcement of judgments in civil-law matters between Liechtenstein and Austria dated 5 July 1973.

39 See, for example, the decisions of the Supreme Court of Liechtenstein, 6 October 2017 OGH 12 RS.2013.200; 1 December 2017 OGH 13 UR.2016.112; and the decisions of the Court of Appeal, 10 April 2018 OG 13 UR.2018.73; 24 April 2018 OG 09 KG.2014.1; 24 April 2018 OG 11 UR.2017.176.

Appendix 1

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