THE ASSET TRACING AND RECOVERY REVIEW

NINTH 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. 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.

Modern times pose fresh challenges for everyone involved in fraud, from those who commit it to those who suffer from it. As Warren Buffet famously said, 'only when the tide goes out do you discover who has been swimming naked'. The coronavirus pandemic has offered the global economy another opportunity to prove him right. Not only are new frauds being discovered, but the growing recession will challenge the budgets of victims, regulators and criminal enforcement bodies to bring those responsible to justice and to retrieve the proceeds. Remote interpersonal dealings are increasing the distance between business counterparties in a way that the internet did, and the growth of cryptocurrency transactions continues to do.

It is not possible to predict the trajectory of these developments. While it is now a cliché to speak of the 'new normal', nobody can be actually sure what that normal will be. Some even dispute that it is useful to speak of a normal at all. Nassim Taleb has argued that the financial world is more frequently and radically affected by extreme and unpredictable occurrences (which he calls 'Sigma' or 'Black Swan' events) than we acknowledge. According to Taleb, we live in 'extremistan' and not 'mediocristan'. He has suggested that it is part of our makeup to blind ourselves to the influence of what we cannot predict.

Taleb may be right. For my part, I rather think that he is. But amid all the unpredictability, there are nevertheless some certainties. Society depends upon trust, and there will always be some people who abuse it. So some people will always commit fraud. Globalisation has ensured that major fraud will usually have an international element. Fraud lawyers will therefore have to be internationally minded.

Perhaps the growing international and technical complexity of fraud will continue to outstrip the ability of any one person to understand or remedy it. One of the heartening things about the legal profession over the past 25 years or so, however, is the growth of an international community of lawyers specialising in fraud and asset tracing work who share knowledge and experience with each other about the events in their fields. This book continues to be a useful contribution to that community.

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 review 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 six. 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
Robert Hunter Consultants
August 2021

Chapter 15

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 perpetrators 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 available 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.

Deception can take place by an act of deception as well as by leading a victim to a false conclusion. A perpetrator has to have the intent to enrich him or herself by inducing a victim to act, to acquiesce to or to fail to do something. As a result of such 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 mislead the deceived person either by causing a misapprehension, or by 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 into it by a trick or by established fear. A cause of action based on civil fraud is similar to a cause of action based on criminal fraud.

'By trick' means that a defrauded contracting party has to be induced to enter into a contract by a 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. A 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 a contract by trickery.

Whether fear was established has to be determined by examining the extent of the fear, the possibility of imminent danger, as well as 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 a contract by applying for declaratory relief as to the status of the contract.[7] It is also possible for a deceived person to apply to the court to specifically amend a 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 a 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. This 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

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 1.03*, Section 870, Rz 28 (www.rdb.at).

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]

The calculation of damages for (civil) fraud corresponds to the above basic calculation of damages in cases of unlawful behaviour. A 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, a person fraudulently causing someone to enter into a contract must put the deceived person back in a position as if the harm had not occurred. As Section 870, Paragraph 1 of the ABGB requires that a 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 a 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 a 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 a perpetrator has established and used a company with the intention of committing fraudulent acts and to deceive other persons.[11]

A perpetrator can also be a company. If a company is insolvent, victims still have the opportunity to file a claim against the organs of that 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 a 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

9 Section 1293 et seq. of the ABGB.

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).

files if there are no conflicts of interests, and the right to deliver anything that could help convict an accused person and verify the enumerated damages 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 an accused person, a private participant is 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 an 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]

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, however, 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 damage caused arises 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

12 Section 32, Paragraph 2 of the STPO.

13 Section 32, Paragraph 4 of the STPO.

14 Section 1489 of the ABGB.

15 Pletzer in Kletečka/Schauer (eds), *ABGB-ON 1.03*, Section 870, Rz 31 (www.rdb.at).

16 Article 270 ff of Liechtenstein's Law on Execution dated 24 November 1971.

are subject to litigation). In this context, the execution 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.

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.[17] The most important instrument in securing assets, however, is the freezing of bank accounts.[18] If a bank account is frozen, a 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 of the investigation.

The freezing of bank accounts also plays a very important role in international matters. In cases of applications for 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.[19] 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.[20]

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 a 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 documents are in the possession of a party who refers to them previously before the court, or where the party under the burden of proof is entitled by law to inspect a document. The order also applies where a document has been prepared for the benefit of the moving party, or where a document sought will serve as evidence for the legal relationship between the parties or serves to demonstrate factors underlying that relationship.[21]

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

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

19 Section 292 et seq. of the ZPO.

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

21 Section 304 of the ZPO.

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.[22]

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.[23] The investigating judge has several options to obtain evidence with.

In matters of fraud, house searches and the seizure of documents and other objects are very important.[24] In the case of bank documents, Liechtenstein has always had very robust banking secrecy laws (similar to 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.[25]

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.

However, Liechtenstein has been a member of MONEYVAL for many years. Therefore, the fight against money laundering has been given the highest priority, and a zero tolerance policy has been pursued in this area.

As an EEA member, Liechtenstein has implemented the Fourth EU Money Laundering Directive[26] as well as the Regulation on the transmission of information in connection with money transfers.[27] The corresponding implementing provisions can be found in particular in the Act on Professional Due Diligence to Combat Money Laundering and in the Ordinance.

