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Litigation

Liechtenstein: Law & Practice
Gasser Partner Rechtsanwälte

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Law and Practice

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Contents

Gasser Partner Rechtsanwälte is an independent international law firm with three senior partners, two partners, and 16 other members. With offices in Vaduz, Zurich and Vienna, and regular close collaboration with foreign law firms, the firm has excellent global links, enabling it to efficiently solve complex international cases. Institutional clients include banks, asset managers, fiduciary service providers, insurance companies, fund administrators and industrial companies, among others. The Arbitration & Litigation team represents clients in civil, criminal and administrative proceedings before all courts and authorities in Liechtenstein, and advises on the enforcement of foreign judgments.

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1. General

1.1 General Characteristics of Legal System

Liechtenstein is a civil law country. Case law does exist, but it does not play as important a role as it does in Anglo-Saxon jurisdictions. In light of Liechtenstein's history, which has always been closely related to Austria's, it is no surprise that both its legal system and the organisation of Liechtenstein's courts depend heavily on Austrian law. Nonetheless, Swiss law has also left significant traces on Liechtenstein's legal system, and Liechtenstein law is a hybrid of Austrian and Swiss law. Furthermore, Liechtenstein has its own specialties because it was the first and only country in continental Europe to adopt the legal institution of trusts.

Civil procedure is designed as an adversarial process with strong inquisitorial elements. The judge is bound by the motions filed by the parties and cannot render a judgment that goes beyond the plaintiff's claim. It is the parties' responsibility to prove their respective claims and defences, but the judge must ascertain the truth. Provided that the corresponding facts have been put forward by a party, the judge may collect additional evidence that has not been requested by the parties. In the judge's inquisitorial role, he or she will be the primary interrogator of parties and witnesses.

Pursuant to the principle of immediacy and orality of proceedings, judges must get an immediate and personal impression of the parties and witnesses. Therefore, no decision can be made without the presiding judge first having personally taken the applicable evidence. However, exceptions do exist where the taking of evidence is not possible – eg, if a witness cannot appear before a court in Liechtenstein. In such a case, the judge will either adjourn the hearing or, if it is unlikely that the witness will obey a summons, delegate the taking of testimony to a competent authority abroad. The principle of orality of proceedings cannot, however, be fully implemented in any process, as legal certainty requires that, for example, the substantive motions and all other essential bases for decision are set down in writing. The statement of claim, the statement of defence and the appeals are therefore principally submitted in writing, and the judgment itself is also issued in written form.

1.2 Structure of Country's Court System

The Liechtenstein courts are all located in Vaduz. There are no specialist courts or juries exercising jurisdiction in civil, commercial or financial law matters. The following courts in Liechtenstein exercise jurisdiction in civil matters: the Princely Court of Justice (Landgericht) in the first instance, the Princely Court of Appeals (Obergericht) in the second instance, and the Princely Supreme Court (Oberster Gerichtshof) in the third instance.

Proceedings before the District Court (Landgericht) are conducted by a single judge, whereas the Court of Appeals consists of three judges, one of whom may be a lay assessor, and the Supreme Court consists of five judges, two of whom may be lay assessors.

So-called Willkürbeschwerden (appeals on arbitrariness) may be brought before the Liechtenstein Constitutional Court (Staatsgerichtshof, StGH), which could prolong the average duration of a proceeding for another year. Nevertheless, this "last frontline in defending the law" guarantees that severe procedural errors or gross negligence regarding the principles of law result in the lifting of court decisions.

1.3 Court Filings and Proceedings
Hearings before courts are open to the public. A statutory exception exists for proceedings where matters of "family affairs" are the points at issue. In addition, an exception can be made where it is justified because the subject matter might be a threat to public order or morality. The majority of court hearings, however, are open to the public. Third parties may inspect the file only if they have permission from one of the parties or have a legal interest in the case, eg, the third party might be liable if the defendant loses the case.

1.4 Legal Representation in Court
Liechtenstein procedural law was meant to be close to the people of Liechtenstein – it does not always require legal representation by a lawyer. A party may therefore be represented by anyone, not necessarily a legal professional, provided that the representative is able to show a written power of attorney at the first intervention in court.

Under certain circumstances, foreign lawyers may also be entitled to represent a party to a dispute before a Liechtenstein court. For EU lawyers, the requirements are less formal. However, foreign lawyers representing a party may only claim legal fees if they have been officially granted the right of legal representation.

2. Litigation Funding

2.1 Third-party Litigation Funding
There are no rules in Liechtenstein governing litigation funding by third parties; it is up to the litigating parties how they fund their litigation. As a result, parties may initiate proceedings using third party funding. Such third parties may take a share of any proceeds of the claim.

2.2 Third-party Funding of Lawsuits
As mentioned above, third party funding is not regulated in Liechtenstein, so there are no statutory limitations as to the types of lawsuits available for third party funding. Generally, litigation funding usually comes into play in large litigation and arbitration disputes, or when losses are suffered by a great number of people due to a common cause.

2.3 Third-party Funding for Plaintiffs and Defendants
As stated above, it is up to the litigating parties how they fund their litigation. Therefore, plaintiffs as well as defendants may initiate proceedings using third party funding.

2.4 Minimum and Maximum Amounts of Third-party Funding
As mentioned, there are no statutory provisions concerning third party funding, so no restrictions exist as to the arrangement between funder and litigant.

2.5 Third-party Funding of Costs
This is also subject to agreement between the funder and the litigant. The funder may consider covering the court fees and/or the costs of representation.

2.6 Contingency Fees
In Liechtenstein, lawyers are not allowed to assert a contingency fee, and they are further not allowed to purchase a client's claim that is the object of current proceedings. In the case of successful litigation, only a surcharge to the fees may be agreed.

2.7 Time Limit for Obtaining Third-party Funding
As there are no statutory provisions governing third party funding, there are principally no time limits by when a litigant should obtain third party funding.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct
In general, there are no specific prerequisites to filing a lawsuit. Nevertheless, it is advisable to send a letter to the potential defendant requesting compliance with regard to the subject matter in dispute. Otherwise, if the potential defendant immediately complies on initiation of the lawsuit or does not dispute the claim, the court may issue an order obliging the successful plaintiff to bear the costs of the unnecessary proceedings.

