

THE DISPUTE  
RESOLUTION  
REVIEW

TENTH EDITION

Editor  
Damian Taylor

THE LAWREVIEWS

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RESOLUTION  
REVIEW

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# PREFACE

*The Dispute Resolution Review* provides an indispensable overview of the civil court systems of 37 jurisdictions. It offers a guide to those who are faced with disputes that frequently cross international boundaries. As is often the way in law, difficult and complex problems can be solved in a number of ways, and this edition demonstrates that there are many different ways to organise and operate a legal system successfully. At the same time, common problems often submit to common solutions, and the curious practitioner is likely to discover that many of the solutions adopted abroad are not so different to those closer to home.

In my home jurisdiction, all eyes have been fixed firmly on the progress of Brexit negotiations with the EU. This edition includes an updated Brexit chapter that charts the progress (or lack thereof) made over the past year. Hopefully we will be able to write in the next edition with more certainty about the future laws and procedures that will apply to cross-border litigation in the UK and across the EU, much of which will be affected by the outcome of the ongoing negotiations.

Attention has also focused on more common issues. The rules of disclosure tend to have a habit of coming under periodic review and proposed new rules are out for consultation in England and Wales once again. This raises questions that are relevant to all jurisdictions that strive towards the common goal of justice at a reasonable price. Has litigation become too document heavy and expensive? Is technology a help or a hindrance? How can its power be harnessed, without adding to the parties' burdens? Is full disclosure suitable for all cases; should a lighter-touch regime be available, with liberty to apply for specific documents – a solution which this book shows has been adopted in many other jurisdictions and in arbitrations?

This tenth edition follows the pattern of previous editions where leading practitioners in each jurisdiction set out an easily accessible guide to the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. *The Dispute Resolution Review* is also forward-looking, and the contributors offer their views on the likely future developments in each jurisdiction. Collectively, the chapters illustrate the continually evolving legal landscape, responsive to both global and local developments.

Finally, I would like to express my gratitude to all of the contributors from all of the jurisdictions represented in *The Dispute Resolution Review*. Their biographies start at page 585 and highlight the wealth of experience and learning from which we are fortunate enough to benefit. I would also like to thank the whole team at Law Business Research who have excelled in managing a project of this size and scope, in getting it delivered on time and in adding a professional look and finish to the contributions.

**Damian Taylor**

Slaughter and May

London

February 2018

# LIECHTENSTEIN

*Stefan Wenaweser, Christian Ritzberger and Laura Vogt*<sup>1</sup>

## I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

The Liechtenstein court system and procedural laws were both largely copied from the Austrian model. The Liechtenstein legal system is a civil law system. The laws relating to dispute resolution are the Civil Procedure Law (ZPO), the Jurisdiction Act (JN) and the Execution Code (EO). Non-contentious proceedings are governed by the Non-Contentious Matters Law.<sup>2</sup>

The Liechtenstein courts are all located in Vaduz, the capital of the country. There are three levels of ordinary civil law courts:

- a* the Princely Court of First Instance (LG);
- b* the Princely Court of Appeal (OG); and
- c* the Princely Supreme Court (OGH).

Besides the three instances mentioned above, there is the Constitutional Court (StGH) acting as an extraordinary court of appeal. A party may have recourse to the StGH against final decisions that ultimately determine a matter for alleged violations of constitutional rights or rights granted by international conventions such as the European Convention on Human Rights. There are no specialist courts or juries adjudicating in civil or commercial law matters.

As a rule, the party that has lost the proceedings must reimburse the costs of the successful party according to the Lawyers' Tariffs Law and bear the court's fees. If a plaintiff is only partially successful, then the court normally adjudicates the costs of the proceedings in proportion to the success. There are, however, some exceptions and special rules.

The Lawyers' Tariffs Law defines costs of lawyers in accordance with the value in dispute and is not based on hourly rates. Court fees are determined according to the Court Fees Act. Where the value in dispute is relatively low, a cost award may not cover all the lawyer's fees that the client has to bear. Usually, the majority of the costs involved will be recovered by the winning party where a value in dispute of several hundred thousand Swiss francs is concerned. In certain cases, for example, supervisory court cases, the value in dispute is often relatively low (e.g., 50,000 francs) because there is no monetary claim at issue that lends itself to set the value in dispute.

