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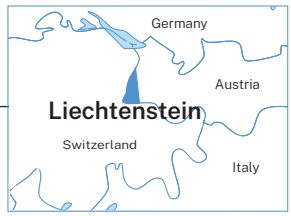
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Liechtenstein: Law and Practice

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LIECHTENSTEIN



Law and Practice

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Schurti Partners Attorneys at Law Ltd is a Liechtenstein-based, full-service law firm with a strong focus on international matters. Its lawyers are trained and qualified in several jurisdictions (Liechtenstein, New York, California, England and Wales, Ireland, Switzerland and Austria) and have gained experience abroad with some of the most prestigious international law firms. Schurti Partners Attorneys at Law Ltd was founded in 1991 as a partnership and incorporated in 2015. Over the years, it has grown to become one of the largest and most renowned law firms in Liechtenstein, and has established a solid track record in supporting clients with businesses and/or assets worldwide, drawing on the support of well-established networks of leading independent law firms based in other jurisdictions. Today, it is one Liechtenstein's leading law firms in the area of banking and finance as well as regulatory matters.

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1. Loan Market Overview

1.1 The Regulatory Environment and Economic Background

Economic Cycles

Since mid-2025, Liechtenstein's real economy has slightly slowed down due to weak external demand, geopolitical issues such the US tariffs policy and the ongoing appreciation of the Swiss Franc, Liechtenstein's national currency. This economic cooling is also reflected in the labour market, where employment growth has remained negative since late 2024. Nonetheless, due to structural factors and a shortage of skilled labour, the unemployment rate remained, compared to other countries, exceptionally low at 2.0% in late 2025. Despite all these developments, Liechtenstein was again awarded a AAA-rating by the international rating agency S&P Global Ratings.

The banking sector recorded another highly successful year in 2025. Propelled by positive stock market developments and strong net new money inflows of CHF27.1 billion (CHF13.1 billion of which was domestic), managed customer assets reached a record CHF538.0 billion. Earnings before taxes (EGT) for the sector grew by 19.4% to CHF 857.7 million. However, the cost-income ratio on an individual bank basis deteriorated from 65.7% to 72.5%, highlighting the pressure of rising operational and regulatory compliance costs. Capitalisation remains exceptionally strong, with the consolidated CET1 ratio rising to 19.9% (22.1% on an individual basis).

Regulatory Environment

Unlike its neighbour Switzerland, Liechtenstein has been part of the European Economic Area (EEA) since 1995 and therefore not only offers the same regulatory standard and framework as other European member states, but also enjoys full access to the EU markets. For this reason, Liechtenstein is often used by non-EEA, international companies as a hub for penetrating the European markets. On the other hand, market participants also benefit from Liechtenstein's traditionally close ties with Switzerland, granting privileged access to the Swiss market. Besides having entered a bilateral customs union with Switzerland in 1923, Liechtenstein is part of the Swiss-franc monetary area, giving its financial institutions the same access to refinancing with the Swiss National Bank as Swiss institutions.

The close integration into the EEA markets is underpinned by the revision of the regulatory framework applicable to credit institutions and investment firms at the beginning of 2025, which cut ties with its historical basis derived from the Swiss Banking Act and established structural equivalence, and therefore stronger alignment, with applicable EU regulations, including the Capital Requirements Directive (CRD), the Capital Requirements Regulation (CRR) and the Markets in Financial Instruments Directive (MiFID).

As part of this revision, CRR III was incorporated into the EEA Agreement in April 2025, which has made it directly applicable in Liechtenstein and introduced more risk-sensitive capital rules. At present, CRD VI has not yet been incorporated into the EEA Agreement but is expected to be adopted by the beginning of 2027. Furthermore, the National Covered Bonds Act

(*Pfandbriefgesetz*), which entered into force in February 2025, established a legal framework for issuing *Pfandbriefe* to secure maturity-matching refinancing, leading to the licensing of the first Liechtenstein covered bond institution in early 2026.

The accessibility of the Liechtenstein loan market, coupled with the hands-on approach of the Liechtenstein Financial Market Authority (FMA), which is committed to further strengthening the financial services market as one of Liechtenstein's key industries, facilitates and fosters an active debt market.