Banks and other financial service providers are obliged to obtain information about their customers. If irregularities should arise, the banks and financial service providers are obliged to report this to the Financial Intelligence Unit responsible for this.

22 Section 384 et seq. of the ZPO.

23 Section 41 of the STPO.

24 Section 91a et seq. of the STPO.

25 See, for example, the decision of the Constitutional Court of Liechtenstein, 28 February 2000, STGH 1999/23 (LES 2003, 1), see also the decision of the Liechtenstein Supreme Court, 2 August 2013, 11 RS 2010.332 (GE 2014, 41).

26 Fourth EU Money Laundering Directive (EU) 2015/849.

27 Regulation (EU) 2015/847 on the transmission of information in connection with money transfers.

ii Insolvency

The Liechtenstein Criminal Code contains special provisions for the criminal prosecution of persons who have committed fraud in insolvency matters.[28] An example of 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 a 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.

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 a perpetrator has established and used a company with the intention of committing fraudulent acts and deceiving other persons.[29]

iii Arbitration

The rules for arbitral proceedings in Liechtenstein are regulated in the ZPO.[30] 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.[31] In matters of the law of obligations, parties may expressly or coherently determine their choice of law and, consequently, parties in fraud matters can do so as well.[32]

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 proceedings on matters of the law of obligations, and in consequence also fraud proceedings, would be judged according to the

28 Section 156 et seq. of the STGB.

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

30 Sections 594 to 635 of the ZPO.

31 See Section II.

32 Article 39, Paragraph 1 of the IPRG.

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, 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. The extent of the assistance, however, 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 to 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,[33] and, as in relation to the treaties regarding the enforcement of judgments with Austria and Switzerland,[34] the enforcement of interim injunctions is explicitly excluded, and the ordering of a foreign court to seize assets in Liechtenstein is not possible.

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

34 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).

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, a victim of fraud can be supported in recollecting his or her assets (see Section III.i).

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 or arbitral awards. The only bilateral treaties on the acknowledgment and enforcement of foreign judgments exist with Austria and Switzerland.[35]

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, and 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.[36]

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 a domicile in another of the signatory states.[37]

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.[38] Concerning the enforcement of judgments from Switzerland and Austria, however, judgments can only be enforced in Liechtenstein if such recognition does not contravene public policy.[39] Under 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.

35 See the Agreements, footnote 34.

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

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

38 See the Agreements, footnote 34.

39 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.

VI CURRENT DEVELOPMENTS

In the implementation of the Fourth European Money Laundering Directive,[40] the government has enacted a law on the introduction of a register of beneficial owners of domestic entities, which has been further concretised by the corresponding delegated Regulation (EU) 2019/758.[41]

The above-mentioned register contains the beneficial owners of domestic entities and is maintained by the Office of Justice. Extracts and certificates from the register, however, do not constitute officially certified documents. Accordingly, a beneficial owner of a legal entity is any natural person who directly or indirectly holds or controls more than 25 per cent of the voting rights, capital or profits of a legal entity. Similar provisions apply to the beneficial owners of trusts or foundations. Third parties may, if they can demonstrate a legitimate interest, request the disclosure of information about an entity. A commission then decides on such an application after weighing the interests of the persons involved.

With the implementation of Directive (EU) 2018/843 (the Fifth Anti Money Laundering Directive),[42] the legislator aimed to prevent the financing of criminal activities and to strengthen the transparency provisions to prevent money laundering on a deeper level. The revised measures of the EU Directive entered into force on 1 April 2020 in Liechtenstein. The respective provisions are implemented in the Law on Professional Due Diligence to combat Money Laundering, Organised Crime and Terrorist Financing (the Due Diligence Act), the corresponding Due Diligence Ordinance and the Act on the Register of Beneficial Owners of Legal Entities.

The Fifth Anti Money Laundering Directive optimised the transparency of information of beneficial ownership. Furthermore, the requirements for operating the central register of Beneficial Owners of Legal Entities have been expanded. In addition, the aforementioned directive introduced the obligation to set up a centralised bank account register or retrieval system to identify holders of bank accounts and safe deposit boxes. Consequently, the government has decided to implement such a centralised bank account register in Liechtenstein. The only authorities to have access to the data in this centralised bank account register will be the Financial Intelligence Unit and the Financial Market Authority.

40 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) no 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/06/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC OJ L 141/73.

41 The Commission delegated Regulation (EU) 2019/758 of 31 January 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries OJ L 125/4.

42 Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU OJ L 156/43.

Appendix 1

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Thomas Nigg is a senior partner at Gasser Partner Attorneys at Law. He is admitted to the Liechtenstein Bar and has been a member of the board since November 2019. Thomas specialises in foundation, trust and corporate law as well as asset-tracing and recovery. His vast experience in civil and insolvency law matters allows him to provide reliable and anticipatory legal advice also in complex and international mandates. He has handled difficult asset-tracing endeavours and enforcement of international judgments with respect to Liechtenstein structures and has broad experience in challenging and defending Liechtenstein private wealth structures in international and cross-border litigation and arbitration.

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