Court decisions as precedents do not have the same legal quality as they have in common law countries under the *stare decisis* doctrine. However, they are of great factual

---

1 Stefan Wenaweser is a partner and Christian Ritzberger and Laura Vogt are associates at Marxer & Partner Attorneys-at-Law.

2 Liechtenstein laws are promulgated in the Legal Gazette (LGBL). All Liechtenstein laws are available on [www.gesetze.li](http://www.gesetze.li) (in German only).

significance, because they provide an interpretation of the statutory framework. For the sake of legal certainty, an existing interpretation is only changed if there are new and convincing arguments justifying a decision different from the precedent.

The most important alternative dispute resolution paths are arbitration (governed by the ZPO) and mediation proceedings (governed by the Law regarding Mediation in Civil Law Matters (ZMG)).

## **II THE YEAR IN REVIEW**

### **i Insufficient research of the applicable foreign law (OGH 6 April 2017, PO 2015.1)**

The problem with which the OGH had to deal in these proceedings was that the previous instances had not properly researched the applicable foreign law despite the obligation to do so *ex officio*. The OGH decided that this is a procedural violation of its own kind that can be asserted as incorrect application of the law and that may lead to the setting aside of the decision of the previous instance.

### **ii Appealability of decisions of the OG (OGH 6 April 2017, 5 CG.2015.298)**

The OGH decided that in cases in which the OG decides on an appeal against a judgment of the LG and sets the judgment aside and refers the matter back to the LG, the decision of the OG may in any event only be appealed to the OGH if the OG explicitly provides for the opportunity to do so. The case law with respect to decisions of the OG on appeals against orders does not apply to decisions of the OG on appeals against judgments. This case law provides that in cases in which the setting aside decision of the OG substantially amends the decision of the LG, the decision of the OG may be appealed to the OGH even if the OG does not provide for this opportunity.

### **iii Assertion of a specific legal ground (OGH 6 April 2017, 3 CG.2016.430)**

The OGH decided that in cases where the claimant bases his or her claims explicitly and exclusively on one specific legal ground, the courts are bound by this and may not uphold the claim based on another legal ground.

### **iv Stage of the proceedings at which the opponent must apply for security of costs (OGH 7 July 2017, 2 CG.2016.140)**

The OGH decided that the defendant must apply for the order of a security for costs in case of a first hearing (in the technical sense, a first hearing is a hearing with a specific content according to the Civil Procedure Law) at the first hearing and – if no first hearing has been scheduled – at the hearing for oral pleadings before defending on the merits of the case. However, there is no obligation to apply for the order of a security of costs before the first hearing or the hearing for oral pleadings (e.g., at a hearing that was just scheduled to decide whether a pending lawsuit impedes the new proceedings).

### III COURT PROCEDURE

#### i Overview of court procedure

International jurisdiction is given once the jurisdiction of the Liechtenstein courts is established.<sup>3</sup> National jurisdiction is given either where the general jurisdiction applies or one of the 'special jurisdictions'<sup>4</sup> is given. If a defendant is resident in Liechtenstein, general jurisdiction is established.<sup>5</sup> For practical purposes, the special jurisdiction based on assets is of particular importance. This means that monetary claims may be pursued against an individual or legal entity that does not have its domicile in Liechtenstein if such party has assets within Liechtenstein; for example, in the form of a deposit with a Liechtenstein bank or a claim against a debtor resident in Liechtenstein. Besides this, the parties may also submit themselves to Liechtenstein jurisdiction by express agreement (prorogation).<sup>6</sup>

Civil proceedings are initiated by filing a legal action or statement of claim with the LG. In the legal action, the plaintiff has to set out the facts on which he or she bases his or her claim and the evidence with which he or she intends to prove the asserted facts. If the court accepts that it has jurisdiction,<sup>7</sup> it serves the legal action on the defendant<sup>8</sup> and at the same time sets a date for the first hearing. At the first hearing, the defendant may invoke formal objections<sup>9</sup> and must apply for the order of a security for costs, if the prerequisites are given.<sup>10</sup> Persons who have no residence in Liechtenstein or who lose such during the legal proceedings and are plaintiffs or appellants in a Liechtenstein court are in most cases obliged, if so required, to furnish the defendant or respondent with a security for the costs of the proceedings. Likewise, legal entities that do not have sufficient domestic property on which execution can be levied may also be required to furnish a security for the costs of the proceedings.