A party intending to bring an action is further entitled to request the opponent to be summoned for the purpose of a settlement attempt. However, this is voluntary and only possible if the opponent is resident in Liechtenstein. The party that did not appear for the settlement attempt shall not suffer any consequences of default and cannot be compelled to appear by means of administrative penalties.

3.2 Statutes of Limitations
Limitation periods are considered a matter of substantive law and not a matter of procedural law. The general limitation period is 30 years after the emergence of a claim. However, for certain types of contractual claims the limitation period is five years (eg, for the delivery of goods or the performance of work or other services in a commercial or business enterprise) or three years (eg, laesio enormis claims, or claims on the grounds of fear or mistake caused in connection with a contract). Claims for damages lapse within three years of the damaged party gaining knowledge of the damage and the damaging party. The statute of limitation is not to be considered ex officio. It is therefore possible for the parties to waive the statute of limitation defence.

3.3 Jurisdictional Requirements for a Defendant
The jurisdiction of Liechtenstein courts is stipulated in the Liechtenstein Judicature Act dated 10 December 1912 (Juris-

diktionsnorm, "JN"). The local jurisdiction of Liechtenstein courts also establishes their international jurisdiction. As a general rule, the Princely Court of Justice shall have jurisdiction if the defendant is domiciled/has its registered seat in Liechtenstein ("general forum").

In addition, there are several forums that constitute special jurisdictions in favour of a Liechtenstein court. For example, a venue may be established in Liechtenstein if the foreign defendant has assets in Liechtenstein (§ 50 para. 1 JN). Liechtenstein courts may have jurisdiction over a foreign-based company if either its permanent representation or its entities in charge of management are residents of Liechtenstein (§ 50 para. 3 JN). If a party has chosen a special location in Liechtenstein for the performance of an obligation, a lawsuit against that party may be brought at that place (§ 43 JN). Liechtenstein courts further have jurisdiction over actions asserting a right in rem to an immovable property if the immovable property is situated in Liechtenstein (§ 38 JN). Moreover, a venue may be established in Liechtenstein by way of a jurisdiction clause in a contract executed by both parties to the dispute (§ 53 JN).

3.4 Initial Complaint

Under Liechtenstein law, proceedings commence with the plaintiff filing a statement of claim (Klage), which is a brief that needs to contain a short statement of the facts of the case, the means of evidence referring thereto, the grounds on which the court has jurisdiction and, finally, a specified prayer for relief (Klagebegehren), be it an action to enforce a right or claim (Leistungsklage), a prohibitory action (Unterlassungsklage), or a declaratory action (Feststellungsklage), the last of which, however, is admissible only as long as the plaintiff shows legal interest in requesting a certain right to be declared and confirmed and, most importantly, that an action to enforce a claim is not (yet) feasible (so-called "subsidiary nature of the declaratory action"). With regard to the principle "iura novit curia", legal arguments are not compulsory ingredients of a statement of claim.

The statement of claim is subject to the paramount principle of clarity and definiteness (Bestimmtheitsgebot). The plaintiff may not leave it to the court to decide what sort of judicial relief it may adjudge, but the statement of claim needs to state precisely what the plaintiff requests.

After the statement of claim has been served, any amendment either affecting the relief requested or introducing a different legal basis for the claim must be agreed by the defendant or permitted by the court.

3.5 Rules of Service

Notices from the court to parties are usually sent by registered mail. In order to constitute valid notification, a notice must be received by the party or by a person who is empowered to receive documents for the party. Usually, parties or their (professional) representatives return an acceptance of service form to the court. The date of acceptance is normally filled in by the party.

In cases of irregularity of service, the judgment may be exposed to appeal. However, such default of service is cured if the party to be served actually receives the court documents early enough to preserve all rights.

Unlike in the US, a plaintiff under Liechtenstein law is not obligated to notify the defendant of a lawsuit. It is the exclusive duty of the court to pass along briefs of one party to the opposing side. Only lawyers may bypass the official channels by serving the briefs to the other party's counsel directly, provided that both parties are represented by lawyers and there is no need for the court to directly deliver the brief to the other party, which might be the case for several reasons. When a complaint is filed, the court will inform the defendant. Furthermore, the court will set a deadline for filing a statement of defence or will schedule a hearing, and is therefore exclusively in charge of duly effecting service upon the respective party.

Although Liechtenstein is not a member of the Hague Treaty on International Service, service on foreigners is regularly effected with the assistance of foreign authorities.

3.6 Failure to Respond to a Lawsuit

In Liechtenstein, even if the submission of a statement of defence is ordered by the court and the defendant fails to do so, there are no consequences of default or preclusion. However, a judgment by default may be rendered against a party who fails to attend the first hearing of the court.

3.7 Representative or Collective Actions

Generally, class actions are alien to Liechtenstein procedural laws. The concept of class action flounders on the principle of Liechtenstein procedural law that a plaintiff needs to be fully entitled to claim the respective right. If a plaintiff assumes a claim to which a third party is entitled, the action will be dismissed on the grounds of lack of standing. Only in certain circumstances is it permitted to assume a third party's rights (Prozessstandschaft) – eg, following an assignment for collection or if the plaintiff sells the subject of the dispute (eg, land or shares) to a third party, which does not, however, affect the standing of the plaintiff in the course of the proceedings.

3.8 Requirement for a Costs Estimate

There is no legal requirement to provide clients with a cost estimate for potential litigation at the outset. In practice, however, most clients ask for the provision of such a cost estimate.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

Only a few specific applications may be decided before trial or substantive hearing of a claim. For example, parties may apply for interim injunctions to temporarily maintain the state of affairs prevailing at that time – eg, to freeze the assets that are the subject of litigation either pending or about to be instigated. Furthermore, applications for security of costs, for legal aid, or to dismiss a claim due to lack of jurisdiction may be made before any substantive hearing of a claim.

