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Liechtenstein

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

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This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in Liechtenstein.

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LIECHTENSTEIN

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS



1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

Liechtenstein has signed 9 conventions in total. However, the most relevant international conventions and treaties that apply in Liechtenstein are the following:

- Treaty between the Principality of Liechtenstein and the Republic of Austria on the recognition and enforcement of judgments, arbitral awards, settlements and public deeds dated 5 July 1973.
- Treaty between the Principality of Liechtenstein and the Swiss Confederation on the recognition and enforcement of judgments and arbitral awards dated 25 April 1968.
- New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.
- The Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children.
- The European Convention of 20 May 1980 concerning the recognition and enforcement of decisions relating to custody rights for children.

2. What, if any, reservations has your jurisdiction made to such treaties?

There are no reservations with regard to the international treaties between Switzerland, Austria and Liechtenstein.

Regarding the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 Liechtenstein declared that it will only apply the

Convention to the recognition and enforcement of arbitral awards rendered in the territory of another Contracting State.

Regarding the Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children, the following reservation regarding Art 18. has been made: decisions of an authority of another Contracting State whose jurisdiction is based on the place of residence of the maintenance creditor (Art. 3 para. 2 of the Convention) can neither be recognized nor enforced in the Principality of Liechtenstein in the absence of a domestic rule of jurisdiction.

Regarding the European Convention of 20 May 1980 concerning the recognition and enforcement of decisions relating to custody rights for children Liechtenstein made reservations concerning two articles. Reservation to Art. 6 para. 1 let. b: in accordance with Art. 6 para. 3 of the Convention, the Principality of Liechtenstein excludes the application of Art. 6 para. 1 let. B and Reservation to Art. 8 and 9. Pursuant to Art. 17 para. 1 of the Convention, the Principality of Liechtenstein shall, in the cases covered by Art. 8 and 9, exclude the recognition and enforcement of custody decisions for the reasons set out in Art. 10 para. 1 let. a, b and d.

3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

According to Art. 52 of the Liechtenstein Enforcement Act ("EO"), a foreign judgment may only be enforced in Liechtenstein if, and to the extent that, this is stipulated in a treaty or if reciprocity is guaranteed by treaty or declaration of reciprocity. Therefore, in the absence of any applicable special regime, foreign judgments are principally not enforceable in Liechtenstein.

Although a formal recognition and thus an enforcement of a foreign judgment is not possible in Liechtenstein, a foreign judgment may ultimately result in enforcement by means of the Reinstitution Procedure. Such procedure constitutes summary proceedings with provisional effect, aimed at ultimately obtaining an enforceable judgment.

4. What basic criteria does a foreign judgment have to satisfy before it can be enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?

For the initiation of the aforementioned Reinstitution Procedure, a foreign public deed is required. In particular, a foreign judgment or a private acknowledgment of debt qualify as such.

The foreign public deed must have been issued in accordance with the law of the country of origin. Furthermore, the creditor's claim must be of a civil law nature and aimed at the payment or surrender of money or an article of property. Lastly, the foreign judgment must be final and legally binding and must not violate the *ordre public*.

In addition, the original foreign judgment or a certified copy thereof must be presented to court. If the foreign judgment is in a language other than German, a translation of the judgment must be produced.

5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?

Among the multilateral and bilateral treaties and conventions listed in question 1, some of the most relevant are the Convention between the Principality of Liechtenstein and Switzerland, the Convention between the Principality of Liechtenstein and Austria as well as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, all of which will be dealt with in the following paragraphs.

The Convention between the Principality of Liechtenstein and the Republic of Austria on the Recognition and Enforcement of Judgements, Arbitral Awards, Settlements and Public Deeds regulates judgments, arbitral awards, settlements and public deeds in civil and commercial matters. Decisions in insolvency proceedings, decisions in inheritance and estate proceedings, decisions in guardianship and tutelage proceedings, interlocutory injunctions, administrative

penalties, and decisions on civil law claims rendered in criminal proceedings are excluded from the scope of this Treaty.

The requirements for the recognition of judgments are stipulated in Art. 1 of the Treaty: firstly, the *ordre public* of the state in which recognition is sought must not be violated. In particular, the decision must not violate the principle of *res judicata*. Secondly, the decision must have been rendered by a court which was competent to do so in accordance with Art. 2 of the Treaty. Thirdly, the decision must be final and binding as well as enforceable. Finally, in case of judgments by default, summary court orders and payment orders, the opposing party must have been summoned in accordance with the law.