Natural persons who are not able to bear the costs of litigation without detriment to the necessary maintenance may apply for legal aid in civil matters with the LG. Likewise, legal persons may apply for legal aid if the means necessary to cover the costs of litigation cannot be borne by the legal person itself or the beneficial owners of the same. Legal aid is only granted if the litigation is not considered vexatious or futile (Section 63 ZPO). If legal aid is granted, the party may also be (and in general is) freed from the payment of court fees and from the provision of a security for costs (Section 64 ZPO).

In cases where the claimant is ordered by the court to deposit a security for costs, the defendant is invited by the court to submit a reply to the statement of claim, if such a security for costs is deposited in time. Thereafter, depending on the complexity of the case, the court usually sets a hearing to decide on the evidence that will be taken. The matter is then heard in one or more oral hearings where the parties may plead their case, witnesses are examined, etc. Once the judge is satisfied and finds that the factual basis of the case is duly presented and

3 OGH in LES 2009, 167; OGH in LES 2006, 480.

4 The LG has exclusive jurisdiction over disputes regarding immovable property located in Liechtenstein pursuant to Section 38 JN.

5 See Sections 30 et seq. JN.

6 It should be noted that free choice of forum is restricted, for example, in consumer cases.

7 Where the court concludes that its jurisdiction is not given, the action is normally dismissed *ex parte*.

8 Defendants not residing in Liechtenstein are normally served by way of letters rogatory to the competent court where they reside.

9 For example, the lack of jurisdiction.

10 This defence has to be raised.

the matter ready for taking a decision, he will close the hearing and then deliver the written judgment. As a general rule, further factual pleadings and new evidence may be put forward or offered by the parties to support their pleadings until the closure of the oral hearing.<sup>11</sup>

The control of the proceedings is exercised by the judge who opens, directs and closes the oral hearing and thereby is in charge of the control of the duration of the proceedings (Section 180 ZPO). He may order the parties to submit written pleadings and sets the dates for the examination of witnesses, experts and the production of evidence.<sup>12</sup>

### ***Ordinary appeals***

Each decision passed by the LG may be appealed to the OG within either 14 days, if an order is concerned, or within four weeks, if a judgment is concerned. In appellate proceedings, the OG, after having conducted an oral hearing on the appeal, gives its decision either by confirming the judgment of the LG or by setting it aside and referring the matter back to the LG, or by itself amending the contents of the judgment. To specify the grounds for avoidance, new facts and evidence may be submitted as long as the claim remains identical (novation is not prohibited before the second instance court). Moreover, the parties may also contest procedural errors or the LG's factual and legal findings. Most orders by the LG, such as the order to lodge a security deposit for costs and fees or the refusal to accept jurisdiction, may be appealed to the OG within two weeks. Decisions by the OG may be appealed to the OGH as follows: an order overturning the decision of the LG may be appealed to the OGH within 14 days. Where an order of the OG confirms an order of the LG, no further appeal to the OGH is possible. Judgments of the OG may, in any event, be appealed to the OGH within four weeks.<sup>13</sup> The OGH conducts a non-public hearing and is solely concerned with legal errors; fact-finding by the lower level courts can, therefore, no longer be contested (novation is prohibited). Accordingly, the parties may only raise points of law on material or procedural issues, but new evidence or pleadings are not allowed.

An appeal against a judgment to the OG or to the OGH has suspensive effect, which means that the appealed decision has no *res judicata* effect and cannot be enforced (Section 436 ZPO). In contrast, an appeal against a court order does not, in principle, have suspensive effect (Section 492(1) ZPO). Upon application of the appealing party, the court may, however, grant suspensive effect to the appeal (Section 492(2) ZPO).

### ***Extraordinary appeal to the StGH***

Decisions of the OGH that are final and ultimately determine a matter (i.e., which are, for example, not merely referring a matter back to the lower instance) and orders by the OG that confirm an LG order may be appealed to the StGH within four weeks for alleged violation of fundamental rights granted by the Constitution or by international conventions such as the

---

11 However, the court may refuse to accept the pleadings or take further evidence if it concludes that the pleadings or evidence, which have not been brought forward earlier, are obviously offered by the party with the intention to delay the proceedings and if their admission would considerably extend the proceedings (Section 179 (1) ZPO).

