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Liechtenstein

WHITE COLLAR CRIME

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This country-specific Q&A provides an overview of white collar crime laws and regulations applicable in Liechtenstein.

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LIECHTENSTEIN
WHITE COLLAR CRIME

1. What are the key financial crime offences applicable to companies and their directors and officers? (E.g. Fraud, money laundering, false accounting, tax evasion, market abuse, corruption, sanctions.) Please explain the governing laws or regulations.

In Liechtenstein, the key financial crime offences applicable to companies and their directors and officers are set forth in the Liechtenstein Criminal Code and are the following:

Embezzlement

The offence of embezzlement is committed by any person who knowingly abuses his or her authorisation to make dispositions in respect of assets belonging to another person or to legally bind such other person and thereby causes damage to the assets of such other person.

Fraud

The offence of fraud is committed by any person who, with the intent of unlawfully enriching himself or herself or a third party through the conduct of the deceived person, induces someone to commit an act, to acquiesce in or refrain from committing an act which damages his or her assets or those of another person by deception of facts.

Fraudulent bankruptcy

The offence of fraudulent bankruptcy is committed by any person who conceals, disguises, sells, or causes damage to a component of his or her assets, purports the existence of or recognizes a non-existent liability, or otherwise actually or in pretence decreases his or her assets, and thereby frustrates or reduces satisfaction of the claims of his or her creditors or of at least one of them.

Forgery of documents

Forgery of documents is committed by any person who draws up a forged document or falsifies an authentic document with the intent to use it in legal transactions to prove a right, a legal relationship or a fact. The person who uses the forged or falsified document in legal transactions to prove a right, a legal relationship or a fact is to be punished likewise.

Money laundering

Money laundering is committed by a person who conceals or disguises the origin of assets resulting from an act punishable with imprisonment of more than one year or certain misdemeanours (eg, forgery of documents or tax fraud), in particular by making false statements in legal transactions concerning the origin or true nature of, the ownership or other rights in, the powers of disposal over or the transfer of those assets.

The offence of money laundering is also committed by a person who takes any such assets or assets of a criminal organisation or a terrorist association into custody, whether for the sole purpose of keeping them in safe custody, investing or managing them, or converting, realising or transferring the assets to a third party.

Assets are considered to derive from a crime, if the perpetrator has obtained them through the offence, received them for the commission of the offence or they represent the value of the asset originally obtained or received. Additionally, untaxed income and funds resulting from tax or VAT fraud are considered proceeds of a crime (ie, saved taxes).

Commercial (private) bribery

The offence of active bribery in commercial dealings is committed by any person who, in the course of business, offers, promises or grants a benefit to an employee or agent of a legal entity or a third party in return for an unlawful act or omission. Any employee or agent of a legal entity, who demands, accepts or allows himself or herself to be promised a benefit in the course of business from another person for himself or herself or a third party in return for the performance or omission of a

legal act in breach of his or her duties likewise commits passive bribery.

In addition to the key financial crime offences which are stipulated in the Liechtenstein Criminal Code, violations of the provisions of the **Due Diligence Act** and its corresponding penal provisions (eg, the violation to identify the contracting party or the beneficial owners of an account) are of particular relevance for companies and its directors in the Liechtenstein financial industry.

2. Can corporates be held criminally liable? If yes, how is this determined/attributed?

The Liechtenstein Criminal Code stipulates provisions dealing with the criminal liability of legal entities. According to the pertinent provisions of the Liechtenstein Criminal Code, a legal entity can be held criminally liable under the following circumstances:

1. The act has been committed unlawfully and culpably by an executive in connection with the business activity of the legal entity within the scope of its purpose.
2. The act has been committed by an employee in connection with the business activity of the legal entity within the scope of its purpose, but only to the extent that a breach of monitoring obligation on the part of the management level has at least substantially facilitated the commission of the act (ie, organisational fault).