According to Art. 5 of the above-mentioned Convention, the party seeking recognition of a judgment must supply the following documents: a counterpart of the judgment, affixed with an official signature and the official seal or stamp; and a judicial confirmation of the judgment's entry into legal force and – if necessary – its enforceability. In cases of a judgment by default, the party seeking recognition of a judgment must supply the following: a counterpart of the summons; a judicial confirmation of the kind and time of its delivery to the absent party; and, if the facts of the case are not recognisable by means of the judgment, a counterpart of the claim or other appropriate deeds.

The Convention between the Principality of Liechtenstein and the Swiss Confederation on the Recognition and Enforcement of Judgements and Arbitral Awards in Civil Matters stipulates in Art. 1 essentially the same requirements as Art. 1 of the Convention between Liechtenstein and Austria. Also, the Treaty only excludes the recognition and enforcement of decisions in insolvency proceedings, interlocutory injunctions, administrative penalties, and decisions on civil law claims which are rendered, through criminal proceedings, from its scope.

Also, the procedural requirements are similar to the ones stated in the Treaty between the Principality of Liechtenstein and Austria which is why one can refer to the above mentioned.

Lastly, the New York Convention applies to the recognition and enforcement of foreign arbitral awards. In order to be recognised in Liechtenstein, an arbitral award must have been rendered in a contracting state, as Liechtenstein reserved the application of the Convention only to the recognition and enforcement of awards made in the territory of other contracting states. In case, an arbitral award is not rendered in the official language of Liechtenstein (German), the document must

be translated and certified by an official or sworn translator or by a diplomatic or consular agent (cf. Art. IV of the New York Convention).

6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?

As already mentioned, foreign judgments may be rendered enforceable in Liechtenstein by way of a special procedure, divided into summary proceedings and the (normally) ensuing Reinstitution Procedure.

Based on a foreign judgment, a creditor may apply for a payment order (if the foreign judgment states the debtor's obligation to pay a certain amount of money or transfer fungible assets to the creditor) or a court order for a specific performance by the debtor (if the foreign judgment is of a declaratory nature or states the debtor's obligation to perform or not to perform certain acts). Such summary court orders fulfil the criteria of a Liechtenstein judgment; hence they can be enforced in Liechtenstein. As a result, the foreign judgment can be converted into a Liechtenstein court order which then can be enforced in Liechtenstein. However, as summary court orders are issued without the opposing party being heard, the debtor can raise an objection and thus nullify the court order by simple notice to the court.

If the summary court order is nullified upon an objection by the debtor, the creditor may, in turn, demand that the court set aside the debtor's objection and reinstitute the creditor's summary court order. Such an application for reinstitution ("Rechtsöffnungsgesuch") is to be considered as a regular claim leading to a court procedure. However, the procedure constitutes a rather simplified and fast paced summary procedure. This means, e.g. the court is obliged to schedule a hearing, at the latest, five days after receipt of the application for reinstitution.

The Reinstitution Procedure is purely based on enforcement law. Thus, the court does not evaluate and decide whether the claim is justified. Instead, the court solely decides whether it is correct and lawful to enforce this claim in Liechtenstein. In the course of the Reinstitution Procedure, the debtor is also heard, meaning he has a chance to oppose the claim raised by the creditor based on formal and substantive arguments. The debtor may furnish evidence by providing deeds or through the testimony of witnesses present at the hearing. As the Reinstitution Procedure is meant to be a fast, simplified procedure, no other evidence is admissible.

Pursuant to settled case law of the Liechtenstein Constitutional Court, the debtor may raise all objections to the application for reinstitution and to the creditor's claim in the course of the Reinstitution Procedure, provided that these objections can be proven by means of deeds or witnesses present at the hearing. The debtor is therefore not restricted in this respect and can dispute the claim of the creditor on the merits and its amount, as well as on the basis of procedural obstacles. There is effectively no limitation as to the range of possible objections, which is why it can be said that the instigation of the Reinstitution Procedure leads to a new judging of the merits of the case in Liechtenstein (révision au fond).