12 An order regarding the production of documents is not enforceable by the court. But the court may of its own discretion take into consideration a party's non-compliance with such an order in the weighing of the evidence pursuant to Section 307 (2) ZPO.

13 The only exception applies to small-claims proceedings (values in dispute up to 1,000 Swiss francs; Section 471 ZPO) where the judgment of the OG is final.

European Convention on Human Rights. An appeal to the StGH does not have the effect of staying the judgment, unless such stay is specifically granted by the StGH, acting through its president. The StGH can only quash the challenged order or judgment; it cannot pass a new decision on the merits. The ordinary courts are, however, bound to the legal considerations of the StGH and have to revise the quashed decision in accordance with the same.

## ii Procedures and time frames

The duration of proceedings before the first instance obviously depends on the subject matter and complexity of the case at hand. If extensive evidence has to be taken, for example, by hearing a large number of witnesses or if the court needs to appoint an expert witness for special questions of fact or if a witness needs to be heard abroad via letters rogatory, the duration of the proceedings before the LG may take up to one year and in complex cases even longer. As a general rule, a decision of the LG may be expected within one year. A final decision that may only be obtained from the OGH can take up to three years. If a matter is of great complexity and if decisions of the lower instances are lifted and the matter handed down to the lower instance for a new decision, proceedings may also take considerably longer.

Both prior to the opening of a lawsuit and during litigation, and even during the execution proceedings, interim injunctions may be issued (Article 270 EO).<sup>14</sup> They serve to secure the right of the party complainant if, in the absence of a protective injunction, there is the risk that a future execution will be prevented or made difficult; for instance, if a claim has to be enforced outside Liechtenstein. Interim injunctions may take the form of a protective order to secure money claims, or of an official order to secure other claims. The applicant must furnish *prima facie* evidence both of his claim and of the risk that may render future executions more difficult.<sup>15</sup> Therefore, the only effect of the interim injunction is that it temporarily maintains the status quo (protective injunction). An interim injunction is normally issued *ex parte* within two to three days. It is up to the court to decide if the defendant shall be heard prior to the passing of the interim injunction. Under Liechtenstein law, it is not possible to obtain a free-standing<sup>16</sup> injunction. This is because in all cases where an interim injunction is granted the court will set a time limit for the claimant to file a statement of claim and commence ordinary civil proceedings. If that time limit is not adhered to, the injunction will be lifted.<sup>17</sup>

## iii Class actions

Generally, class actions are not included in Liechtenstein procedural laws. Sections 11 et seq. ZPO contain provisions regarding the joinder of parties (either as joined plaintiffs or joined defendants). Pursuant to these provisions, several persons may act as joint claimants or joint

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14 In urgent matters, Article 272 EO provides for the possibility to issue provisional security measures. The applicant has to apply for an interim injunction at court within two days of being notified of the security measure (Article 272 (4) EO).

15 The court may order the provision of a security if, for example, it does not consider the *prima facie* evidence for the alleged claim to be sufficient (Article 283 EO). According to Article 287 EO, the applicant has to reimburse any pecuniary loss suffered by the defendant if, for example, the applicant loses the main proceedings.

16 The term 'free-standing injunction' refers to an injunction granted by a court pending the resolution of a dispute before a foreign court.

17 Article 284 (4) EO.

defendants if their rights are based on the same legal or factual grounds. The Liechtenstein Consumer Protection Act (KSchG) enables certain consumer protection organisations to claim on behalf of several individuals, for example, against terms and conditions of businesses that are disadvantageous to consumers (Article 41 et seq. KSchG). However, these are not class actions in the strict sense.

#### **iv Representation in proceedings**

The civil procedure law of Liechtenstein does not provide for compulsory representation: irrespective of the amount claimed or the object in dispute or the instance, every person may represent himself or be represented. In practice, however, it rarely occurs that parties act without representation before the courts.

