

Arbitration 2021

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Published by

Law Business Research Ltd

Meridian House, 34-35 Farringdon Street

London, EC4A 4HL, UK

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First published 2006

Sixteenth edition

ISBN 978-1-83862-624-2

Printed and distributed by

Encompass Print Solutions

Tel: 0844 2480 112



Arbitration 2021

Contributing editors**Stephan Wilske and Gerhard Wegen****Gleiss Lutz**

Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Arbitration*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Hong Kong, Macau, Spain, Sri Lanka and Zambia.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Gerhard Wegen and Stephan Wilske of Gleiss Lutz, for their continued assistance with this volume.



London

February 2021

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This article was first published in March 2021

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Contents

Introduction	5	Ghana	102
Stephan Wilske and Gerhard Wegen Gleiss Lutz		Kimathi Kuenyehia, Sefakor Kuenyehia and Kwasi Danso Amoah Kimathi & Partners Corporate Attorneys	
CEAC	14	Hong Kong	112
Dominik Ziegenhahn Chinese European Arbitration Centre Eckart Brödermann and Elke Umbeck Chinese European Arbitration Association		Charles Allen and Yi-Shun Teoh RPC	
DIS	18	Hungary	124
Renate Dendorfer-Ditges DITGES Partnerschaft mbB		Chrysta Bán Bán S Szabó & Partners	
ICSID	22	India	133
Harold Frey and Hanno Wehland Lenz & Staehelin		Shreyas Jayasimha and Spandana Ashwath Aarna Law	
Austria	25	Japan	151
Klaus Oblin OBLIN Attorneys at Law		Aoi Inoue Anderson Mōri & Tomotsune	
Belgium	35	Liechtenstein	161
Alexander Hansebout ALTIUS		Thomas Nigg Gasser Partner Attorneys at Law	
Bulgaria	44	Macau	169
Emil Emanuilov Kambourov & Partners, Attorneys at Law		Jorge Neto Valente and Cristina Neto Valente JNV – Lawyers and Notaries	
Chile	54	Norway	179
Francesco Campora and Juan Pablo Letelier Loy Letelier Campora		Erlend Haaskjold Arntzen de Besche Advokatfirma AS	
China	63	Pakistan	187
Dong Chungang and Hu Ke Jingtian & Gongcheng		Feisal Hussain Naqvi and Mian Sami ud Din Bhandari Naqvi Riaz	
Egypt	73	Romania	197
Ismail Selim The Cairo Regional Centre for International Commercial Arbitration		Cristiana-Irinel Stoica, Irina-Andreea Micu, Daniel Aragea and Alin-Gabriel Oprea STOICA & Asociații	
France	83	Russia	209
Cédric de Pouzilhac and Marion Carrega Aramis Law Firm		Dmitry Ivanov, Grigory Marinichev and Jon Hines Morgan Lewis & Bockius LLP	
Germany	93	Singapore	219
Stephan Wilske and Claudia Krapfl Gleiss Lutz		Edmund Jerome Kronenburg and Angelia Thng Braddell Brothers LLP	

Slovakia	232	Thailand	302
Roman Prekop, Monika Šimorová, Peter Pethő and Richard Šustek Barger Prekop		Pakpoom Suntornvipat and Surasak Vajasit R&T Asia (Thailand) Limited	
South Korea	242	Turkey	311
Byung-Woo Im, Hyemin Park and Joel E Richardson Kim & Chang		Orcun Cetinkaya and Ural Özbek CETINKAYA	
Spain	255	United Arab Emirates	319
Alfredo Guerrero and Fernando Badenes King & Wood Mallesons		Chatura Randeniya, Mevan Bandara and Amira Shahin Afridi & Angell	
Sri Lanka	265	United Kingdom	327
Avindra Rodrigo FJ & G De Saram		Craig Tevendale, Vanessa Naish and Rebecca Warder Herbert Smith Freehills LLP	
Sweden	273	United States	340
Simon Arvmyren and Christopher Stridh Advokatfirman Delphi		Matthew E Draper Draper & Draper LLC	
Switzerland	283	Zambia	350
Daniel Hochstrasser, Nadja Jaisli Kull and Sarah Affolter Bär & Karrer		Sydney Chisenga and Ken Phiri Corpus Legal Practitioners	
Taiwan	293		
Helena H C Chen Pinsent Masons			

Liechtenstein

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LAWS AND INSTITUTIONS

Multilateral conventions relating to arbitration

- 1 | Is your jurisdiction a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Since 5 November 2011, Liechtenstein has been a signatory to the New York Convention. Under article 1(3) of the Convention, Liechtenstein declared a reservation of reciprocity (LGBI 2011/325).

Liechtenstein is a member of the International Energy Charter, resulting in the application of the treaty's investment protection rules.