Consequently, the criminal liability of a legal entity is subject to the commission of an offence that has been committed in the course of business activities within the scope of the legal entity's purpose. Therefore, a functional connection between the offence and the legal entity's activity (ie, its entire area of activity, including all entity-related activities) is required in order to establish its criminal liability. As a result, no corporate criminal liability can be established for offences that have been committed (i) in the exclusive interest of an executive or a subordinate or (ii) against the legal entity itself.

3. What are the commonly prosecuted offences personally applicable to company directors and officers?

The most relevant financial offences that are prosecuted are related to money laundering and violations of the Due Diligence Act. This holds equally true for legal entities and its directors and officers. In addition, investigations and prosecution against directors and officers based on the suspicion of embezzlement to the detriment of a company are also fairly common.

4. Who are the lead prosecuting authorities which investigate and prosecute financial crime and what are their responsibilities?

The lead prosecution authority to prosecute financial crimes is the Liechtenstein Prosecution Service. The Liechtenstein Criminal Procedure Code sets forth that the Prosecution Service is ex officio and with the assistance of the Liechtenstein National Police responsible for investigating all punishable acts that come to its attention and to prosecute the suspected perpetrator(s). As regards financial crimes, the support of the Liechtenstein National Police is provided by its specialised unit for white-collar crime. Additionally, the FIU assist and cooperates with the investigative authorities.

The Prosecution Service is responsible for submitting motions for investigation activities with the Princely District Court. The most important investigative measures that can be applied by the Princely District Court upon submission of a respective motion by the Prosecution Service are (i) the seizure of evidence by ordering an information holder (eg, a bank or a professional trust service provider) to produce documents related to the investigated offence, (ii) a house search and seizure of evidence, (iii) freezing assets that allegedly derive from the investigated offence in order to secure them for forfeiture, and (iv) interrogation of a suspected perpetrator and examination of witnesses.

The investigation activities are carried out either directly by an investigative judge or with the assistance of the Liechtenstein National Police. In the latter case, the Princely District Court requests the Liechtenstein National Police to examine a witness or assist to conduct a house search.

It should be further noted that the administrative authorities (eg, the Financial Market Authority (FMA)) are competent to investigate, prosecute and execute violations of administrative law (eg, the FMA is responsible for imposing fines on perpetrators of administrative offences in relation to violations of the Due Diligence Act or the Banking Act).

5. Which courts hear cases of financial crime? Are trials held by jury?

The Liechtenstein legal system does not provide for specific criminal courts for financial crime cases.

Therefore, financial crime cases are heard by general criminal judges. Depending on whether the indicted offence is a felony or a misdemeanour, the case is either heard by a single judge or by a senate of five judges. Juries are not known in the Liechtenstein court system.

6. How do the authorities initiate an investigation? (E.g. Are raids common, are there compulsory document production or evidence taking powers?)

The authorities are required to conduct an investigation as soon as they become aware of a suspicion that an offence could have been committed (which can either be ex officio or by means of a criminal complaint). If an initial suspicion can be established, further investigations will be conducted.

In recent years, the FIU has gained great importance in relation to the initiation of investigations in financial crime matters. Financial intermediaries, who are subject to the Due Diligence Act, are obligated by law to file a report to the FIU if they become aware of any suspicion relating to money laundering, a predicate offence to money laundering or financing of terrorism. Such suspicious activity reports in turn may lead to a report of the FIU to the Prosecution Service if an initial suspicion of money laundering, a predicate offence to money laundering or terrorism financing has been determined. The FIU has thus become a key instrument for the prosecution of money laundering and related offences as FIU-reports regularly lead to financial crime investigations.

7. What powers do the authorities have to conduct interviews?

If deemed necessary by the Prosecution Service, the Princely District Court may upon a respective motion summon the suspect or witnesses to be interrogated or examined respectively. In this context, the general rules of interrogations apply (eg, the right to avoid self-incrimination). The interviews are either conducted by the competent investigative judge or the Liechtenstein National Police.