4.2 Early Judgment Applications

An early judgment is possible before a substantive hearing of a claim takes place, particularly with regard to procedural grounds for dismissal – eg, lack of jurisdiction of the court.

The defendant must raise the defence of the lack of jurisdiction of the court (excluding international jurisdiction, the lack of which eliminates jurisdiction at any time) at the first opportunity before pleading to the merits of the plaintiff's claim, usually no later than in the statement of defence (Klagebeantwortung). In a considerable number of court proceedings, lawsuits are brought by foreign plaintiffs who are obliged to pay a security for legal and court fees in the first court hearing even before the court orders a statement of defence to be filed by the defendant. In such cases, the defendant must enter the plea no later than at the beginning of the court hearing. Afterwards, this defence is no longer admissible. If it is raised, the court has to give an immediate decision on its jurisdiction – ie, without ordering further pleadings on the merits of the case.

4.3 Dispositive Motions

As described above, the defence of the lack of jurisdiction and the application for the provision of a security for costs are commonly made before trial, as they must be raised before pleading to the merits of the plaintiff's claim.

4.4 Requirements for Interested Parties to Join a Lawsuit

A person who has a legal interest in the outcome of a dispute is entitled to intervene by joining either the plaintiff or the defendant (Nebenintervention). To this end, the intervening party must provide prima facie evidence showing their legal interest. Furthermore, all persons entitled by law to do so may join the litigants by intervention.

Third-party intervention may be performed by simply addressing a written statement to the "original" parties (through the court), which may be done at any time as long as a nonappealable judgment has not been rendered. Either party may oppose the intervention, but the law does not provide a particular recourse against the admittance of the intervening party. As long as the interlocutory decision that refuses the intervention is not binding and final, the intervening party may even participate as if said party had been validly admitted.

4.5 Applications for Security for Defendant's Costs

As a principle, a plaintiff that neither has a residence in Liechtenstein (citizenship is not decisive) nor owns land or receivables that are secured on such land must pay security in the amount of the calculated and presumed court and lawyers' fees of the defendant. An exception from this principle will be made if it is possible to enforce the decision of a Liechtenstein court in the country where the real estate is located. This applies to any kind of company (domestic as well as foreign companies), unless it is able to show sufficient funds to cover the expected cost of the procedure, and these funds are subject to the binding enforcement of a Liechtenstein court. The security for costs also has to be paid accordingly by appellants, regardless of whether they have been plaintiffs or defendants in the first instance.

4.6 Costs of Interim Applications/Motions

In general, the winning party is reimbursed by the losing party. Principally, courts issue decisions as to which party is required to bear the costs along with the decision regarding the main claim.

4.7 Application/Motion Timeframe

There is no fixed time limit within which a court has to deal with an application/motion. However, a disciplinary complaint may be filed in cases of refusal or delay of the administration of justice,. All complaints that are not obviously unfounded shall be notified to the court or judge concerned, with a request to remedy them and to report back within a specified period of time or to disclose any obstacles.

5. Discovery

5.1 Discovery and Civil Cases

Compulsory pre-trial discovery, as known in common law countries, does not exist and there is no comparable provision under Liechtenstein law. However, it is possible to obtain an order that forces the other party to produce certain types of documents in the course of a civil law procedure. The order is limited to cases where the document is in the possession of a party who referred to it previously before the court, or where the party possessing the burden of proof is entitled by law to inspect the document. The order also applies where the document has been prepared for the benefit of the moving party, or where the document sought will serve as evidence of the legal relationship between the parties or serves to demonstrate factors underlying that relationship. Nonetheless, there are no strong means to force the opposing party to produce relevant documents. If the latter refuses to co-operate, this could be weighed and considered accordingly by the court only within its free evaluation of the evidence.

Under Liechtenstein law, there is no deposition without the court's lead, which means that parties cannot compel a witness to appear at a pre-trial deposition and answer questions under the penalty of perjury. The same applies for pre-trial interrogatories, which are also not to be found within Liechtenstein's jurisdiction.

5.2 Discovery and Third Parties

A party may request the court to order a third party to provide a specific document if said third party is obliged by law to hand over the document in accordance with the provisions of civil law or because the document is, in terms of its content, of joint use to the parties – eg, a contract. Unlike an order addressed to a party to the litigation itself, the court order addressed to a third party is enforceable.

If a third party denies possession of a document, the party seeking to present evidence in support of his or her arguments needs to certify that possession. In the event that the party is not successful or if the right to obtain the document is controversial, the party may file an action (Editionsklage) to obtain the document.

5.3 Discovery in this Jurisdiction

Compulsory pre-trial discovery, as known in common law countries, does not exist and there is no comparable provision under Liechtenstein law.

5.4 Alternatives to Discovery Mechanisms

Once the action and defence are brought before the court and the first hearing has taken place, the judge will limit the subject of the further trial. Evidence will be heard only with regard to the disputed facts that have a bearing on a possible cause of action upon which the plaintiff's request for relief might be founded. Principally, the court does not collect facts of its own accord, but confines itself to appraising the facts pleaded by the parties. However, the judge may also take evidence even without a corresponding motion of a party.

Usually, the court issues in a separate hearing an order detailing all the points in dispute with regard to which it intends to hear evidence, which is called an order for evidence (Beweisbeschluss). In practice, the order for evidence is more like a programme to organise the trial and the taking of evidence. It is inconsequential whether the court hears evidence not covered by the subjects of the hearing. However, if the court fails to take evidence that is necessary to decide the case but is not covered by the order for evidence (and the court declines to amend the order), such action may be reason for appeal.

Rules regarding the admissibility of evidence in civil proceedings can be found under section 266 et seq of the ZPO. There are five different types of evidence named in the ZPO, all of which have equal weight: evidence by documents, hearing of witnesses, evidence by (qualified) experts, evidence by inspection of the court, and evidence by party interrogation.

Under Liechtenstein civil procedure law, a judge is free to weigh and consider the evidence submitted by the parties.