Bilateral investment treaties

- 2 | Do bilateral investment treaties exist with other countries?

According to www.unctad.org, Liechtenstein is not a party to any bilateral investment treaties. However, Liechtenstein has concluded a number of bilateral tax treaties, providing for arbitration.

Domestic arbitration law

- 3 | What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary domestic sources of law relating to domestic and foreign arbitral proceedings and the recognition and enforcement of awards are the Liechtenstein Code of Civil Procedure (LCCP; sections 594-635), the Liechtenstein Enforcement Act (EO; article 1(m)) and the New York Convention.

The LCCP governs both domestic and foreign arbitral proceedings. In addition, there are the Liechtenstein Rules, which apply whenever parties agree on them.

Domestic arbitration and UNCITRAL

- 4 | Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

Domestic arbitration law basically corresponds to the Austrian arbitration law, as the country has generally based its Code of Civil Procedure closely on the Austrian model. Since Austrian law itself is strongly influenced by the UNCITRAL Model Law, the Liechtenstein Arbitration law today largely matches international standards. Hence, the domestic arbitration law is based on the UNCITRAL Model Law. Liechtenstein law,

however, only partly deviates from the provisions of the Model Law, including, inter alia, provisions on the conclusion of arbitration agreements with consumers or employees.

Mandatory provisions

- 5 | What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The provisions on arbitration are generally dispositive and can thus be overlaid by the arbitration rules. Section 605 of the LCCP, for example, stipulates minimum standards regarding the neutrality of arbitrators. In this respect, an arbitrator may be challenged only if circumstances occur that give rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not meet the requirements agreed between the parties.

Substantive law

- 6 | Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Section 620 of the LCCP governs the law applicable in arbitration proceedings seated in Liechtenstein. This provision addresses the law applicable to the merits, not the law applicable to the arbitration agreement.

First, the arbitral tribunal must comply with the parties' choice of law. However, if the parties have not agreed to the law applicable to the merits, the arbitration tribunal has to apply the law it deems appropriate.

A decision based on reasons of equity can only be made if the parties have explicitly empowered the arbitral tribunal to do so.

Arbitral institutions

- 7 | What are the most prominent arbitral institutions situated in your jurisdiction?

Liechtenstein with its political neutrality, geographically central location, excellent infrastructure and legal framework, is an attractive central European place of arbitration. However, besides the Liechtenstein Arbitration Association (www.lis.li), which is not an arbitral institution in the literal sense, no other arbitral institution is based in Liechtenstein. However, because of its geographical vicinity and legal similarities, a significant number of arbitration proceedings are conducted under the auspices of the Swiss Chambers' Arbitration Institution and the Vienna International Arbitration Centre.

ARBITRATION AGREEMENT

Arbitrability

8 | Are there any types of disputes that are not arbitrable?

Liechtenstein as a jurisdiction is arbitration-friendly, and thus nearly every matter that could be subject to state court proceedings may be submitted to arbitration as well. Accordingly, section 599(1) of the LCCP states that any pecuniary claim to be decided by state courts may be subject to arbitration agreements. Nonetheless, there are disputes that are not arbitrable. Family law matters, certain company-related disputes and all disputes arising out of contract articles of apprenticeship cannot be made subject to arbitral agreements.

In summary, all business- and civil law-related matters can be subject to an arbitration agreement. Therefore, all company-related matters are usually open to arbitration if the proceedings are not initiated by the public prosecutor.

Requirements

9 | What formal and other requirements exist for an arbitration agreement?

For a natural person, the capacity for arbitration agreements derives from his or her personal statute, whereas a legal person needs to have legal personality to be a party to an arbitration agreement.

Besides the capacity to conclude arbitration agreements, the basic requirement for an arbitration agreement is that it exists in writing. Either a document must be signed by both parties, or it must be included in correspondence (eg, email) or in standard contracts providing a record of the agreement. Available proof of the arbitration agreement equivalent to a written document is required. There is no easing of this requirement.

However, the violation of the requirement of written form can be healed if not objected together with the first submission in the arbitral proceedings (eg, in the case of a respondent, the answer to the statement of claim).

Enforceability

10 | In what circumstances is an arbitration agreement no longer enforceable?

An arbitration agreement is a contract between two or more parties. Usually, it is up to the parties to agree on specific circumstances under which the arbitration agreement no longer applies. However, the doctrine of separability also applies, and thus an arbitration agreement continues to exist even if the underlying contract has been terminated.

There are several cases where arbitration agreements have been deemed pathological, meaning that they could not be enforced. One of the most common cases concerns the explicit naming of arbitrators in the arbitration clause. If in the case of a dispute the explicitly designated arbitrator is deceased, the arbitration clause is deemed to be invalid because of its unenforceability. The same applies if the arbitral institution designated in the arbitration agreement ceased to exist.