#### **v Service out of the jurisdiction**

Although Liechtenstein is not a member of the Hague Treaty on International Service, service on foreigners is regularly effected via letters rogatory to the competent court where the defendant resides. The rules regarding service out of the jurisdiction are contained in Article 13 of the Law regarding the Service of Official Documents. In the absence of any international treaties, service has to be effected in the way provided for by the laws or other legal provisions of the country in which a court document has to be served, or alternatively, as permitted by international custom, or where necessary via the diplomatic route. The LG will request the foreign court to which the letter rogatory is addressed to provide a confirmation of service.<sup>18</sup> The rules of service for natural and legal persons do not differ.

#### **vi Enforcement of foreign judgments**

The levying of execution or the performance of individual acts of execution on the basis of a foreign judgment (or other foreign enforceable instruments) is possible in Liechtenstein according to Article 52 et seq. EO only if this is provided for in treaties or if reciprocity is guaranteed to the government by treaties or government policy statements. There have not been any such statements guaranteeing reciprocity so far.

Section III.vi, below details the few bilateral and multilateral treaties concluded by Liechtenstein and the enforcement of foreign judgments in the absence of an enforcement treaty.

#### ***Bilateral treaties***

On 25 April 1968, Switzerland and Liechtenstein concluded a treaty on the Recognition and Enforcement of Court Decisions and Arbitration Awards in Civil Law Matters (published in the Legal Gazette (LGBl) 1970/14). On 5 July 1973, Liechtenstein concluded a treaty on the same subject matter with Austria (published in LGBl 1975/20). The treaty with Austria also covers the reciprocal recognition of settlements and public documents.

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18 It should be noted that, in the absence of any international treaties on service of official documents, service can generally not be forced upon a party residing abroad. Therefore, no default judgment can be passed if the party abroad voluntarily refuses to accept service of the legal action. See OGH 09.01.2014, 6 CG.2013.248, published in GE 2014, 207.

Both treaties require all of the following conditions to be met in order to recognise a judgment:

- a* recognition of the judgment must not be contrary to public order of the state in which the judgment is asserted and a plea of *res judicata* must not be possible;
- b* the judgment must have been passed by a court with jurisdiction relating to the subject matter according to the principles set out in the treaty;
- c* the judgment must have entered into legal force according to the law of the state where it has been passed; and
- d* in case of a default judgment, the writ of summons, by which proceedings are instituted, must have been served on the party in default personally or on a proper representative.

### **Multilateral treaties**

In 1972, Liechtenstein ratified the Convention of 15 April 1958 concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children (LGBl 1972/55), and in 1997 the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (LGBl 1997/110).

The Liechtenstein Parliament consented to the signing of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 on 19 May 2011. The New York Convention was then ratified and entered into force on 5 October 2011.<sup>19</sup>

Currently, Liechtenstein has not signed or become a party to any other multilateral treaty or instrument. In particular, it is not a party to the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 1988/2007 or the Council Regulation (EC) No. 44/2001 of 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels-I Regulation).

### **Enforcement of a foreign judgment in Liechtenstein**

As mentioned above, foreign judgments may generally not be enforced in Liechtenstein. Consequently, a judgment creditor must obtain a Liechtenstein enforceable instrument against the judgment debtor, before he can successfully levy execution in Liechtenstein. A foreign judgment is sufficient to be granted what is called '*Rechtsöffnung*', in other words, simplified proceedings to obtain a Liechtenstein enforceable instrument.<sup>20</sup> On the account of the *Rechtsöffnung*, the creditor who has obtained a default summons<sup>21</sup> or other decision within summary proceedings<sup>22</sup> may have the debtor's opposition or legal proposal annulled by the court, if the claim he has put forward is based on a Liechtenstein or foreign public instrument.<sup>23</sup> The respondent in such proceedings may avoid an enforceable instrument only by bringing an action for denial.<sup>24</sup> Once an action for denial has been brought, the merits of the case are decided upon in contentious proceedings before a court of law. In practice, this means that if the opponent does not want a foreign judgment to be validated by *Rechtsöffnung*, the whole case has to be re-tried on the merits before the Liechtenstein courts.

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19 LGBl. 2011 No. 325.

20 Articles 49–53 RSO.

21 *Zahlbefehl* according to Sections 577 et seq. ZPO.

22 *Rechtsbot* according to Sections 592a et seq. ZPO.

23 Article 49 (1) RSO.

24 *Aberkennungsklage* according to Article 53 RSO.