5.5 Legal Privilege

Attorneys must respect client confidentiality concerning issues entrusted to them. Non-compliance with this rule could have severe consequences for lawyers – up to the loss of their licence and criminal proceedings. Under Liechtenstein law, a client may release a lawyer from the obligation of confidentiality. The lawyer's duty of professional secrecy is stated in Article 15 of the Law on the Legal Profession (Rechtsanwaltsgesetz, RAG) and reflected in § 321 of the Civil Procedure Code, ZPO, which together authorise lawyers to refuse the disclosure of privileged information. Advice from in-house lawyers is not protected in principle, as they do not qualify as lawyers (attorneys at law) within the meaning of the RAG.

5.6 Rules Disallowing Disclosure of a Document

As mentioned, it is possible to obtain an order that forces the other party to produce certain types of documents in the course of a civil law procedure. The order is limited to cases where the document is in the possession of a party who referred to it previously before the court, or where the party possessing the burden of proof is entitled by law to inspect the document. The order also applies where the document has been prepared for the benefit of the moving party, or where the document sought will serve as evidence of the legal relationship between the parties or serves to demonstrate factors underlying that relationship.

Other documents need not be submitted if they concern family matters; if submitting them would create dishonour; if doing so would break a recognised obligation of secrecy; if it would have penal consequences; or, finally, if the opposing party would have similar reasons that could fairly be considered to be of the same gravity as those listed here.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Interlocutory injunctions or interim relief – prior to the commencement of a lawsuit and during litigation – may take the form of either a security restraining order (Sicherungsbot) or an official order (Amtsbefehl), the choice of which generally depends on the nature of the claim. Whilst security restraining orders aim exclusively at securing pecuniary claims, official orders deal with claims other than those of a pecuniary nature.

Security Restraining Orders
To be granted an injunction by a court, one has to fulfil two major conditions. Besides certifying the claim that warrants such a legally far-reaching measure, it is necessary to establish reasonable security reasons. The applicant must furnish (prima facie) evidence that he is going to face a subjective or objective risk. In some cases, it is sufficient to certify that the opposing party is a "domiciliary company" (objective reason) – ie, a company that is not engaged in business in Liechtenstein because its purpose is limited to managing funds or holding participations or equity interests.

The court may order different injunctions as security for pecuniary claims, such as the seizure, custody and compulsory administration of movable tangible property and the deposit of funds in court, an injunction by order of the court on the sale or seizure of movable tangible property to the effect that the sale or seizure is rendered invalid, or an injunction addressed to a third party in which the alleged debtor has to file a pecuniary claim against that third party.

Official Orders
According to Article 276 EO, an official order may be issued if it is otherwise likely that the prosecution or realisation of a claim may be rendered impossible or substantially more difficult. Even if there is no particular endangerment or defeat of prosecution, the court can grant such an injunction in order to settle the relation of the parties to the subject of controversy, and more precisely to settle the ownership or maintain the real condition of the tangible property or legal relationship, if such measures are necessary. An official order is a remedy for the temporary regulation of a specific situation.

As security for such claims, the court may order, among others, a deposit in court of movable, tangible property in the alleged debtor's custody, or the compulsory administration of the movable tangible property or immovable tangible property or rights or, depending on the claim, an order addressed to the alleged debtor (or opposing party) to perform specific acts necessary to maintain either the movable or immovable tangible property.

If a temporary injunction is granted prior to the maturity date of the right of which the applicant claims to be the owner or before the institution of civil proceedings, non-contentious proceedings, administrative proceedings or execution proceedings, a two-week period is to be fixed as a rule for the institution of the justification proceedings.

6.2 Arrangements for Obtaining Urgent Injunctive Relief
Injunctive relief is granted in accelerated preliminary proceedings. Depending on the specific circumstances of the case, injunctive relief can be obtained within 24 hours.

In urgent cases, an applicant may preliminarily request the competent authorities (the mayor, members of the local council, the court usher, police officers or the bailiff of the court, who are responsible for the alleged debtor) to render a provisional order such as the security of movable tangible property, the collection of money, or the maintenance of a provisional situation, which, in practice, may even be orally expressed to the alleged debtor or, more importantly, to the banks or trustees who are about to dispose of assets of which the alleged debtor is deemed the beneficial owner.

6.3 Availability of Injunctive Relief on an Ex Parte Basis
An interim injunction is normally issued ex parte. It is the court's responsibility to decide whether the defendant shall be heard prior to issuing the interim injunction.

6.4 Applicant's Liability for Damages
The applicant shall pay compensation to the defendant for all financial disadvantages caused to him by the interim injunction if the asserted claim for which a security restraining order or an official order has been issued is dismissed with prejudice, if the applicant's request otherwise proves to be unjustified, or if the applicant fails to meet the time limit for justification (see above). The amount of the compensation shall be determined by the court upon application in its free conviction by order. This order shall be enforceable after it has become final and binding in respect of the assets of the applicant.

In addition, if the interim injunction was obviously obtained maliciously, the applicant shall, at the request of the defendant, be ordered to pay a penalty of up to CHF1,000, to be determined by the court with regard to the circumstances of the individual case.

A temporary injunction – due to an unsatisfactory certification of the claim on which the applicant has an assumed right – can be ordered by the court if the applicant provides a sufficient cash indemnity and security, at a level determined by the court, to compensate for the opposing party's threatened disadvantages. However, the lack of a sufficient assertion or certification of the claim cannot be substituted by a security. The court can make the granting of a temporary injunction dependent on such a provision of security according to the factual situation, even though the applicant has furnished the required certifications in a sufficient manner. In such a case, the court can order a security so as to balance the interests of both parties, namely the endangerment of the applicant on one hand and the impact on the legal sphere of the opposing party on the other hand. The granting or maintenance of a temporary injunction can be made dependent on the provision of security when the applicant is a party responsible for the proceeding's costs, according to the ZPO.