Separability

11 | Are there any provisions on the separability of arbitration agreements from the main agreement?

In Liechtenstein, as in its neighbouring countries, the doctrine of separability applies. This principle is closely linked to the competence-competence of the arbitral tribunal and means that the arbitration agreement is an independent contract as distinct from the main agreement. The validity of the agreements must be examined separately.

This applies both to an independent arbitration agreement and to an arbitration agreement that is only a clause of the main agreement (see Manuel Walser, *Schiedsfähigkeit im liechtensteinischen Recht*, 29 and 371; Voser/Schramm/Haugeneder in Torggler et al (eds), *Handbuch der Schiedsgerichtsbarkeit*, Rz 795).

Further, section 598 of the LCCP states that the provisions relating to arbitration shall also apply mutatis mutandis to arbitral tribunals, which are ordered in a legally permissible manner by testamentary disposition, or other legal transactions not based on an agreement between the parties or by statutes.

Third parties – bound by arbitration agreement

12 | In which instances can third parties or non-signatories be bound by an arbitration agreement?

In line with Austrian jurisprudence, legal successors are bound by an arbitration agreement concluded by their predecessor. According to the Liechtenstein Supreme Court, beneficiaries of a foundation or trust who are not explicitly named in the foundation or trust documents (discretionary beneficiaries) are bound by an arbitration agreement in the statutes or by-laws if they decide to accept a distribution by the foundation or trust.

Furthermore, according to Austrian doctrine, the liquidator is also bound by arbitration agreements of the insolvent company.

Third parties – participation

13 | Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

Under Liechtenstein law, there are almost no specific provisions with respect to third-party participation in arbitration, such as joinder or third-party notice. Nonetheless, section 633(3) of the LCCP states that with the consent of all parties involved in the arbitral proceedings, third parties may inspect the files and collect copies of documents.

However, various arbitration rules, such as the ICC Rules, contain provisions with respect to third-party participation.

Groups of companies

14 | Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

Arbitration agreements are written clauses in contracts, or at least included in standard terms and conditions, and therefore are only enforceable between the corresponding signatories. This is because of general contractual principles. Thus, courts and arbitral tribunals may not extend an arbitration agreement to the non-signatory parent or subsidiary companies of a signatory company. There are no specific provisions or judicature regarding this matter in Liechtenstein.

Thus, it is not established whether the internationally recognised group of companies doctrine applies in Liechtenstein as well. However, the Austrian Supreme Court accepted the application of an arbitration clause to economically related contractual relationships.

Multiparty arbitration agreements

15 | What are the requirements for a valid multiparty arbitration agreement?

There are only very few special provisions in the LCCP explicitly addressing multiparty arbitrations. Most importantly, section 604(5) of the LCCP governs a fallback option if a number of parties cannot agree on the appointment of their arbitrator. After a period of four weeks and upon request of a party, the arbitrator can be appointed by the competent state court.

Consolidation

16 | Can an arbitral tribunal in your jurisdiction consolidate separate arbitral proceedings? In which circumstances?

Neither the LCCP nor the Liechtenstein Rules contain provisions as to whether an arbitral tribunal can consolidate separate arbitral proceedings or not.

CONSTITUTION OF ARBITRAL TRIBUNAL

Eligibility of arbitrators

17 | Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

Section 605(3) of the LCCP prohibits judges to sit as arbitrators while being active in service.

Apart from that, the parties are free to agree on certain conditions that arbitrators must fulfil. For instance, article 6 of the Liechtenstein Rules provides, unless otherwise agreed, that all parties or the commissioner, or both, accept that only such persons may be appointed, as they are subject to a legal confidentiality obligation that at least includes criminal liability for violations of that confidentiality obligation, and possess the right to refuse to testify in civil matters. Generally, this includes lawyers, auditors and professional trustees.

However, section 594 et seq does not stipulate that the arbitrators must be legally qualified persons.

Background of arbitrators

18 | Who regularly sit as arbitrators in your jurisdiction?

Predominantly, lawyers and attorneys-at-law in particular sit as arbitrators. Judges cannot serve as arbitrators during their tenure. Depending on the matter, economists may also sit as arbitrators.

Section 594 et seq do not stipulate that the arbitrators must be legally qualified persons.

Default appointment of arbitrators

19 | Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

The parties may freely agree on the number of arbitrators and a mechanism for the appointment. However, if the parties have agreed on an even number of arbitrators, they shall appoint another person as chair. Unless otherwise agreed by the parties, three arbitrators are appointed (section 603 of the LCCP).

Only if the parties fail to agree on the appointment of a single arbitrator after a specific time limit has passed, the court shall appoint an arbitrator (see section 604(2) No. 1 of the LCCP).