**vii Assistance to foreign courts**

The provisions of Sections 17 et seq. JN provide assistance to foreign courts. Pursuant to Section 27 JN the LG has to grant legal assistance unless the requested act does not fall within the competence of the LG or if an act is requested that is prohibited by Liechtenstein law or if reciprocity is not given. Where the LG doubts the existence of reciprocity, it has to obtain a binding declaration from the OG in this respect.<sup>25</sup>

The most common cases of legal assistance for a foreign court in civil proceedings are the service of documents and the examination of witnesses. The court has to provide legal assistance in accordance with the Liechtenstein procedural laws pursuant to Section 28(1) JN.

**viii Access to court files**

As a rule, court hearings in civil cases are open to the public. However, in specific cases, where the public interest or the protected interests of a person are directly affected, the public may be excluded. Written submissions in civil proceedings are not made available to the public. Therefore, non-parties are not granted access to the court file, unless the parties of the lawsuit agree to grant information to the third party or such third party can prove some legal interest (for example, if the information is required for a lawsuit) and is granted access through a court decision (see Section II.iii, *supra*). Judgments may be requested by anyone, but are only made available in anonymised form.

**ix Litigation funding**

There are no rules in Liechtenstein regarding litigation funding by disinterested third parties. It is in principle up to the litigating parties how they fund their litigation.<sup>26</sup> Parties may therefore use third-party funding to pay the legal costs in order to reduce their risks. Litigation funding usually occurs in large arbitration and litigation disputes or when a number of people suffer losses with a common cause (so that in aggregate, those losses are significant).

**IV LEGAL PRACTICE**

**i Conflicts of interest and Chinese walls**

The duty to avoid any conflict of interest is one of the crucial duties of a lawyer and is stipulated in Article 17 of the Law regarding Lawyers (RAG). Where a lawyer has represented the opposing party in the same matter or in a matter connected thereto, he must not accept the mandate. Likewise, a lawyer may not advise both parties in the same case. These duties are specified in the Professional Conduct Guidelines. Section 18 Professional Conduct Guidelines provides that a lawyer must not advise, represent or defend more than one client in the same matter if a conflict of interest or the immediate danger of a conflict of the interest of these clients exists. If such a conflict arises or if there is a danger of a violation of the duty of secrecy or if the lawyer's independence is at risk, the lawyer has to lay down his mandate with regard to all clients. Pursuant to Section 19 Professional Conduct Guidelines, a lawyer must not accept a mandate if the danger of a violation of his duty of secrecy in respect of

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25 Section 27 (2) (3) JN.

26 A limitation exists only as regards lawyers in Article 23(3) RAG, which provides that quota litis agreements or the assignment or pledging of the disputed claim or object are not permitted.

information entrusted by a former client or the knowledge of the affairs of a former client could present a disadvantage to the former client or an unjustified advantage for the new client. The same obligation to avoid conflicts of interest applies to different lawyers of the same law firm, who are, for this purpose, regarded as one and the same lawyer.<sup>27</sup> The duty of a lawyer to exercise his profession independently is of utmost importance as the client needs to be sure that he is being advised independently and in a manner free from conflicts of interest.<sup>28</sup> With a view to this duty and the rules relating to the avoidance of conflicts of interest, Chinese walls are not permissible in Liechtenstein.

## **ii Money laundering, proceeds of crime and funds related to terrorism**

To the extent that lawyers provide tax advice to their clients or assist in the planning or execution of transactions for their clients concerning:

- a* the buying and selling of undertakings or real estate;
- b* the managing of client money, securities or other assets;
- c* the opening or managing accounts, custody accounts or safe deposit boxes;
- d* the organisation of contributions necessary for the creation, operation or management of legal entities; or
- e* the establishment of a legal entity on the account of a third party or acting as a partner of a partnership or a governing body or general manager of a legal entity on the account of a third party or carrying out a comparable function on the account of a third party; lawyers are subject to the Due Diligence Act (SPG) and are obliged to:
  - identify and verify the identity of their contractual partner;
  - identify and verify the identity of the beneficial owner;
  - establish a profile of the business relationship; and
  - carry out adequate monitoring of the business relationship for risk.