6.5 Respondent's Worldwide Assets and Injunctive Relief

Principally, Liechtenstein courts are able to issue interim injunctions concerning assets located outside of Liechtenstein. However, the enforceability of such interim injunctions will regularly fail due to requirements stipulated by foreign law (eg, reciprocity). Liechtenstein follows a very restrictive approach when it comes to the recognition and enforcement of foreign judgments and, therefore, the enforcement of interim injunctions will be very difficult. Even in the bilateral treaties between Liechtenstein and Switzerland/Austria, the recognition and enforcement of interim injunctions is excluded.

6.6 Third Parties and Injunctive Relief

In general, interim injunctions must not interfere with the rights of a third party. However, it is possible to apply for an injunction by order of the court addressed to a third party when the alleged debtor has to file a pecuniary claim against a third party, including the applicant, or when the alleged debtor has to file a claim for services rendered or the return of other objects. The injunction addressed to a third party is enforced by prohibiting the alleged debtor from any disposal of the claim and especially from its collection, and by ordering the third party not to pay the debt to the alleged debtor until a further court order, or else the third party will be held personally responsible; nor can they return the tangible property belonging to the alleged debtor or undertake steps in connection with the tangible property that may render the control of the execution proceedings on the pecuniary claim or on the tangible property due or to be returned impossible or substantially more difficult. By means of this injunction addressed to a third party, the applicant acquires a lien on secured claims or rights vis-à-vis the opposing party.

6.7 Consequences of a Respondent's Non-compliance

In order to enforce an interim injunction, a further request for enforcement is not required in principle. The decision on the injunction implies approval for enforcement.

7. Trials and Hearings

7.1 Trial Proceedings

Typically, a civil lawsuit might run as follows:

- filing of lawsuit by plaintiff (Klage);
- preliminary hearing (Erste Tagsatzung);
- statement of defence by defendant (Klagebeantwortung);
- hearing on admissibility of evidence (Beweisbeschluss-Tagsatzung);
- civil trial and taking of evidence (Beweisaufnahme);
- close of trial (Schluss der Verhandlung);
- judgment (Urteil);
- first appeal (Berufung); and
- second and final appeal (Revision).

As outlined above, pursuant to the principle of immediacy and orality of proceedings, judges must get an immediate and personal impression of the parties and witnesses, so no decision can be made without the presiding judge first having personally taken the applicable evidence. However, exceptions do exist where the taking of evidence is not possible – eg, if a witness cannot appear before a court in Liechtenstein. In such a case, the judge will either adjourn the hearing or, if it is unlikely that the witness will obey a summons, delegate the taking of testimony to a competent authority abroad. The principle of orality of proceedings cannot, however, be fully implemented in any process, as legal certainty requires that, for example, the substantive motions and all other essential bases for decision are set down in writing. The statement of claim, the statement of defence and the appeals are therefore principally submitted in writing, and the judgment itself is also issued in written form.

7.2 Case Management Hearings

The so-called first hearing (Erste Tagsatzung) is meant to be arranged together with an ordinary trial court session. It is the first time the plaintiff has the opportunity to present his or her case before the court, and the defendant, on the other hand, to prepare his or her defence. The judge is free to arrange a separate first hearing, though, which is usually the case if the plaintiff is not a Liechtenstein citizen and it is likely the defendant will make a motion to oblige the plaintiff to pay an amount of money as aktorische Kaution (security for costs) yet to be determined. The first hearing also provides an opportunity for deciding on the basic movements of the defendant, for a judgment to be rendered (by default or because of acknowledgment), or for dismissal of a claim (because of inadmissibility, etc).

As the first hearing is meant to enable the judge to terminate the case and not to take evidence, only certain procedural actions can be taken, the most important of which are an effort to agree on a settlement, acceptance of the claims, the defence, consideration of the inadmissibility of the legal process taken, consideration of the incompetence of the court, and consideration regarding whether the facts have already been decided on by the court or that another hearing is pending in which another judge will have to decide on the same facts.

If the judge decides to have the first hearing in conjunction with an ordinary court session, the defendant may also submit further arguments and defences. If the first hearing is arranged as a separate court session, the defendant ought to be entitled to answer the complaint within a certain period (usually four weeks). The period runs either from the day of the first hearing or from after the court notifies the defendant that the plaintiff paid the bond into the court's account. The answer to the complaint is the counterpart of

the complaint, and is meant to contain all the arguments that – in the defendant's opinion – make the complaint inadmissible or unjustified. The defendant also has to list the evidence intended for presentation to the court in proof of their arguments.

7.3 Jury Trials in Civil Cases

Juries as formed in other (especially common law) jurisdictions are alien to Liechtenstein.

7.4 Rules That Govern Admission of Evidence

The judge is not generally bound to rules of evidence, but instead must weigh the evidence taken and consider which facts presented are true and which are false. The judge also has to determine and – using his or her judgment – justify whether and why they believe one or several witnesses more than the others.

"Notorious and admitted" facts need not be proven. In the event that certain facts have been decided on in criminal proceedings, the (civil) judge is bound to the criminal court's judgment and its findings of fact. There may be situations in which the grounds of the claim can be proven but the amount is unprovable or can be proven only with extraordinary costs or delay. The judge is empowered by § 273 ZPO in such situations to estimate the amount to award in the judgment. The estimation is not part of the fact-finding and thus may be contested amongst other errors in the judgment.

Irrelevant evidence is rejected by the judge. Any motion to take evidence that is intended to delay the proceedings has to be rejected either after a motion of the other party or at the judge's own discretion. Furthermore, the other party may move for giving a period for the taking of evidence if the taking of evidence is hindered for an undefined time or has to be conducted abroad. After the expiration of that period, the proceedings may be continued without consideration of the evidence moved for.

7.5 Expert Testimony

Experts are nominated by the court in the event that the judges themselves do not have sufficient expertise to decide the factual matters in question. In practice, experts are often needed to answer questions in construction disputes and courtroom battles involving foundations or trusts where the capacity of the founder and, thus, the legal existence of the entity or trust are questioned. An expert may be asked to decide, for example, whether a building or parts of it have been constructed in conformity with the rules of a craft, whether a defect may be fixed or is unfixable, or whether the founder or settlor of a challenged estate planning structure was mentally capable of setting it up validly.