When it comes to market participants on the lender's site, it must be noted that the Liechtenstein loan market is largely in the hands of international banks, as the financial sector in Liechtenstein, and in particular the Liechtenstein banks, is/are more focused on private banking and wealth management.

1.2 Impact of Global Conflicts

In line with the EU sanctions, Liechtenstein has adopted national legislation to sanction certain industries, companies and persons with close ties to or otherwise associated with the Russian Federation and Iran. In view of the fact that Liechtenstein (unlike other member states of the EEA) has not hosted any (branches of) Russian banks, and considering that no party to the conflicts in Ukraine and/or the Middle East is included among Liechtenstein's main trading partners, the debt market in Liechtenstein has remained largely unaffected by these conflicts.

However, the Ukraine war and the Middle East conflict have had, and continue to have, a significant impact on the private wealth and asset management sector, where efforts continue to combat and prevent the circumvention of EU sanctions in Liechtenstein. These developments have intensified the need to deal with reputational and compliance risks, particularly for the fiduciary and trust sector. This has forced widespread de-risking, causing fiduciaries to terminate relationships with Russian ties.

1.3 The High-Yield Market

Liechtenstein does not have a regulated market and therefore has no active high-yield market.

1.4 Alternative Credit Providers

Alternative credit providers are not regularly seen as lenders in transactions.

1.5 Banking and Finance Techniques

The Liechtenstein loan market for corporate clients is in the hands of foreign banks. The trends and documentation of financing are strongly influenced by international trends whereby the documentation of the Loan Market Association remains the gold standard for commercial financing in Liechtenstein.

1.6 ESG/Sustainability-Linked Lending

Since ratifying the Paris Agreement on climate change on 9 June 2017, Liechtenstein has identified and declared climate risks as a core risk for the financial sector. As a member of the EEA, Liechtenstein is participating in the EU-wide transformation of the financial sector towards a more long-term thinking and sustainable industry. This trend can also be found in Liechtenstein financing, where ESG-related margin grids or reporting and compliance obligations linked to environmental, social and/or governance (ESG) indicators and metrics are commonly used.

The main pillars of the remodelling process are the following EU regulations, which have been approved by the Joint EEA Committee and are therefore directly applicable in Liechtenstein.

Regulation (EU) 2019/876 (ESG Disclosure)

This amends the Capital Requirement Regulation (Regulation (EU) No 575/2013) and introduces an obligation to disclose ESG risks applicable to large financial institutions that have issued securities admitted to trading on a regulated market in the EEA.

Regulation (EU) 2019/2088 (Sustainability-Related Disclosures)

This regulation establishes rules as to how market participants and advisers have to integrate and consider ESG risk factors in their decision-making and investment-advice processes. It also foresees additional disclosure requirements for financial advisers with a view to company-related – as well as product-related – information, and with a special emphasis on sustainability risks and adverse effects of investment decisions in that regard.

Regulation (EU) 2019/2089 (ESG Benchmarks)

This regulation requires all providers of benchmarks or indices used to measure the performance of financial instruments or investment funds to disclose whether and how ESG factors are taken into account. It focuses on increasing transparency and uniformity when it comes to indices, and also introduces two new categories of benchmarks – namely the EU climate-transition benchmarks and the EU Paris-aligned benchmarks.

Regulation (EU) 2020/852 (Taxonomy)

This regulation embodies the main pillar of the EU sustainability strategy and the so-called Green Deal. It provides an investment tool and classification system – the so-called "green list" – that facilitates sustainable investments by identifying the degree to which commercial activities can be considered environmentally sustainable. It provides for additional disclosure requirements (eg, on the alignment of financial products with the taxonomy), aims to further strengthen investor protection and also to avoid so-called "greenwashing".

The FMA has indicated in one of its latest reports on supervisory matters relating to sustainable finance that sustainability remains a priority, and that, in view of the topic's significant relevance, its broad range of subjects, and the vast detail applicable to these, it has set supervision priorities. It is thus placing particular emphasis on the environmental aspects of ESG factors, transparency and disclosure requirements, practices in relation to identifying investors' sustainability preferences, greenwashing and the integration of ESG into risk management and business strategy.