If reinstitution is not granted, the creditor may initiate regular judicial proceedings in Liechtenstein without the debtor being able to object for reasons of res judicata.

If reinstitution is granted, the according decision of the court serves as a legal title, based on which the creditor can demand enforcement of his claim. The debtor may not formally appeal against this decision. However, the debtor may file the so-called "Disallowance Claim" (Aberkennungsklage).

7. What, if any, formal requirements do the courts of your jurisdiction impose upon foreign judgments before they can be enforced? For example, must the judgment be apostilled?

To initiate the above-mentioned Reinstitution Procedure, a foreign public deed is required. In particular, a foreign judgment or a private acknowledgment of debt qualify. The foreign public deed must have been issued in accordance with the law of the country of origin. Furthermore, the creditor's claim must be of a civil law nature and aimed at the payment or surrender of money or an article of property. Lastly, the foreign judgment must be final and legally binding and not violate the ordre public.

Apart from the substantive requirements mentioned in question 6, the original foreign judgment or a certified copy thereof must be presented to court. Furthermore, if the foreign judgment is in a language other than German, a translation of the judgment must be produced.

8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction? Is there a summary procedure

available?

In principle, the procedure to enforce a foreign judgment will often lead to a new procedure on the merits of the case. Thus, it may take the same amount of time to enforce a foreign judgement as it would take for a Liechtenstein judgment. It generally depends on the complexity of the matter as well as the workload of the courts. However, there are no specific time limits.

As regards the summary procedure, please refer to the above-mentioned proceedings.

9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while the enforcement or registration procedure takes place?

Pursuant to Art. 270 EO interim injunctions may be issued upon application to secure the rights of a party. A request for interim injunction may be filed prior to the initiation of a lawsuit, during the lawsuit, but also during the stage of enforcement.

Per the statutes of Liechtenstein, provisional judicial measures may be sought to avert imminent and irreparable harm or to forestall alterations in status that could hinder or unduly complicate the future execution of a legal claim or entitlement. In such cases, injunctive relief can be granted in the form of preservative measures in order to preserve the matter in dispute or otherwise secure future enforcement pending conclusion of the main proceedings, for example by means of freezing orders, seizures or restraining orders.

Furthermore, irrespective of concerns regarding subsequent enforcement, provisional relief in the form of regulatory injunctions may be decreed to dictate interim relations between the parties, thereby preventing anticipated irreparable detriment prior to the resolution of the primary litigation.

10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?

The statute of limitations is a question of substantive and not of procedural law. As a result, the limitation period varies depending on the claim in question and the law applicable to such a claim. Consequently, the limitation period has to be assessed under the law governing the claim in question.

Under Liechtenstein law, a judgment may be enforced

within 30 years of its entry into legal force, irrespective of which limitation period is applicable to the underlying claim. The limitation period is interrupted as soon as a motion for enforcement is filed with the competent court provided that it is granted eventually.

11. On what grounds can the enforcement of foreign judgments be challenged in your jurisdiction?

By means of the Disallowance Claim, the debtor may object to the reinstitution. However, the Disallowance Claim is not a legal remedy in the sense of an appeal, but rather a regular claim aimed at a negative declaratory judgment. If it is granted, the court confirms that the claim underlying the Reinstitution Procedure does not exist or is not enforceable and that the reinstitution is set aside. The Disallowance Claim may also be beneficial for foreign creditors as it reverses the roles of the parties (the debtor has to file the claim). Meaning, the foreign creditor now does not have to provide for a security deposit for procedural costs anymore.

In the course of the Disallowance Procedure, the debtor has the chance to lay out and prove his arguments in a regular, full and unrestricted court procedure and specifically object to the foundation and existence of the claim raised by the creditor for the first time. The Disallowance Procedure therefore no longer deals with the question of whether it was correct for the court to confirm enforceability of the creditor's claim and thus to grant reinstitution; it is rather a full procedure on the merits of the claim raised by the creditor – notwithstanding the fact that a foreign judgment on such a claim may already exist.

12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?

The initiation of proceedings to enforce a foreign judgment within the jurisdiction of Liechtenstein typically necessitates a de novo review of the underlying case. Throughout this process, the adjudicative determinations – including arguments, evidentiary submissions, judicial findings, and the ultimate judgment – originating from the foreign jurisdiction generally hold limited precedential weight. The competent Liechtenstein court independently evaluates the evidence and administers the examination of witnesses. This autonomous fact-finding endeavor enables the court to issue an independent and original judgment on the merits of the case.