Regarding the appointment of a three-member arbitral tribunal, each party usually nominates one arbitrator. These two arbitrators then

agree upon a chair. Should they fail to agree, the court shall appoint the presiding arbitrator upon the request of one party (see section 604(2) of the LCCP).

Challenge and replacement of arbitrators

20 | On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

The parties are free to agree on a specific challenge procedure. If the parties have failed to agree on a challenge procedure, section 606(2) of the LCCP provides a default procedure. The challenging party needs to file an application with the arbitral tribunal explaining the reasons for the challenge within four weeks of gaining the knowledge that prompted their challenge. If the arbitrator does not resign, the arbitral tribunal rules upon the challenge. It is possible to request the state court to rule upon an unsuccessful challenge within four weeks of the decision to reject that challenge.

If the office of an arbitrator ends prematurely (through, for example, illness, death or resignation) a substitute arbitrator is appointed. The appointment of the substitute arbitrator is enacted in accordance with the rules applicable to the appointment of the arbitrator to be replaced (see section 608 of the LCCP).

Relationship between parties and arbitrators

21 | What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration and expenses of arbitrators.

The relationship between the parties and the arbitrators is not the same as the one between parties and judges in ordinary proceedings. This is because the relationship is based on a contractual relationship with corresponding contractual liability. Arbitrators must be impartial and independent. The costs and expenses of the arbitrators are usually determined in the final award, and must be borne by the parties.

The arbitrators' contract is considered a contract for services and contains an obligation to adjudicate upon an arbitral award.

Duties of arbitrators

22 | What are arbitrators' duties of disclosure regarding impartiality and independence throughout the arbitral proceedings?

If a person wishes to assume the office of an arbitrator, he or she shall disclose any circumstances that may cast doubt on his or her impartiality or independence or that are contrary to the agreement between the parties. From the time of his or her appointment and during the arbitration proceedings, an arbitrator shall immediately disclose such circumstances to the parties if he or she has not already communicated them to the parties in advance (see section 605 (1) of the LCCP).

Under the rules of the domestic arbitration institutions mentioned above, however, arbitrators who conduct proceedings under these rules must be impartial and remain independent at all times. Any person requested to act as an arbitrator shall disclose in writing all circumstances likely to cast reasonable doubt on his or her impartiality or independence (see article 10 of the Liechtenstein Rules).

Immunity of arbitrators from liability

23 | To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

According to section 611(4) of the LCCP, an arbitrator who fails to fulfil the obligations arising from the acceptance of his or her appointment or fails to fulfil it in a timely manner shall be liable to the parties for all damage caused by his or her wrongful refusal or delay. Regarding the extent of liability (limited versus unlimited), especially with regard to the arbitration award being made, opinions differ. Nonetheless, the Austrian Supreme Court held in its decision of June 2005 that an arbitrator's liability is limited (9 Ob 126/04 a) and that an arbitrator may only be held liable for damage if the award has been challenged and the challenge was successful (RS0119996).

The possibility of a contractual limitation of liability remains unaffected (Czernich in Czernich, Deixler-Hübner, Schauer (eds), Handbuch Schiedsrecht, 10.131).

JURISDICTION AND COMPETENCE OF ARBITRAL TRIBUNAL

Court proceedings contrary to arbitration agreements

24 | What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

In principle, an existing arbitration agreement shall be given priority over state court proceedings. If court proceedings are initiated in a matter that is subject to arbitration, the court shall reject the claim. However, this is only the case if the defendant in this respect does not raise an objection in his or her oral or written pleadings. If proceedings are pending at court, the arbitration proceedings may still be commenced or continued. According to the ruling of the Liechtenstein Supreme Court, arbitral awards have *res judicata* effect only between parties to the arbitration and not upon third parties.

Jurisdiction of arbitral tribunal

25 | What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitration proceedings have been initiated, and what time limits exist for jurisdictional objections?

Once arbitration proceedings have been initiated, any objection to the jurisdiction of the tribunal must be submitted at the first opportunity. Otherwise, the party forfeits this right. However, in the event of a convincing excuse, the party may rectify the omission. An arbitral tribunal is capable of deciding on its own competence to rule on a specific dispute; in other words, it has 'competence-competence' and may therefore decide upon its own jurisdiction.

ARBITRAL PROCEEDINGS

Place and language of arbitration, and choice of law

26 | Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings? How is the substantive law of the dispute determined?

If there is no agreement on determining the place of arbitration, the arbitral tribunal shall determine its place, taking into account the circumstances of the case, including the suitability of the place of arbitration for the parties (section 612 of the LCCP). If the parties have failed to stipulate an arbitration language, the arbitral tribunal shall determine

the language (section 613 of the LCCP). Section 620 of the LCCP governs the law applicable in arbitration proceedings seated in Liechtenstein. This provision addresses the law applicable to the merits, not the law applicable to the arbitration agreement. First, the arbitral tribunal must comply with the parties' choice of law. Only if the parties have not agreed to the law applicable to the merits, the tribunal may apply the law it deems appropriate. A decision based on reasons of equity can only be made if the parties have explicitly empowered the arbitral tribunal to do so.