2. Authorisation

2.1 Providing Financing to a Company

Regulatory Framework for Providing Financing

As a member of the EEA, Liechtenstein has established the same regulatory framework for providing financing in Liechtenstein as other members of the EEA, which is outlined below.

Liechtenstein banking license requirement

The requirement to apply for a Liechtenstein banking license not only entails the submission of very detailed and extensive documentation (eg, a business plan, envisaged organisational structure, appropriate statutes and regulations) but also requires a certain minimum corporate structure and substance in Liechtenstein. The latter requires, inter alia, a Liechtenstein entity as an applicant for the license, appropriate business premises in Liechtenstein and at least one member of the management board who must reside in or near Liechtenstein so that they can reach the bank's premises within a reasonable time.

Establishing a branch in Liechtenstein

Banks from other EEA member states can establish a branch (*Zweigniederlassung*) in Liechtenstein, meaning that the bank's license obtained in the home member state is notified or "passported" to Liechtenstein as the host member state by the supervisory authority of the home member state. It is expected that the implementation of CRD VI will also regulate to a stricter extent the need for banks from non-EU/non-EEA states to establish a Liechtenstein branch if they intend to actively market certain banking services to Liechtenstein clients.

Freedom to provide services

Banks from other EEA member states can render financing services on the basis of the freedom to provide services, meaning that no physical presence is established in Liechtenstein so that the services are rendered on a cross-border basis. This form of "passporting" also takes place via a notification by the supervisory authority of the respective home member state to the FMA.

Reverse solicitation

Rendering financing services on a "reverse-solicitation" basis refers to transactions that were initiated and concluded on the exclusive initiative of the borrower, meaning that the bank in question did not direct its business towards clients in Liechtenstein, ie, the bank neither directly nor indirectly promoted or solicited its services to clients and/or the public in Liechtenstein. However, the concept of reverse solicitation has only been transposed expressly into national law for investment services provided by non-EEA firms

and for some types of investment funds. The limitation to third-country firms, coupled with the available EU guidelines, could be understood to imply that this exemption may not be invoked by EEA firms, as doing so could be perceived as circumventing the EEA passporting regime. However, there is no published guidance from the Liechtenstein FMA available which would prohibit EEA firms from providing services on a reverse-solicitation basis. Consequently, the provision of financing on the basis of reverse solicitation involves a certain degree of regulatory uncertainty, and is also subject to any future change or more restrictive approach at EU/EEA level. For banks from other EEA member states, it is therefore advisable to passport services to Liechtenstein and, in so doing, avoid the need to invoke the reverse-solicitation principle.

Financing without obtaining a banking license

Non-banks can provide financing without obtaining a banking license as long as the financing is not carried out on a commercial basis and not as the main business of the relevant lender (eg, intra-group lending). It is strongly advisable to specify in the articles that any financing activity shall be confined to internal transactions, such as payments to or in favour of shareholders, beneficiaries or subsidiaries, thereby avoiding regulatory licensing issues.

3. Structuring and Documentation

3.1 Restrictions on Foreign Lenders Providing Loans

Subject to compliance with regulatory requirements (see **2.1 Providing Financing to a Company**), foreign lenders face no additional restrictions when it comes to lending to borrowers domiciled in Liechtenstein.

3.2 Restrictions on Foreign Lenders Receiving Security

There are no legal restrictions or impediments that would specifically apply to foreign lenders when receiving collateral or guarantees. For general restrictions, see **5.5 Other Restrictions**.

3.3 Restrictions and Controls on Foreign Currency Exchange

Liechtenstein law does not maintain any restrictions or controls on foreign currency exchange.

3.4 Restrictions on the Borrower's Use of Proceeds

There are no specific restrictions on the borrower's use of proceeds made available under a loan or debt securities under Liechtenstein law.

However, it should be noted that certain legal entities, most importantly a company limited by shares (*Aktiengesellschaft*) and an establishment (*Anstalt*), are subject to capital-maintenance rules (see **5.2 Downstream, Upstream and Cross-Stream Guaranties**) which may limit the use of loan proceeds.

3.5 Agent and Trust Concepts

The (security) agent concept is commonly used for secured syndicated financings. Consequently, the common security pooling mechanics, in particular through establishing a parallel debt (or similar) structure, are applied in Liechtenstein. However, there is no published Liechtenstein case law that has tested the (security) agent concept.