As experts do specialise, it is very important that the right person is chosen to provide evidence, although the parties may nominate the expert of their choice. If one of the parties doubts the qualifications or impartiality of the expert nominated by the court, that party has the right to refuse the nomination and, in case of affirmation, the right to file an appeal against the court order. It is also the court that decides which questions the appointed expert should answer. The parties can submit supplementary questions to the court, which may then include them in the questionnaire. Experts usually file a written expert opinion, and afterwards may be invited to answer questions posed by the court and the parties at a hearing. They are subject to the same duty to tell the truth and the same criminal sanctions for violations of that duty as witnesses.

Each party is also allowed to present expert opinions from experts who have not been nominated by the court but by themselves before or during the trial. The evidence in such expert opinions is subject to consideration and, in practice, is usually less convincing than the expert opinion of an expert nominated by the court. It may, however, be useful for a party to show that the "court expertise" is wrong or incomplete so that said party can move for the appointment of a second or further expert to amend or verify the first expert opinion.

7.6 Extent to Which Hearings are Open to the Public

Hearings before courts are open to the public. A statutory exception exists for proceedings where matters of "family affairs" are the points at issue. In addition, an exception can be made where it is justified because the subject matter might be a threat to public order or morality. The majority of court hearings, however, are open to the public. Third parties may inspect the file only if they have permission from one of the parties or have a legal interest in the case – eg, the third party might be liable if the defendant loses the case.

7.7 Level of Intervention by a Judge

Under Liechtenstein civil procedure, the judge is empowered to direct the formal course of the proceedings, to determine the intent and arguments of the parties, and to prevent undue delays. The authority to direct the formal course of the proceedings includes the service of documents and summons, the prescription of which procedural actions are taken in which order, the conjunction and separation of one or more court proceedings, and the interruption of the proceedings.

The parties to the lawsuit are those who determine the "content" of the proceedings, although the judge has been given means to control their actions. The judge may interrogate and advise the parties, take evidence even without a corresponding motion of a party, request a party to specify and correct pleadings or to present documents, and reject pleadings in the case of an evident intent to delay the proceedings or evident irrelevancy.

The judge is not generally bound to rules of evidence, but instead must weigh the evidence taken and consider which facts presented are true and which are false. The judge also has to determine and – using his or her judgment – justify whether and why they believe one or several witnesses more than the others.

In civil procedures, a decision is made in the form of a judgment. In strict compliance with law, judgments should be pronounced right after the proceedings are closed. In practice, this is almost never the case, as the judgment is usually made in writing. According to § 415 ZPO, the written judgment should be made within eight days, but this period is also almost never observed. The judgment enters into effect when it is served on the parties.

7.8 General Timeframes for Proceedings

Compared with other jurisdictions, Liechtenstein justice is relatively swift. There is no rule requiring criminal cases to be granted priority. Once the relevant documents are filed, a hearing is scheduled within weeks. The median time from commencement of a lawsuit to judgment is 12 months. It may take longer if the case is complex or international, if foreign courts or foreign law must be applied, or if witnesses who live abroad must be heard in court. In the vast majority of civil cases, a final decision can be obtained within two or three years.

8. Settlement

8.1 Court Approval

Liechtenstein law distinguishes between extrajudicial and judicial settlements. Extrajudicial settlements are concluded without the approval of a court. If civil proceedings have already been instigated, the parties may agree that the claim is withdrawn or may agree to stay the proceedings indefinitely.

A judicial settlement is a contract agreed on in court proceedings, which needs to be entered in the records of the trial. Under a settlement, part or all of the claim is settled and the beneficiary is entitled to commence execution proceedings. A settlement in court may contain a suspensive condition (eg, a time limit for revocation) but not a resolutory condition.

8.2 Settlement of Lawsuits and Confidentiality

Parties can agree to keep their settlements confidential under Liechtenstein law. However, the confidentiality of judicial settlements reached during a trial is restricted due to the fact that court hearings are principally open to the public.

8.3 Enforcement of Settlement Agreements

Judicial settlements can be enforced in the same way as judgments. Extrajudicial settlements are treated as a contract – ie, claims arising from such contract must be pursued before the relevant courts.

8.4 Setting Aside Settlement Agreements

As mentioned, a settlement in court may contain a suspensive condition (eg, a time limit for revocation). In particular, this allows legal representatives to conclude a settlement and consult with their client in the meantime. The substantive reasons to challenge settlement agreements are significantly fewer than those available to challenge other types of agreements.

9. Damages and Judgment

9.1 Awards Available to a Successful Litigant

According to the different kinds of actions, there are judgments ordering performance, acquiescence and the enjoining of certain actions, judgments creating or altering legal status, or judgments granting declaratory relief.

A performance judgment may order the performance of an action – eg, the payment of an amount of money or the surrender of a tangible object.

A judgment enjoining certain actions orders the defendant to cease and/or refrain from certain conduct.

A judgment of acquiescence orders the defendant to tolerate certain acts. This acquiescence consists of the omission of the obstruction of certain acts.

A judgment creating or altering legal status orders the immediate termination, alteration or creation of a legal relationship – eg, the judgment setting aside an arbitral award.

A declaratory judgment determines the existence or non-existence of a certain legal relationship or right, or the authenticity or falseness of a document.

9.2 Rules Regarding Damages

There are no special rules regarding awards in damages proceedings. The most important forms of awards for damages are pecuniary judgments (judgments ordering the payment of money) and declaratory judgments regarding foreseeable future damages. Liechtenstein's rules on torts and damages are based on the principle of compensation and thus damages claims are aimed at providing relief only to the extent the plaintiff has suffered damage. Punitive damages are not allowed in Liechtenstein, but contractual penalties are allowed.

9.3 Pre- and Post-judgment Interest

Liechtenstein civil law stipulates that the debtor has to compensate the creditor for damage arising from any delay in payment, with interest. Under Liechtenstein law, creditors

are entitled to claim legal interest in the amount of 5% per year in addition to the amount due. In respect of commercial contracts, the default interest rate can be 8% above the Central Bank Rate (in line with EU law).