Commencement of arbitration

27 | How are arbitral proceedings initiated?

In line with international standards, arbitral proceedings are initiated when the claimant delivers a written statement of claim to the respondent. The statement of claim must (in most cases) include a copy of the arbitration agreement and a fully substantiated statement of claim. The latter requirement is intended to enhance efficiency. Furthermore, the claim should include, *inter alia* and as a minimum content, the names and contact information of the other parties and their counsel, a proposal as to the number of arbitrators and the language of proceedings (if not agreed on previously) plus, if three arbitrators have been proposed or agreed, the name and contact details of the arbitrator to be appointed by the claimant.

Hearing

28 | Is a hearing required and what rules apply?

If the seat of the arbitral tribunal lies in Liechtenstein, a hearing is required only by request of a party, in accordance with section 615, sentence 2 of the LCCP. However, unless the parties have agreed otherwise, the arbitral tribunal shall decide whether the proceedings shall be oral or written.

Evidence

29 | By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

The arbitral tribunal shall decide independently on matters of evidence. Provisions on proceedings and evidence can be found in section 616 of the LCCP. Provisions regarding expert witnesses can be found in section 618 of the LCCP. The arbitral tribunal may appoint an expert witness, following consultation with the parties. However, the parties shall be informed in good time of each hearing and of each meeting of the arbitral tribunal for the purpose of taking evidence. All written pleadings, documents and other communications submitted to the arbitral tribunal by one party shall be forwarded to the other party. Legal opinions and other evidence on which the arbitral tribunal may base its decision shall be also brought to the attention of all parties (section 616 of the LCCP).

Court involvement

30 | In what instances can the arbitral tribunal request assistance from a court, and in what instances may courts intervene?

As outlined above, an arbitration agreement and subsequent arbitral proceedings take precedence over court proceedings. With the aforementioned competence-competence (see question 25), an arbitral tribunal is competent to make a binding judgment regarding its own jurisdiction. Section 595 of the LCCP states that the court may take action in matters governed by the provisions in the LCCP only to the extent provided in these provisions.

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of one party, order provisory or interim measures against

another after hearing the counterparty (section 610 of the LCCP). At the request of one of the parties, the state court shall take such a measure. Therefore, parties could apply for interim measures to an arbitral tribunal in the same way as to a court (see questions 32 et seq). However, the court must refuse the enforcement of such a measure if certain prerequisites listed in the LCCP were met (section 610 paragraph 4 of the LCCP).

Moreover, the arbitral tribunal, the arbitrator appointed by the arbitral tribunal or one of the parties, with the agreement of the arbitral tribunal, can request the court to perform judicial acts for which the arbitral tribunal is not empowered (see section 619 of the LCCP).

Confidentiality

31 | Is confidentiality ensured?

Although there are no explicit provisions on confidentiality in the LCCP, Liechtenstein complies with international standards. In this regard, confidentiality of arbitration proceedings is guaranteed in all aspects.

The provisions of the Liechtenstein Rules are much more far-reaching than the legal provisions, providing a strong confidentiality obligation. Article 29 of the Liechtenstein Rules imposes a strict confidentiality obligation upon all those involved – the parties and their representatives, the arbitrators, any commissioner, the secretariat and their auxiliary persons – regarding all material submitted, all facts made available and all orders and awards. The confidentiality obligation is protected by a contractual penalty in the amount of 50,000 Swiss francs, but does not cover publicly available information, information already known by the party prior to the proceedings or information that is not adduced by a third party during the proceedings.

Furthermore, confidentiality is ensured by article 6 of the Liechtenstein Rules, according to which a person can be appointed as an arbitrator only if subject to a legal confidentiality obligation.

INTERIM MEASURES AND SANCTIONING POWERS

Interim measures by the courts

32 | What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

In general, the arbitral tribunal has after its formation exclusive jurisdiction over interim measures. The arbitral tribunal may, at a party's request, take any interim measure it deems necessary or appropriate (see section 610 (1) of the LCCP).

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of one party, order provisory or interim measures against another after hearing the party (section 610 of the LCCP). At the request of one of the parties, the state court shall take such a measure. Therefore, parties could apply for interim measures to an arbitral tribunal in the same way as to a court. However, the court must refuse the enforcement of such a measure if certain prerequisites set forth in the LCCP are met (section 610(4) of the LCCP).

Interim measures by an emergency arbitrator

33 | Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

The institution of an emergency arbitrator is not recognised in Liechtenstein domestic arbitration law.