With regard to the pooling of collateral under Liechtenstein law, a distinction must be made between two different types of security: accessory (*akzessorisch*) and non-accessory (*nicht-akzessorisch*) collateral.

Accessory Collateral

Accessory collateral, most importantly, the pledge (*Pfandrecht*), is characterised by the relationship and linkage of the security to the underlying obligation secured by that security. In particular, this means that the security "follows" the secured claim (eg, if the debt is discharged, the collateral is extinguished by operation of law) and that the security taker may only hold and administer collateral if and to the extent that it is also a creditor of the secured obligation. A security pool with accessory collateral, where the security agent only holds the security interests on behalf of the other lenders without also being a creditor of the underlying secured claims, is not permissible in Liechtenstein. This structural hurdle is often overcome by implementing a parallel debt, which consolidates the

aggregate amount of debt under the financing agreements and is owed by each security provider to the security agent. On the back of this parallel debt, the security agent may hold, administer and enforce the security package on behalf of all other syndicate lenders (including the security agent itself).

Non-Accessory Collateral

Non-accessory collateral (most importantly, guarantees and security assignments/transfers) are not subject to the restrictions described above. Therefore, a security creditor can hold, administer and enforce these types of collateral regardless of who the creditor of the secured claim is.

3.6 Loan Transfer Mechanisms

A loan transfer may be achieved either through an assignment, where the lender (assignor) assigns (only) its claims against the borrower to a new lender (assignee), or via an assumption of the entire loan contract, in which case all rights and obligations are transferred to the new lender. The borrower's explicit consent is required for an assumption, but not for an assignment. However, until the debtor is formally notified about the change of creditor, they can repay the loan by making payment to the original lender.

As outlined in **3.5 Agent and Trust Concepts**, an accessory collateral "follows" the respective secured obligation, meaning that, if the secured claim is transferred to a new creditor, the accessory collateral is transferred to the new creditor by operation of law. Non-accessory security interests, on the other hand, have to be actively transferred to the new creditor, usually requiring the debtor's consent.

A transfer of a loan, including the respective security package, can also be achieved by redemption (*Einlösung*). In this case, the new lender redeems the existing lender's claims against the borrower and requests the transfer of all associated rights (eg, security interests). The claims as well as the security interests are then transferred to the new lender by operation of law.

3.7 Debt Buyback

Liechtenstein law does not regulate or prohibit debt buy-backs through the borrower or a sponsor.

3.8 Public Acquisition Finance

As a member of the EEA, Liechtenstein has transposed the European Takeover Directive (Directive 2004/25/EC) into national law. Certain fund rules foreseen in the Liechtenstein Takeover Act (*Übernahmegesetz*) require the bidder to not only ensure that sufficient funding is available before submitting a takeover bid, but also to disclose the terms in the bid documentation, which then has to be audited and approved by an independent auditor.

As Liechtenstein does not have a regulated stock exchange/market and has only a limited number of publicly traded companies (which are listed on foreign stock exchanges), in former times no clear Liechtenstein market standards for documentation have emerged. However, on 1 February 2025, the Regulated Market and Exchange Act (HPBG) entered into force. This piece of legislation introduced European standards for the operation and supervision of regulated stock exchanges/markets.

Since Liechtenstein public companies are usually listed in foreign jurisdictions, the corresponding foreign rules also apply to them (alongside the Liechtenstein Takeover Act, where applicable). This becomes relevant, for instance, in squeeze-out transactions – eg, during a going-private/de-listing.

3.9 Recent Legal and Commercial Developments

Following a general trend of "paperless" shares, Liechtenstein law has introduced uncertificated securities (*Wertrechte*) allowing, inter alia, companies limited by shares to issue their shares in unsecuritised form. These shares must be recorded in a register (*Wertebuch*), which can also be kept as a distributed ledger within the meaning of the Liechtenstein fintech law, the Token and TT Service Provider Act (*Token- und VT-Dienstleister-Gesetz*). As disposals of such uncertificated securities are subject to different rules than disposals of certificated shares, the perfection requirements as well as the enforcement procedures had to be adopted accordingly.