13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?

According to Art. 53 EO, Liechtenstein requires international jurisdiction of the first state for the recognition and enforcement of foreign judgments.

The requirement of international jurisdiction and reciprocity is of paramount importance in the area of judgments relating to the law of obligations.

14. Do the courts in your jurisdiction impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in default be enforced?

In the practice of the Liechtenstein courts, a foreign judgment that has been properly rendered is regarded as an evidential document. This means that if a hearing was duly convened abroad, the person concerned had the opportunity to defend themselves and there was no obvious exorbitant jurisdiction or serious formal error, the opening of legal proceedings will be granted.

15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?

No. The fulfilment of the requirements for the recognition and enforcement are of relevance in this regard.

16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple damages be enforced?

Yes, as described under Question 2. some judgments are not enforceable in Liechtenstein. E.g. according to the Convention between the Principality of Liechtenstein and the Republic of Austria on the Recognition and Enforcement of Judgements, Arbitral Awards, Settlements and Public Deeds, decisions in insolvency proceedings, decisions in inheritance and estate proceedings, decisions in guardianship and tutelage proceedings, interlocutory injunctions, administrative penalties, and decisions on civil law claims rendered in criminal proceedings are excluded from the scope of the

Treaty.

17. Can enforcement procedures be started in your jurisdiction if there is a pending appeal in the foreign jurisdiction?

No, enforcement procedures can commence only if the judgement is final and enforceable in the jurisdiction where it was issued.

18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?

As already described above, there is a possibility to file a Disallowance Claim, where the debtor may object to the reinstitution. However, the Disallowance Claim is not a legal remedy in the sense of an appeal, but rather a regular claim aimed at a negative declaratory judgment. If it is granted, the court confirms that the claim underlying the Reinstitution Procedure does not exist or is not enforceable and that the reinstitution is set aside.

19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?

Yes, according to § 1000 of the Civil Code ("ABGB"), interest that has been agreed upon without specifying the amount or that is due according to the law, is payable at five percent per annum, unless otherwise specified.

20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?

The Civil Code (ABGB) states the following: in cases where a debt, denominated in foreign currency, is to be paid within the country, it is permissible to make the payment in the local currency. This is applicable unless there is an explicit agreement that the payment must be made in the foreign currency.

The process of converting the currency will be based on the exchange rate that is relevant at the time and place of the payment. If there is a delay in payment by the debtor, the creditor is given the option to choose between the exchange rate that was valid at the due date and the exchange rate at the actual time of payment.

As far as the court fees are concerned, Art. 4 of the Liechtenstein law on court fees ("GGG") states that if an amount in a foreign currency forms the basis for assessment, the corresponding amount in Swiss Francs is to be determined based on the current daily exchange rate published by SIX AG on the day the fee claim arises.

21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?

Unless otherwise specified for individual cases, the obligated party must reimburse the enforcing creditor for all costs incurred that are necessary for the realization of rights in the execution process, upon the creditor's request. The court must determine which costs are necessary after careful consideration of all circumstances.

22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

In Liechtenstein, there are no specific legal provisions regulating third-party funding in litigation. As a result, parties are not subject to any legal constraints in their agreements with financial backers. Additionally, there's no mandatory requirement to reveal such funding agreements. However, when lawyers serve as third-party

financiers, they must adhere to standard professional guidelines. This is particularly relevant as arrangements where lawyers receive a portion of the litigation proceeds, known as contingency or conditional fee agreements (quota litis), are not allowed in relationships between lawyers and their clients.

23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in the next 5 years?

As Liechtenstein has a rather restrictive approach to the recognition and enforcement of foreign judgments, we do not expect any significant legal developments in this regard.

24. Has your country ratified the Hague Choice of Courts Convention 2005? If not, do you expect it to in the foreseeable future?

Liechtenstein has not ratified the Hague Choice of Courts Convention 2005. However, there are no indications to expect a ratification in the near future.

25. Has your country ratified the Hague Judgments Convention 2019? If not, do you expect it to in the foreseeable future?

Liechtenstein has not ratified the Judgments Convention 2019 either. There are no indications to expect a ratification in the near future.

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