The starting date for legal interest is not the date of the award but the date when the claim was due to be paid. It is owed from the day after the payment obligation was due, until the day of actual payment. This applies to both pre-judgment and post-judgment interest.

9.4 Enforcement Mechanisms for a Domestic Judgment

Methods of enforcement are enlisted in the EO. Inter alia, the following measures are available to enforce court judgments:

- compulsory creation of a lien;
- compulsory auction;
- seizure of moveable and immovable assets;
- forced administration through an official receiver; and
- seizure, confiscation and sale of movable tangible assets.

If a judgment obliges a party to perform or not perform a specific action, the opposing party may file a motion for a fine or a prison sentence to force the party to perform the required action.

9.5 Enforcement of a Judgment From a Foreign Country

Apart from a few exceptions (eg, bilateral agreements with Austria and Switzerland), foreign judgments are generally not recognised and enforced in Liechtenstein. However, Liechtenstein law offers specific procedures that may provide a chance for a successful plaintiff who is a creditor on the basis of a foreign judgment to achieve his or her goal.

Under Liechtenstein law, the decisions of foreign courts may be used as a basis for summary proceedings to convert a foreign judgment into an enforceable Liechtenstein court order. The creditor may apply for a payment order or a court order based on a foreign judgment. Such summary court orders have the quality of a Liechtenstein judgment and can therefore be enforced based on the EO. This only works if the opposing party does not object.

If the opposing party does object and the summary court order is disputed, Liechtenstein law provides for a specific procedure: the "Reinstitution Procedure" (Rechtsöffnungsverfahren), which is laid down in the Liechtenstein Act on the Protection of Rights (Rechtssicherungsordnung, RSO). The demand for such a reinstitution can be considered in the same way as a regular claim, and leads to a court procedure in Liechtenstein which is, however, structured as a speedy summary procedure and gives the opposing party a first chance to argue his or her position. When it comes to submitting evidence, there is a very restrictive approach.

The decision of the Reinstitution Procedure is of the utmost importance for what happens next. The creditor has a legal title if the court grants the reinstitution. There is no "normal" appeal against such a decision; rather, the opposing party has to file a disallowance claim ("Aberkennungsklage"). Should reinstitution not be granted, the creditor has to act against the debtor through regular procedures (see Article 51 RSO).

An attempt to enforce foreign judgments in Liechtenstein could lead to entirely new procedures in Liechtenstein, so it may be easier and more efficient to sue a Liechtenstein debtor in Liechtenstein at the very beginning instead of initiating legal proceedings abroad.

10. Appeal

10.1 Levels of Appeal or Review Available to a Litigant Party

The Court of Appeals (Obergericht) decides all appeals, recourses and nullity appeals against decisions of the District Court, and the Supreme Court (Oberster Gerichtshof) decides all such appeals against a Court of Appeals decision. The appeal has a suspensive effect, which means that the appealed decision has no res judicata effect and cannot be enforced. An appeal against a court order, however, does not have a suspensive effect.

10.2 Rules Concerning Appeals of Judgments

The right to appeal must have been neither relinquished nor abandoned. The appeal must be filed in time, and must contain the declaration, the reasons and the motions. The declaration must state whether the judgment is appealed in whole or in part. The reasons must state whether the judgment is appealed for nullity, violation of material procedural rule, erroneous or arbitrary factual assumption, and/or violation of substantive law. The motion needs to contain a statement of whether the appellant seeks a new judgment, an amended judgment and/or proceedings, and/or to set aside the judgment and remand the case for new judgment to the District Court.

Each party, including an intervening party, is entitled to file an appeal. The appellant, however, needs to be aggrieved. Aggrievement is not accorded if the appellant won the case, even if the appellant thinks he or she won the case for the wrong reasons. If only one of the parties appeals, the judgment of the Court of Appeals may not award the appealing party less than the District Court did.

10.3 Procedure for Taking an Appeal

An appeal against a judgment needs to be filed with the court within four weeks of the delivery of the judgment. An appeal against a court order needs to be filed within two weeks. Those time limits cannot be extended.

The appeal needs to be filed with the District Court, which examines the timeliness of the appeal and returns it, giving a time limit for correction if the appeal can be corrected. Next, the court sends the appeal to the opposing party to submit an answer within four weeks. It then sends both written pleadings on to the Court of Appeals.

During the preliminary proceedings, the presiding judge or the judge's representative examines whether or not the appeal is admissible, and whether nullities of the District Court proceeding are given. (In examining for nullities, the judge is not limited to considering the grounds raised by the appellant).

If the inadmissibility is affirmed, the appeal is rejected. If the nullity of the judgment is affirmed, the appeal is granted. Depending on whether the nullity allows the District Court proceedings to be amended, the Court of Appeals either remands the case to the District Court to amend the proceedings or rejects the claim itself.

10.4 Issues Considered by the Appeal Court at an Appeal

Judgments may be appealed on the grounds of nullity, violation of material procedural rule, erroneous or arbitrary factual assumption, and/or violation of substantive law. In connection with the motions and grounds of the appeal (and the response to it), new facts and evidence may be presented to the court as long as the claim remains identical (novation is not prohibited before the Court of Appeals). However, any new pleading in the appeal may be declared inadmissible if it is made to protract the lawsuit.

The appellate proceedings are oral as well if both parties do not expressly waive their right to oral proceedings and the appellate court does not insist on such proceedings. The Court of Appeals needs to repeat the fact-finding and the taking of evidence if it intends to find different facts; if it does not, it violates the principle of immediacy of proceedings. The Court of Appeals is bound to the facts found by the District Court insofar as they are not contested by the appellant.

10.5 Court-imposed Conditions on Granting an Appeal

A court order of the Court of Appeals, by which the appeal against a decision of the first instance is granted to the effect that the contested decision is set aside and the case is referred back to the District Court (for a new hearing and/or decision), can in any case only be challenged with an appeal to the Supreme Court if the Court of Appeals has reserved res judicata – ie, if the Court of Appeals has expressly stated that the appeal to the Supreme Court is admissible. In the absence of such a statement, an appeal against the decision of the Court of Appeals to set aside the contested decision of first instance is inadmissible in any case.