Interim measures by the arbitral tribunal

34 | What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

As mentioned in question 32 and stated in section 610(1) et seq of the LCCP, at a party's request the arbitral tribunal may take any interim measures it deems necessary or appropriate.

Sanctioning powers of the arbitral tribunal

35 | Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration? May counsel be subject to sanctions by the arbitral tribunal or domestic arbitral institutions?

Because of the competence-competence of the arbitral tribunal, it is competent to order sanctions against parties or their counsel who use guerrilla tactics in arbitration. However, the imposition of such sanctions might be rather difficult in practice.

AWARDS

Decisions by the arbitral tribunal

36 | Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

Unless otherwise agreed by the parties, the following applies.

In arbitration proceedings involving more than one arbitrator, any decision of the arbitral tribunal shall be taken by a majority of all members. In procedural matters, the chair may decide on his or her own if the parties or all members of the arbitral tribunal have authorised him or her to do so. If one or more arbitrators fail to take part in a vote without justifying reasons, the other arbitrators may decide without him or her. In this case, too, the required majority of votes shall be calculated from the total number of all participating and non-participating arbitrators. In the case of a vote on an arbitral award, the intention is to proceed in such way as to inform the parties in advance (section 621 of the LCCP). However, the arbitral award shall have the effect of a final judgment between the parties.

Dissenting opinions

37 | How does your domestic arbitration law deal with dissenting opinions?

As outlined above, in procedural matters the chair may decide on his or her own if the parties or all members of the arbitration tribunal have authorised him or her to do so. If one or more arbitrators fail to take part in a vote without justifying reasons, the other arbitrators may decide without him or her.

In arbitration proceedings involving more than one arbitrator, any decision of the arbitral tribunal shall be taken by a majority of all members. In procedural matters, the chair may decide on his or her own if the parties or all members of the arbitral tribunal have authorised him or her to do so. If one or more arbitrators fail to take part in a vote without justifying reasons, the other arbitrators may decide without him or her. In this case, too, the required majority of votes shall be calculated from the total number of all participating and non-participating arbitrators. In the case of a vote on an arbitral award, the intention is to proceed in such a way as to inform the parties in advance (section 621

of the LCCP). However, the arbitral award shall have the effect of a final judgment between the parties.

Form and content requirements

38 | What form and content requirements exist for an award?

Besides final awards, an arbitral tribunal is entitled to make interim, interlocutory or partial awards. However, the award must be made in writing and delivered to the parties. Furthermore, the award must contain the reasons upon which it is based unless the parties have agreed that no reasons are to be given. In addition, the award must be signed by the arbitrators and contain the date on which the award was made as well as the place of arbitration. An award is final and binding on the parties (see section 624 of the LCCP).

Time limit for award

39 | Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

General provisions regarding calculations of time limits cannot be found under the provisions of the LCCP.

Date of award

40 | For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

Unless otherwise agreed by the parties, each party can apply to the arbitral tribunal for rectification, clarification and amendment of the award within four weeks from service of the award (see section 627 of the LCCP).

Only an action for judicial annulment may be brought against an arbitral award. This shall also apply to arbitration awards whereby the arbitral tribunal has ruled on its jurisdiction. The claim must be filed within four weeks. The corresponding period shall commence on the day on which the party receives the award or amendments to the award (section 628(4) of the LCCP).

Types of awards

41 | What types of awards are possible and what types of relief may the arbitral tribunal grant?

In addition to making a final award, the arbitral tribunal is entitled to make interim, interlocutory or partial awards.

Termination of proceedings

42 | By what other means than an award can proceedings be terminated?

Arbitration proceedings are usually terminated with an award, an arbitration settlement or an order of the arbitral tribunal according to section 625(2) of the LCCP.

Arbitral settlements settle the claims in dispute between the parties and they terminate any pending proceedings. Since arbitral settlements are not enforceable according to the New York Convention, it is advisable to apply for the rendering of a settlement in the form of an award. An award on agreed terms should still contain the reasons upon which it is based.

Cost allocation and recovery

43 | How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

Provisions regarding costs can be found in section 626 of the LCCP. If arbitration proceedings are terminated, the arbitral tribunal shall decide on the obligation to reimburse the costs unless the parties have agreed otherwise. At its discretion, the arbitral tribunal shall take into account the circumstances of the individual case and, in particular, the outcome of the proceedings. The obligation to pay the costs may include all reasonable costs for appropriate prosecution and legal defence. Certain decisions shall only be taken if a party applies for such a decision. If the decision on the obligation to reimburse costs or to determine the amount to be reimbursed is omitted, or is only possible after the end of the arbitration proceedings, a separate award shall be made.

Interest

44 | May interest be awarded for principal claims and for costs, and at what rate?