In case of criminal investigations against a legal entity, the authorities have the power to demand the questioning of an informed representative of such a legal entity. In practice, employees of a legal entity under investigation are examined as witnesses (provided the employee is not also subject to prosecution).

8. What rights do interviewees have regarding the interview process? (E.g. Is there a right to be represented by a lawyer at an interview? Is there an absolute or qualified right to silence? Is there a right to pre-interview disclosure? Are interviews recorded or transcribed?)

With regard to the examination of witnesses, the statutory reasons for refusing to testify (eg, right to avoid self-incrimination or client attorney privilege in case of the interview of an attorney) and the reasons to be released from the obligation to testify (eg in case of a family relationship to the suspect) apply. Furthermore, at the request of the witness, a person of trust may be allowed to be present during the examination.

As for suspects, he or she has the right to have a defense attorney present during the interrogation. At the beginning of the interrogation, the suspect must be informed about the offences which are investigated and the right to remain silent.

Interviews are (in general) conducted orally and recorded in written minutes.

9. Do the laws or regulations governing financial crime have extraterritorial effect so as to catch conduct of nationals or companies operating overseas?

As a general rule, Liechtenstein criminal law only applies to acts committed in Liechtenstein. Therefore, the Liechtenstein criminal law provisions have no extraterritorial effect. Liechtenstein criminal law does however apply to acts that have been committed on a Liechtenstein ship or aircraft, irrespective of where the ship or aircraft is located. The same holds true for certain offences that are subject to the jurisdiction of Liechtenstein regardless of the fact that they have been committed abroad. These exceptions inter alia include offences committed against Liechtenstein (eg corruption, terrorism, etc.), but also economic offences such as industrial violation of business or trade secrets, industrial espionage or counterfeiting.

10. Do the authorities commonly cooperate with foreign authorities? If so, under what arrangements?

Liechtenstein is heavily dependent on international cooperation in order to conduct criminal proceedings with suspects abroad who are alleged to have committed

criminal acts in Liechtenstein, but does simultaneously provide legal assistance in criminal matters to other states. International mutual legal assistance in criminal matters is primarily governed by international and bilateral treaties, inter alia the European Convention on Mutual Assistance in Criminal Matters, the European Convention on Extradition and the European Convention on the Transfer of Proceedings in Criminal Matters. Further, the provisions of the Schengen Convention dealing with mutual legal assistance in criminal matters are also applicable in Liechtenstein. Liechtenstein has additionally concluded bilateral treaties in criminal matters with other states such as Austria, Belgium, Germany, Switzerland and the United States of America.

In the absence of a treaty or in case of a legal loophole in the existing treaties, the prerequisites that must be met in order to grant mutual legal assistance in criminal matters are set forth in the Liechtenstein Mutual Legal Assistance in Criminal Matters Act. According to the Liechtenstein Mutual Legal Assistance in Criminal Matters Act, mutual legal assistance is inter alia refused, if (i) the respective request does not refer to a criminal law matter, (ii) the principle of reciprocity is not respected, (iii) the principle of double criminality is violated, or (iv) the request would violate the national interests or the public order of Liechtenstein.

11. What are the rules regarding legal professional privilege? Does it protect communications from being produced/seized by financial crime authorities?

The client attorney privilege provides protection to the extent that privileged communication must not be used in criminal investigations. In case of a seizure of documents, the sealing of the privileged communication can be applied and an appeal filed against the seizure order. If the appeal is granted, the privileged communication that has been sealed must be released to the respective attorney or the information holder respectively.

In addition, the attorney's right to refuse to testify also protects employees of the attorney to be interviewed.

12. What rights do companies and individuals have in relation to privacy or data protection in the context of a financial crime investigation?