10.6 Powers of the Appellate Court After an Appeal Hearing

If the appeal is not inadmissible and grounds for nullity have not been put forward or taken up ex officio, the appellate court decides by judgment. The judgment may grant the appeal and change the judgment of the District Court, or may dismiss the appeal and confirm the judgment of the District Court. In the event that the appellate court decides the proceedings of the District Court were defective, it overturns the District Court's judgment and remands the case to the District Court to negotiate and judge it again. This decision is rendered not by judgment but by order. In such a case, the District Court, in arriving at a new judgment, is bound by the legal opinion of the Court of Appeals. As mentioned above, the court order may be appealed only if the appellate court also decided to reserve res judicata and, consequently, its decision is subject to appeal. This decision for reservation of res judicata cannot be appealed. Instead of remanding the case to the District Court, the Court of Appeals may take the necessary evidence and decide the case itself if both parties move for that action or if it seems reasonable to save time and costs.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

Legal costs – to be considered by the judge – are all the necessary and appropriate costs that have been caused by the litigation.

At first, each party bears all its own costs, which are recoverable from the losing party in proportion to the extent to which the winning party prevails. If the plaintiff prevails with 50% of the claim, the costs are compensated for and each party is responsible for paying his or her own lawyer. If the plaintiff, for instance, succeeds with 75% of his or her claim, they are reimbursed to the extent of 50% (75 – 25 = 50) of the legal fees charged by his or her counsel. Hence, one must always bear in mind the risk of losing a case.

The order for payment of costs is executable if the other party does not pay the costs within the required period.

11.2 Factors Considered When Awarding Costs

As a rule, the losing party must reimburse the costs of the successful party according to the Lawyers' Tariffs Law (RATG), and pay the court's fees. In this regard, little discretion is given to the court.

The RATG is staggered according to the amount in dispute and the kinds of services rendered. Court fees are determined according to the Court Fees Act (GGG).A new GGG entered into force on 1 January 2018, which provides for flat-rate fees depending on the value in dispute. As a result,

the court fees stay the same irrespective of the amount and the duration of the hearings of the specific case.

11.3 Interest Awarded on Costs

Although the Liechtenstein Civil Procedure Code largely follows the Austrian Civil Procedure Code, the Liechtenstein ZPO does not contain an according provision stipulating that interest is awarded on costs (in Austria: § 54a of the Austrian Civil Procedure Code).

12. Alternative Dispute Resolution

12.1 Views on ADR in this Jurisdiction

The most important alternative dispute resolution paths are arbitration and mediation proceedings (governed by the Law on Mediation in Civil Law Matters – ZMG). Arbitration is regarded as the main alternative dispute resolution path, with mediation proceedings being less common.

Apart from these two alternative dispute resolution paths, there are several organisations that provide alternative and extrajudicial means of dispute resolution in Liechtenstein, including the Conciliation Board and the Professional Ethics Committees.

12.2 ADR Within the Legal System

There used to be an obligatory mediation procedure built into the court process. However, due to its low practical impact, it has been abolished.

12.3 ADR Institutions

The Conciliation Board (www.schlichtungsstelle.li) is a mediator for conflicts between clients and banks, investment and asset management companies and payment service providers. It provides a neutral and cost-free service that deals with specific client complaints. An essential precondition is its independence from any institutes possibly involved.

The Professional Ethics Committee of the Liechtenstein Institute of Professional Trustees and Fiduciaries (Liechtensteinische Treuhandkammer) is responsible for disciplinary complaints regarding licensed trustees and trust companies.

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13. Arbitration

13.1 Laws Regarding the Conduct of Arbitrations

Provisions on arbitration in Liechtenstein can be found in the Code of Civil Procedure (see §§ 594 et seq ZPO). Arbitration law is up to date due to a total revision in 2010, which closely followed the Austrian provisions and the Model Law on International Commercial Arbitration ("UNCITRAL Model Law"). However, in order to make Liechtenstein more attractive as an arbitration location, it has included several special features in its arbitration procedure – eg, the grounds for challenging an award are strictly limited and comparable to those under the New York Convention. Furthermore, the Liechtenstein Chamber of Commerce and Industry (LCCI) released Rules of Arbitration in 2012. Parties may agree that an arbitral tribunal has jurisdiction under these rules.

Liechtenstein is a signatory to the "New York Convention", which entered into force in 2011 with the effect that the enforcement of Liechtenstein arbitral awards and vice versa is guaranteed in all countries party to that convention.

13.2 Subject Matter not Referred to Arbitration

Pursuant to sec. 599 para. 2 Civil Procedure Code, claims in matters of family law, certain company-related disputes, and claims based on articles of apprenticeship may not be made subject to arbitral proceedings.

13.3 Circumstances to Challenge an Arbitral Award

In Liechtenstein, the parties to arbitration may exercise their right to file an action for setting aside the award within four weeks of the award being declared. This applies to arbitral awards, including awards on jurisdiction. The Court of Appeals is the only competent court for actions determining the (non-)existence of an award or setting aside an award. The decisions of the Court of Appeals are final, except for actions brought in the Constitutional Court.

The decision of an arbitral tribunal may be set aside on grounds of the invalidity of the agreement, an excess of authority, a violation of the right to be heard, or a violation of ordre public. In addition, awards have to be set aside if the subject matter of the dispute is not capable of settlement by arbitration in Liechtenstein, and may be reopened for reasons relating to crime.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

The New York Convention entered into force in Liechtenstein on 5 November 2011. Foreign arbitration awards are therefore easily enforceable in Liechtenstein, and Liechtenstein arbitration awards are enforceable in the courts of other states that are parties to the New York Convention. When ratifying the convention, Liechtenstein made a reservation on the grounds of reciprocity, which means that recogni-

tion and enforcement only apply to arbitral awards rendered within the territory of other countries that are signatories of the convention. Liechtenstein thus recognises and enforces awards rendered by arbitral tribunals seated in one of the signatory states of the New York Convention.