Additionally, on 1 February 2025, the national Covered Bonds Act (*Pfandbriefgesetz*, *PfbG*) entered into force. The law establishes a dedicated legal framework for

issuing covered bonds (*Pfandbriefe*) to secure resilient, maturity-matching refinancing for the real estate market.

Modelled on the well-established Swiss system, the *PfbG* distinguishes between the high-quality "Liechtenstein *Pfandbrief* " (backed exclusively by first-class domestic mortgages) and other covered bonds that may include foreign collateral. To pool mortgages efficiently, emissions are routed through a specialised joint covered bond institution whose members must be licensed Liechtenstein banks. Under the Banking Act (BankG), authorised *Pfandbrief* institutes are exempt from BankG application as long as they operate within their licensed scope. Following this framework, the Financial Market Authority (FMA) licensed the country's first covered bond institution in early 2026.

3.10 Usury Laws

Liechtenstein regulatory law does not provide for any limitations when it comes to the pricing of a loan. The Liechtenstein General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*), on the other hand, declares agreements null and void where the value of one party's obligation is strikingly disproportionate to the value of the other party's obligation and where the beneficiary takes advantage of the other party's carelessness, vulnerability, mental infirmity, inexperience or heightened emotional state.

The practical relevance of this rule in the context of commercial lending is very limited and more focused on retail lending where the lenders also have to comply with additional consumer protection regulations (in particular information duties).

3.11 Disclosure Requirements

Liechtenstein law does not stipulate any disclosure requirements when it comes to mere loan agreements. If the financing involves the issuance of bonds or other securities, an issuer domiciled in Liechtenstein would have to comply with the disclosure requirements under the Liechtenstein Disclosure Act (*Offenlegungsgesetz*). The Disclosure Act also applies to financing transactions which ultimately result in significant changes of shareholdings in an issuer (eg, due to the enforcement of share pledges in an event of default).

4. Tax

4.1 Withholding Tax

Neither principal payments nor interest payments are subject to withholding tax in Liechtenstein. The interest payments will have to be taken into account for income tax purposes at the lender's level.

4.2 Other Taxes, Duties, Charges or Tax Considerations

Should a financing or the taking of a security require an increase of share capital of a company and/or the granting of shareholder contributions, capital increases and shareholder contributions can be subject to the so-called emission fee (*Emissionsabgabe*) pursuant to the Swiss Stamp Duty Act (*Bundesgesetz über die Stempelabgaben*), which also applies to certain Liechtenstein entities. This fee accrues in connection with the issuance and increase of the nominal value of participation rights of and the granting of shareholder contributions without consideration to, among others, companies limited by shares and limited liability companies, and amounts to 1% of the increased capital/contribution. The Swiss Stamp Duty Act provides for some exemptions and a general allowance amounting to CHF1 million.

The Swiss Stamp Duty Act also provides for the so-called turnover tax (*Umsatzabgabe*), which is a type of stamp duty levied on the transfer of ownership in certain securities, such as shares, bonds, and similar financial instruments, when these transactions involve a securities dealer.

4.3 Foreign Lenders or Non-Money Centre Bank Lenders

There are no tax-related concerns with regard to having foreign lenders and/or non-money centre banks from a Liechtenstein law perspective.

5. Guarantees and Security

5.1 Assets and Forms of Security

The most common security package requested by lenders for corporate borrowing consists of share pledges/security assignments of shares, bank-account pledges, and receivables pledges/security

assignments. In some instances, mortgages on Liechtenstein buildings/real estate are requested. In relation to the particularities and differences between accessory and non-accessory collateral, see **5.1 Assets and Forms of Security**.

Share Interests

The most common types of legal entities in Liechtenstein for corporate purposes are the company limited by shares (*Aktiengesellschaft*) and the establishment (*Anstalt*). Security interests over shares in a company limited by shares are most commonly created in the form of a pledge (but can also be created in the form of a security assignment). The pledge is established under a share pledge agreement and perfected by carrying out certain perfection requirements. The perfection and form requirements depend on whether and, if applicable, in what form the shares are securitised. For both perfection and form requirements, the most common type of shares, namely registered shares (*Namenaktien*), are pledged as follows:

- if physical share certificates have been issued, the pledge is perfected by handing over the physical share certificate to the pledgee with a blank endorsement and registering the pledge in the share register of the company. In these cases, the share pledge agreement can be concluded without any formal requirements being observed; and
- if no physical share certificates have been issued, the pledge is perfected by notifying the company whose shares have been pledged and registering the pledge in the share register of the company. Pledge agreements in relation to unsecuritised shares must be concluded in writing.