Whether interest may be awarded for principal claims and costs depends on the claims for relief of the parties.

PROCEEDINGS SUBSEQUENT TO ISSUANCE OF AWARD

Interpretation and correction of awards

45 | Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

Yes. The arbitral tribunal can either perform a correction of the award – concerning, for example, errors in computation, or clerical or typographical errors – on the grounds of an application by the parties or ex officio. Unless otherwise agreed, either party can make such a request within four weeks of receipt of the award. Provisions regarding the interpretation and correction of awards as well as time limits can be found in section 627 of the LCCP.

Challenge of awards

46 | How and on what grounds can awards be challenged and set aside?

Only an action for judicial annulment can be brought against an arbitral award. This also applies to arbitration awards by which the arbitral tribunal has ruled on its jurisdiction. The action must be filed within four weeks, commencing on the day upon which the party receives the award or the amendments to the award (section 628 of the LCCP).

According to section 628 (2) of the LCCP, an arbitral award shall be set aside if:

- a valid arbitration agreement does not exist, or if the arbitral tribunal has denied its jurisdiction although a valid arbitration agreement does indeed exist, or if a party did not have the capacity to enter into an arbitration agreement in accordance with the law to which the party is personally subject;
- a party was not given proper notice of the appointment of an arbitrator or an arbitral proceeding, or was otherwise unable to present his or her case;
- the award concerns a dispute to which the arbitration agreement does not apply, or it contains decisions on matters beyond the scope of the arbitration agreement or the party's request for relief; if the deficiency relates only to a separable part of the arbitral agreement, that part shall be set aside;

- the formation or composition of the arbitral tribunal conflicts with any provision of this section or any permissible agreement between the parties;
- the arbitration procedure was conducted in a manner in conflict with the fundamental values of the Liechtenstein legal system (public policy);
- the requirements for contesting a court judgment through an application for a new trial pursuant to section 498(1) Nos. 1-5 of the LCCP are satisfied;
- the subject matter of the dispute is not arbitral under domestic law; or
- the arbitration award is in conflict with the fundamental values of the Liechtenstein legal system (public policy).

The challenge of an award does not affect the validity of the arbitration agreement on which the award is based.

Levels of appeal

- 47 | How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

As mentioned above, parties have four weeks to submit a respective claim to the Court of Appeal to set aside an arbitral award. The latter functions as the first and last instance in such challenge proceedings and proceedings involving declaratory claims regarding the existence or non-existence of an arbitral award.

Unless other very specific conditions apply, the possibility of raising a claim to the Constitutional Court as a separate and further level of appeal is not an option (see Michael Nueber, 'OGH als einzige Instanz in Verfahren zur Aufhebung von Schiedssprüchen (rechts) politisch möglich?', ZFRV, 73, 76 (2013)).

Recognition and enforcement

- 48 | What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

Provisions regarding the recognition and enforcement of foreign awards are to be found under section 631 of the LCCP. In general, the provisions of the EO govern the recognition and declaration of enforceability of foreign arbitral awards, unless otherwise provided for in international treaties or declarations of opposition. The formal requirements for the arbitration agreement are also deemed fulfilled if the arbitration agreement complies with both, the form and requirements of section 600 of the LCCP and the formal requirements of the law applicable to the arbitration agreement.

A submission of the original or a certified copy of the arbitration agreement pursuant to article IV (1)(b) of the New York Convention is only required if requested by a court.

Time limits for enforcement of arbitral awards

- 49 | Is there a limitation period for the enforcement of arbitral awards?

Liechtenstein domestic arbitration provisions do not contain time limits or limitation periods for the enforcement of arbitral awards.

However, when it comes to the enforcement of the award, the limitation periods must be assessed in accordance with the relevant substantive law applicable, which entitles the enforcement of the arbitral award. In Liechtenstein, this would be the EO, which does not, however, contain any provisions regarding limitation periods.

Enforcement of foreign awards

- 50 | What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Liechtenstein is a signatory to the New York Convention. In the context of this Convention, Liechtenstein has issued a reservation of reciprocity, and therefore only recognises and enforces arbitral awards rendered in the territory of other member states of the New York Convention.

Enforcement of orders by emergency arbitrators

- 51 | Does your domestic arbitration legislation, case law or the rules of domestic arbitration institutions provide for the enforcement of orders by emergency arbitrators?

Liechtenstein's domestic arbitration jurisdiction and the Liechtenstein Rules lack the legal provisions of an emergency arbitrator.

Cost of enforcement

- 52 | What costs are incurred in enforcing awards?

According to article 1(1)(m) of the EO, domestic arbitral awards are enforceable and, therefore, liable to enforcement. Such enforcement is approved by the Princely Court in Vaduz (Landgericht) at the request of the party entitled to make such a claim. The creditor (the operating party) must bear the costs in advance. However, these costs are to be reimbursed by the debtor at the creditor's request.