In conducting due diligence, lawyers must immediately report in writing to the Liechtenstein Financial Intelligence Unit (FIU) where there is suspicion of money laundering, a predicate offence of money laundering, organised crime or terrorist financing. They must not execute any transaction unless refraining in such a manner is impossible or would frustrate efforts to pursue a person suspected of being involved in money laundering, predicate offences of money laundering, organised crime or terrorist financing. The representation of a client in litigation or arbitration matters is not subject to the SPG.

## **iii Data protection**

Processing personal data is governed by the DSG, by which the Data Protection Directive 95/46/EC was implemented into Liechtenstein law. 'Personal data' means any information that permits the identification of both private persons and legal entities (data subjects). Pursuant to Article 10 DSG, personal data obtained through any professional activity has to be kept secret without prejudice to other legal secrecy obligations, unless there is a legally permissible reason for the transmission of the entrusted data. It follows from this that the strict secrecy obligations stipulated by the RAG provide complete protection of personal data

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27 Section 19 (2) Professional Conduct Guidelines (*Standesrichtlinien*).

28 Article 11 RAG and Section 4 *Standesrichtlinien*.

provided by the client to the lawyer. Therefore, a lawyer can neither grant access to data that may contain personal data of a client to any third party, nor can he share such data with other law firms.

The violation of the strict professional secrecy obligations that cover all aspects of the lawyer's relationship with his client provided in the RAG is punishable pursuant to Section 121 of the Criminal Code and represents a disciplinary offence.

## V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

### i Privilege

The legal privilege of lawyers is stipulated in Article 15 RAG. The lawyer is obliged to keep confidential all affairs entrusted to him, and all other facts that have become known to him in his professional capacity and that have to be kept secret in the interest of his or her client. The law provides that the lawyer has a right to this professional secrecy privilege in all court and other official proceedings in accordance with the applicable procedural laws. The procedural laws contain provisions allowing the lawyer to preserve secrecy. In particular, Section 321(1) (4) ZPO provides that the lawyer is entitled to refuse to testify as a witness regarding information entrusted to him by his client. This privilege must not be circumvented by other means; for example, the examination of employees of the lawyer (Article 15(2) RAG).

The legal privilege extends, in particular, to correspondence between the lawyer and his client, irrespective of where and in whose possession this correspondence covered by the professional secrecy protection is (Article 15(3) RAG).

In-house lawyers are not protected because they are not lawyers in the sense of the RAG. A lawyer who is admitted to a foreign Bar may invoke professional secrecy obligations in the same way as a Liechtenstein lawyer, and therefore the same level of legal privilege applies to such lawyers.

In a regulatory context, the lawyer has to provide information only to the Financial Market Authority and FIU and just in case the lawyer carries on activities that are subject to the SPG. The information the lawyer has to provide is limited to information and documents that the regulatory authorities require to fulfil their tasks (Article 15(4) RAG). Since the representation of a client in a dispute resolution matter or, more specifically, in court proceedings is not an activity subject to the SPG, this provision is not of great significance in dispute resolution practice.<sup>29</sup>

### ii Production of documents

There is no disclosure process or pretrial discovery in Liechtenstein. And yet, in specific and narrowly defined circumstances, the taking of evidence as a form of precautionary measure prior to trial is possible. While third parties or authorities must produce relevant documents in their possession, unless they have a right to refuse to testify under Liechtenstein law, there is no effective means of asking the court to order disclosure of documents from a party for use in the proceedings.<sup>30</sup>

That is because according to Section 307(2) ZPO, even in relation to documents the production of which has been ordered by the court, a defendant cannot be forced effectively to

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<sup>29</sup> See Section IV ii, *supra*.

<sup>30</sup> Section 304 ZPO.

produce such documents. If he refuses to present the documents, the court, in its discretion, may only take this into consideration in the weighing of evidence. The difficulty a plaintiff faces in this respect is that he often does not know what documents that might assist his case are in the hands of the defendant.

## VI ALTERNATIVES TO LITIGATION

### i Overview of alternatives to litigation

While arbitration is seen as the main alternative dispute resolution mechanism to ordinary state court litigation, mediation proceedings have less practical importance.

### ii Arbitration

Liechtenstein passed new legislation regarding arbitration proceedings with effect from 1 November 2010.<sup>31</sup> The new arbitration legislation generally follows the Austrian model, which again is based on the Model Law on International Arbitration (UNCITRAL Model Law). However, Liechtenstein arbitration law departs in certain aspects from its model to make it more attractive and effective.