Financial crime investigations are not publicly conducted (as opposed to the trial, if no exception is applied). This means that information from the investigations is in general not made available to third parties. However, so called private parties in the investigation (ie, persons who have potentially suffered financial losses as a result of the criminal offence under investigation) may be granted access to the court files and therefore to information contained therein. This also holds true if a third person is able to prima facie prove a legal interest to be granted access to the court files (eg, in order to assert a legal claim).

Personal data which has been made available under these circumstances may in general not be published or made available to a broad public if this this would violate confidentiality interests that prevail over the public information interest. This prohibition of publication regularly includes inter alia business and company secrets. Violation of this provision may, under certain circumstances, lead to claims for damages.

Furthermore, the EU General Data Protection Regulation, which provides for protective provisions with regard to the processing of personal data, is also applicable in Liechtenstein. Therefore, the protection of personal data must also be respected by law enforcement authorities and their processing of such data is limited to the purposes necessary for law enforcement. The authorities shall further take appropriate precautions in order to safeguard the confidentiality interests of the data subjects. In principle, personal data (even in the case of a conviction) must be deleted within ten years after the decision has been handed down or the sentence has been executed (if no other grounds for processing arise). Additionally, personal data obtained through certain investigative measures (ie, identification, physical examination or molecular genetic examination) may only be processed under certain conditions for the duration of the investigation.

13. Is there a doctrine of successor criminal liability? For instance in mergers and acquisitions?

In case of a merger or an acquisition, the successor entity may be held liable for offences committed by the target entity that occurred prior to the merger. The same holds true for monetary penalties that were imposed prior to the merger or acquisition.

14. What factors must prosecuting authorities consider when deciding whether to charge?

The decision whether to indict the suspected perpetrator

must be taken by the Liechtenstein Prosecution Service once the facts of the case have been fully established. If the Prosecution Service draws the conclusion that the probability of a conviction is more than 50%, it is obligated to indict the suspected perpetrator. The Prosecution Service must also consider reasons for discontinuation of the proceedings (eg, legal reasons against prosecuting the accused) and reasons for withdrawal from the proceedings (eg, by means of applying a so-called Diversion) when assessing the probability of a conviction.

15. What is the evidential standard required to secure conviction?

Liechtenstein criminal law applies the principle in dubio pro reo. According to this principle, an acquittal must always be granted if even one prerequisite of the offence remains doubtful. In order to deliver a guilty verdict, the court must be convinced about the criminal liability of the accused with the highest level of proof (ie, beyond reasonable doubt).

16. Is there a statute of limitations for criminal matters? If so, are there any exceptions?

Under Liechtenstein criminal law, the limitation periods for offences depend on the respective maximum sentence that can be imposed on the suspected perpetrator. The statute of limitation commences (i) upon completion of the punishable act or (ii) when the illegal conduct has ceased. The statute of limitations is extended if the perpetrator commits another punishable act based on the same harmful propensity during the limitation period of the initial offence. Under these circumstances, the statute of limitations for both offences will not lapse until the limitation period of the later punishable act has lapsed. Furthermore, the statute of limitations can be suspended under certain circumstances (eg, during pending criminal proceedings). There is no statute of limitations for offences with a sentence of 10 to 20 years of imprisonment or with a life-time sentence as well as for offences such as (inter alia) genocide, crimes against humanity and war crimes. The prosecutions of offences with a sentence of more than five years and at most ten years of imprisonment (eg, the commission of serious fraud causing financial damage in the excess of CHF300,000.00) become statute-barred in ten years. The limitation for criminal liability is five years for offences with a sentence of more than one year and at most five years of imprisonment, three years for offences with a sentence of more than six months and at most one year of imprisonment and one year for offences with a sentence of not more than six months or a monetary penalty.

17. Are there any mechanisms commonly used to resolve financial crime issues falling short of a prosecution? (E.g. Deferred prosecution agreements, non-prosecution agreements, civil recovery orders, etc.) If yes, what factors are relevant and what approvals are required by the court?