According to article III of the New York Convention, each signatory shall recognise foreign arbitral awards that may be enforced in accordance with the rules of procedure of the territory in which the award is invoked. Under Liechtenstein law, this means that the creditor first must bear the costs of enforcement in advance but at his or her request, these shall be reimbursed by the debtor.

OTHER

Influence of legal traditions on arbitrators

- 53 | What dominant features of your judicial system might exert an influence on an arbitrator from your jurisdiction?

Owing to the fact that Liechtenstein has a relatively young arbitration market, it is unknown so far which dominant features may have an influence on arbitrators. However, the European Human Rights Convention (EHRC) – in particular article 6 – is fully applicable to arbitral proceedings. With respect to evidence finding, the arbitral tribunal has the right to decide on the admissibility of the taking of evidence, to carry it out and to freely assess its outcome. The arbitral tribunal must inform the parties in good time of each hearing and of each meeting for the purposes of taking evidence. All pleadings, documents and other communications submitted by one party to the arbitral tribunal must be brought to the attention of the other party. Written witness statements could be used as documentary evidence.

Professional or ethical rules

- 54 | Are specific professional or ethical rules applicable to counsel and arbitrators in international arbitration in your jurisdiction? Does best practice in your jurisdiction reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

General ethical rules, such as the EHRC, are applicable to arbitral proceedings. As mentioned above, lawyers – in particular attorneys-at-law – sit as arbitrators. For this reason, the attorney-client privilege as a professional rule may play a role.

The IBA Guidelines on Conflicts of Interest in International Arbitration (2004) can also be taken into consideration.

Third-party funding

55 | Is third-party funding of arbitral claims in your jurisdiction subject to regulatory restrictions?

In general, third-party funding is one of the most discussed issues in international arbitration (Pestalozzi in Czernich, Deixler-Hübner, Schauer (eds), *Handbuch Schiedsrecht*, 4.60).

Court proceedings in Liechtenstein are usually funded by the parties themselves, whereas section 63 of the LCCP explicitly provides for the possibility of seeking legal aid. In contrast, arbitration institutions usually assume that parties possess the necessary resources to conduct arbitral proceedings (see, for instance, Dasser and Reithner, *The Liechtenstein Rules of Arbitration*, Editions Weblaw, Bern 2015, 17).

The Supreme Court holds that if a penniless party to an arbitration agreement files a claim to a state court and the opponent of this party does not declare his or her willingness to advance to this party the costs necessary for the arbitration proceedings, it is to be assumed that the parties depart from the arbitration agreement. The lack of means of a party does not itself render the arbitration agreement ineffective (LES 2009, 27).

Explicit provisions regarding third-party funding, however, are not to be found in Liechtenstein law, so in this regard one should look to general provisions. In Liechtenstein, lawyers are not allowed to assert a contingency fee, and they are further not allowed to purchase any client claim that is the object of current proceedings (see section 879 of the General Civil Code). In the case of successful litigation, only a surcharge to the fees may be agreed.

However, litigation funding by an independent third party is possible in Liechtenstein. It is up to the parties how they fund proceedings.

Regulation of activities

56 | What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

A foreign practitioner must bear in mind several provisions regarding work permits and be aware of visa requirements if he or she is not a citizen of a Schengen member state. Before taking up activities as a lawyer, in particular as an attorney-at-law in Liechtenstein, a European Lawyer must report his or her intention to the Liechtenstein Bar Association and prove his or her status as a lawyer (see article 83 of the Lawyer's Act).

UPDATE AND TRENDS

Legislative reform and investment treaty arbitration

57 | Are there any emerging trends or hot topics in arbitration in your country? Is the arbitration law of your jurisdiction currently the subject of legislative reform? Are the rules of the domestic arbitration institutions mentioned above currently being revised? Have any bilateral investment treaties recently been terminated? If so, which ones? Is there any intention to terminate any of these bilateral investment treaties? If so, which ones? What are the main recent decisions in the field of international investment arbitration to which your country was a party? Are there any pending investment arbitration cases in which the country you are reporting about is a party?

There are no trends or updates with respect to legislative reform and investment treaty arbitration.

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Coronavirus

58 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The legal foundation for any administrative directive concerning the covid-19 global pandemic is the Law on Epidemics, which was adopted from Switzerland and enabled the government to set further restrictions in helping combat the disease. To this end, it is noteworthy that the government enacted a law on administrative and judicial accompanying measures in connection with covid-19. The Act aims to regulate measures alleviating the consequences of covid-19, like extending time limits for court and administrative proceedings in Liechtenstein. Regarding the extension of procedural time limits, the extension application must be submitted in writing to the court or administrative authority by post, email or fax.

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