The new arbitration law practically<sup>32</sup> permits the submission of all types of disputes in relation to trusts, foundations or companies to arbitration, including, in particular:

- a the removal of trustees (or foundation council members);
- b the challenging of resolutions of trustees (or the foundation council); and
- c the appointment of extraordinary auditors.

The advantages of arbitration are the following:

- a the composition of the arbitration tribunal and the appointment of its members may be freely determined;<sup>33</sup>
- b the seat of the arbitration tribunal and the language of the arbitration proceedings may be freely determined;<sup>34</sup>
- c speedy proceedings, as there is only one instance and the arbitral award may only be challenged before the OG on very limited formal grounds;<sup>35</sup>
- d arbitration proceedings are confidential; and
- e special provisions have been enacted to provide for extra confidentiality of the proceedings before the OG in case the arbitral award is challenged.<sup>36</sup>

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31 Sections 594–635 ZPO; LGBl. 2010/182.

32 Exceptions are matters falling within the public supervision of foundations (Government Report No. 53/2010, p. 13) and, in general, proceedings that are initiated *ex officio* or by a public authority (i.e., the LG, the Foundation Supervision Authority (STIFA) or the Attorney General) and based on mandatory law (Section 599 (3) ZPO).

33 Sections 603 and 603 ZPO.

34 Sections 612 and 613 ZPO. This allows the appointment of, for example, English trust law experts as arbitrators or the use of English language documents.

35 Section 628 ZPO. Theoretically, the decision of the OG may be challenged with the extraordinary remedy of an appeal to the StGH for alleged violation of constitutional rights.

36 Section 633 (2), (3) and (4) ZPO. This was necessary as the proceedings before the OG are generally public. In this respect, it should be noted that, for example, supervisory court matters are generally heard in private to protect the privacy of the involved parties.

### **iii Mediation**

The rules governing mediation in Liechtenstein are contained in the ZMG. The commencement and proper continuation of mediation suspends the statute of limitations in relation to the rights and claims subject to mediation (Article 18(1) ZMG). The suspension of the statute of limitations is effective if one of the parties files a legal action with the LG within 14 days from the termination of the mediation (Article 18(3) ZMG). A settlement reached in the mediation is not binding on the parties and cannot be enforced. Mediation is available for all types of civil law matters. Mediation procedures are of minor importance in Liechtenstein, since Liechtenstein lawyers usually attempt to bilaterally settle a case (without the involvement of a mediator) before formal proceedings are initiated.

### **iv Other forms of alternative dispute resolution**

Another form of alternative dispute resolution available in Liechtenstein is the Conciliation Board, with one mediator. It has been created to deal with conflicts between clients and various financial service providers such as asset management companies, banks, professional trustees and others. The Conciliation Board is regulated in the Ordinance Regarding the Extrajudicial Conciliation Board in the Financial Services Sector (FSV). It is up to the parties to refuse the conciliation proceedings or to abandon them at any time (Article 13 FSV). The conciliation proceedings come to an end if the motion is repealed, the parties reach an agreement, the Conciliation Board makes a proposal for a settlement, the rejection of the motion is obviously abusive or if a court or arbitration tribunal is seized of the matter. If no agreement is reached between the parties, they have to be referred to ordinary legal proceedings (Article 19(2) FSV). In practice, such conciliation proceedings do not play an important role. This is, among other reasons, probably due to the fact that parties may practically decide to abandon the proceedings at any time.

## **VII OUTLOOK AND CONCLUSIONS**

On 1 July 2017, the law regarding Alternative Dispute Resolution in Consumer Matters (AStG), which is the implementation of the EU Directive on Consumer ADR (Directive 2013/11/EU), entered into force. Since participation in such procedures is voluntary, the AStG will likely not be of great practical importance.

Generally, no substantive changes in the legislation governing dispute resolution in Liechtenstein are envisaged in the near future. Because of the liberal legislation relating to companies, foundations and trusts, cases involving foundations and trusts play an important role, in general, as do commercial and company law cases in Liechtenstein. The new and attractive arbitration law in combination with the New York Convention on the Recognition and Enforcement of Arbitral Awards makes Liechtenstein an attractive place for arbitration.

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