Under Liechtenstein criminal law, deferred prosecution agreements, non-prosecutions agreements or any equivalent thereto are not available. However, the Liechtenstein Criminal Procedure Code provides for the possibility of withdrawal from the prosecution of misdemeanours and other minor offences (with not more than a three years prison sentence) (so called Diversion) for both natural and legal persons if the following prerequisites are met:

i. the suspect's culpability is not to be considered serious;
ii. the facts are sufficiently clear;
iii. no general or special preventative reasons require a conviction; and
iv. the offence has not caused a person's death.

If these prerequisites are met, the prosecution will be withdrawn upon payment of a certain amount of money, an out of court settlement with the possible victims or performance of community service.

18. Is there a mechanism for plea bargaining?

Plea agreements are not available under Liechtenstein criminal law. However, a confession and showing remorse constitute mitigating factors that must be taken into consideration when determining the perpetrator's sentence. In recent years, it has become apparent that confessions can considerably reduce prison sentences in financial crime cases.

19. Is there any requirement or benefit to a corporate for voluntary disclosure to a financial crime authority?

Voluntary self-disclosure as well as cooperation are considered mitigating factors which can reduce a possible penalty significantly, help to achieve a Diversion

or lead to the discontinuation of the investigations. Against this background, it appears advisable for legal entities to cooperate under certain circumstances. However, legal entities are not required by law to self-disclose any misconduct.

In this context, it should be noted that under the Liechtenstein Tax Act, self-reporting for the first tax offence leads to an exemption from punishment.

20. What rules or guidelines determine sentencing? Are there any leniency or discount policies? If so, how are these applied?

The determination of a sentence is based on the culpability of the offender. When determining the sentence, the reasons for mitigation (eg, self-disclosure and cooperation) and the reasons for aggravation of the sentence must be taken into consideration. In addition, the effects of a sentence on the offender's future life in society, or its further existence in case of a legal entity, must be taken into consideration.

If a monetary penalty is imposed on a natural person, such a monetary penalty will be assessed in daily rates. The amount of one daily rate is to be determined according to the personal circumstances and the economic capacity of the offender at the point in time when the judgement of first instance is delivered. The amount of one daily rate is at least CHF10.00 and at most CHF1,000.00. If recovery of the monetary penalty fails, a substitute custodial sentence will be imposed. The substitute custodial sentence is determined on the basis of the monetary penalty, with two daily rates being equivalent to one day of substitute imprisonment.

A corporate entity is sentenced with a monetary penalty in the event of a conviction. The monetary penalty is assessed in daily rates with a minimum number of at least one daily rate and a maximum number of daily rates depending on the sentence of the offence for which the corporate entity is convicted (eg, up to 130 daily rates for an offence with a sentence of imprisonment of up to ten years, up to 100 daily rates for an offence with a sentence of imprisonment of up to five years or up to 85 daily rates for an offence with a sentence of imprisonment of up to three years). The severity and consequences of the offence committed by an executive or the seriousness of the organisational deficiency respectively have to be taken into account when the number of daily rates is determined. Further, the conduct of the legal entity after the offence must be considered, in particular whether it has compensated for the consequences caused by the offence. The assessment of the amount of one daily rate largely depends on the income situation of the legal entity, but must also take into consideration its economic capacity. The amount of one daily rate assessed must correspond to 1/360th of the annual corporate earnings of the legal entity, but must be at least CHF100.00 and is at most CHF15,000.00.

In general, leniency programs are not available for material witnesses under Liechtenstein criminal law. However, the Liechtenstein Criminal Procedure Code provides for the possibility of an extraordinary mitigation of a penalty in case of cooperation of an offender with the law enforcement authorities in relation to offences of criminal organisations and terrorist groups (so called small leniency program).

21. In relation to corporate liability, how are compliance procedures evaluated by the financial crime authorities and how can businesses best protect themselves?

As a rule, the introduction of an adequate compliance program is an important defence instrument with regard to the criminal liability of a legal entity. For example, the commission of offences can be prevented by effective compliance programs. Furthermore, an effective compliance program makes it difficult for the prosecutor to prove an organisational fault which is mandatory in order to hold a legal entity criminally liable for an offence committed by a subordinate (ie, the criminal act of a subordinate must be at least facilitated by the lack of an adequate risk management). However, an effective compliance program does not prevent a legal entity from being held criminally liable if a manager or director commits a crime.

22. What penalties do the courts typically impose on individuals and corporates in relation to the key offences listed at Q1?

The range of sentences for the commission of severe fraud, embezzlement, fraudulent bankruptcy and money laundering is from one up to ten years of imprisonment or, in case of legal entities, a total maximum of 130 daily rates. Commercial (private) bribery in its severe form is punishable with a prison sentence of six months up to five years or, in case of legal entities, a total maximum of 100 daily rates. The offence of forgery of documents is sentenced with imprisonment of up to one year or a monetary penalty of up to 720 daily rates or, in case of legal entitles, a total maximum of 55 daily rates.

Violations of the provisions of the Due Diligence Act are

either prosecuted by the Liechtenstein Prosecution Service and the Princely District Court (in case of infringements and misdemeanours) or the FMA (in case of administrative offences). Misdemeanours are punishable by a prison sentence of up to six months or a monetary penalty of 360 daily rates or, in case of legal entitles, a total maximum of 40 daily rates. Infringements are sentenced with a fine of up to CHF100,000.00. Administrative offences are sanctioned with fines of up to a maximum of CHF5,000,000.00 and in case of legal entities alternatively with up to 10% of the total annual turnover if this amount exceeds CHF5,000,000.00.

The specific penalty assessment in the individual case depends on various criteria and it is to be considered a case-to-case decision. Therefore no typical penalties which are imposed on natural and legal persons exist.

23. What rights of appeal are there?

An order of the Princely District Court which applies coercive measures (eg, seizure of documents or prohibition of disposal) is in general subject to an appeal to the Princely Court of Appeal. Such appeals may be lodged by the suspected perpetrator as well as the concerned parties (eg, the information holder where the documents have been seized or the account holder whose assets have been frozen).

An accused can object to an indictment within 14 days upon service to the Princely Court of Appeal. An objection is, for example, granted and the indictment rejected, if the facts of the case have not been sufficiently clarified or if there are circumstances that abolish criminal liability (eg, active repentance) or preclude prosecution (eg, the prosecution is time-barred).

If a (guilty) verdict is delivered by the Princely District Court, the offender and the Prosecution Service may appeal this decision within 14 days upon service of the written decision. However, an appeal is only admissible if the appellant declares to appeal the decision within four days upon its pronouncement at trial. The decision of the Princely Court of Appeal can be appealed provided that a sentence of more than one year imprisonment has been rendered.

Any final and last instance decision may be appealed by means of a constitutional complaint before the Constitutional Court on the grounds of violation of constitutionally guaranteed rights or of the rights guaranteed by international conventions (eg, European Convention on Human Rights).

24. How active are the authorities in tackling financial crime?

It is safe to say that Liechtenstein pursues a zero tolerance policy in relation to financial crimes. It has already years ago declared to meet all international standards in order to (effectively and efficiently) combat money laundering and related (financial) crimes. Therefore, various legislative reforms have been implemented. In addition, these policy objectives also had a major impact on law enforcement. It is fair to say that the Liechtenstein law authorities may be deemed very active in tackling financial crime. This is inter alia reflected in court decisions in which the fact that a crime has been conducted by a Liechtenstein financial intermediary has been considered an aggravating factor due to the possible damage to the reputation of the Liechtenstein financial centre.

25. In the last 5 years, have you seen any trends or focus on particular types of offences, sectors and/or industries?

As part of Liechtenstein's policy to protect its financial sector and meet international standards, in particular the EU Money Laundering Directives, Liechtenstein authorities have put a special focus on creating a coherent system for the effective prosecution and sanctioning of money laundering.

In this context, the increasingly expanded Due Diligence Act is of major importance. Persons subject to the Liechtenstein Due Diligence Act (eg, banks, asset managers, insurance companies, investment firms or professional providers of fiduciary services) are obliged to take the necessary measures to combat money laundering and are required, among other things, to report to the Liechtenstein Financial Intelligence Unit (FIU) any suspicion of money laundering, a predicate offence to money laundering, organized crime or the financing of terrorism. Therefore, investigations in relation to the suspicion of any kind of predicate offence abroad can trigger a reporting obligation in Liechtenstein if assets relating to these investigations are held here. Any violations of such reporting obligation on the part of the financial intermediary will itself be prosecuted by the Liechtenstein Prosecution Service.

26. Have there been any landmark or notable cases, investigations or developments in the past year?

In January 2020, the Token and TT Service Provider Act has come into force and therefore virtual asset service

providers (VASP) became subject to the Due Diligence Act. As a result, the FIU recorded a drastic increase in the number of submitted suspicious activity reports (accounting for approximately 41% of the total number of reports). The suspicions related to the categories of eg unauthorised access to wallets, fraud schemes, identity theft, and exposure of transaction participants to Darknet markets and uncooperative clients in carrying out simple or specific clarifications.

In addition, recent case law provided for a remarkable decision regarding the right of private parties to inspect the court files. According to the Constitutional Court's ruling, the respective application of the private party does not necessarily need to be served to the defendant and may be granted without hearing the defendant on it, as long as the investigative authority carries out a comprehensive evaluation of interests on both sides. In addition, a decision must be made in a formal order, which must be served on the parties. This case law has been criticized because it would unlawfully restrict the defendant's right to be heard and would result in a loss of jurisdiction, since the defendant's only recourse in such cases would be to appeal the decision directly to the Princely Court of Appeal.

27. Are there any planned developments to the legal, regulatory and/or enforcement framework?

A comprehensive reform of the Liechtenstein Criminal Code, the Criminal Procedure Code and the Mutual Legal Assistance in Criminal Matters Act has just been passed and put into force most recently. In this context, the amendment of the Mutual Legal Assistance in Criminal Matters Act is particularly noteworthy. According to the newly introduced provisions of the Mutual Legal Assistance in Criminal Matters Act, mutual legal assistance can under certain conditions (eg, if it is deemed appropriate in order to investigate a suspicion of money laundering, a predicate offence to money laundering or offences in connection with organised crime) be provisionally granted to the requesting authority without notifying the suspect thereof. Therefore, documents are seized from the information holder (who must be subject to the Liechtenstein Due Diligence Act) and provisionally transmitted to the requesting authority without the suspect becoming aware of this because an information ban has been imposed on the information holder. The suspect will only be informed about the seizure of documents and its transmission to the requesting authorities once the information ban is lifted (which can be upheld for up to 24 month). The impairment of the right to be heard is justified by the legislator with more efficient mutual legal assistance in line with international standards and the legitimate interest of the requesting authority to keep the investigations secret (for a certain period of time). It remains to be seen whether the Constitutional Court will consider this provision of the Mutual Legal Assistance in Criminal Matters Act in line with the constitutional right.

28. Are there any gaps or areas for improvement in the financial crime legal framework?

In Liechtenstein, criminal investigations that drag on for many years are no exception. In particular, the complexities of financial crimes, which typically have cross-border elements, regularly lead to extremely long investigations. It would therefore be desirable to foresee a provision that standardises a maximum duration of (pre-trial) criminal investigations and, if this maximum duration is exceeded, require the Prosecution Service to report to the court, stating the reasons for the exceedance. Such a provision would help to curb the excessively long duration of criminal investigations.

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