The interests in an establishment, called "founder's rights" (*Gründerrechte*), cannot be pledged but can only be assigned for security purposes (Liechtenstein law explicitly prohibits the creation of a pledge over founder's rights). The security assignment agreement does not require any specific formalities. The security is perfected by handing over a founder's rights certificate to the assignee and by notifying the establishment of the assignment.

Bank Accounts

Security over bank accounts is typically created in the form of a pledge established under a bank account pledge agreement which must be in writing but is not subject to any further formal requirements. The general terms and conditions of Liechtenstein bank accounts usually provide for a (first-rank) pledge over all assets credited or otherwise transferred to accounts held with that bank. When pledging these bank accounts, the aforementioned pledges should be either waived or subordinated to the pledge of the pledgee. The pledge is then perfected by notifying the relevant account bank(s) of the pledge.

Receivables

The common security package also comprises security over receivables (in particular trade receivables and intra-group receivables). Receivables may either be pledged or assigned for security purposes. From a lender's perspective, the latter is more advantageous, and thus more frequently used, as the full title to the receivables is transferred to the lender and is not only a limited right in rem. The lender is, however, limited in disposing of the receivables as any disposal outside of an enforcement scenario would be a violation of the security agreement resulting in potential damage claims of the assignor. The security assignment is perfected by notifying the respective debtor of the assignment. Neither receivables pledges nor security assignments are subject to any formalities other than that the underlying agreements must be in writing.

Movable Assets

Movable assets are also pledged under a pledge agreement that does not require any formalities. As a general principle of Liechtenstein pledge law, physical assets subject to a pledge must be handed over to and remain with the pledgee (*Faustpfandprinzip*) as a perfection requirement. Alternatively, if the assets are with a third party, the pledge may also be perfected by instructing the third party to hold the asset on behalf and for the benefit of the pledgee. It should be noted that a determinable, coherent set of assets (eg, a warehouse) can be made the subject of a pledge agreement, but the perfection requirements have to be fulfilled for every single asset in the set, meaning that the set of assets cannot be pledged as a whole.

Obviously, this can have a significant impact on the practicality of pledges.

Real Estate

Security over real estate located in Liechtenstein is taken in the form of a mortgage (*Grundpfandverschreibung*) or mortgage certificate (*Register-Schuldbrief*). Compared to the other types of collateral, the documentation for a mortgage or mortgage certificate is strongly formalised and only the template agreement published by the Liechtenstein Office of Justice (*Amt für Justiz*) can be used. In addition, the signatures of the parties have to be notarised. The agreement is then filed and registered with the Liechtenstein Land Register (*Grundbuch*).

5.2 Floating Charges and/or Similar Security Interests

Floating charges or other universal or similar "catch-all" security interests over all the current and future assets of a company are not permitted under Liechtenstein law. The assets to be charged must be clearly identified, or at least identifiable, and security cannot be created over a generic, volatile pool of assets. It should also be kept in mind that Liechtenstein law requires a perfection step for each single asset so that a security interest over an aggregation of assets (eg, a warehouse) may not be created uno actu.

5.3 Downstream, Upstream and Cross-Stream Guarantees

The most relevant and prevalent legal forms in Liechtenstein for commercial purposes, ie, the company limited by shares (*Aktiengesellschaft* or AG) and the establishment (*Anstalt*), are subject to capital-maintenance rules which, generally speaking, prohibit a company from disbursing its assets to or for the benefit of its direct or indirect shareholder(s)/holder(s) of founder's rights other than by way of dividend payments, share-capital reductions or liquidation proceeds.

In the context of financings, this means that forwarding funds drawn under a loan to, and securing liabilities of, direct or indirect shareholder(s) (up-stream) and/or affiliated entities other than subsidiaries (cross-stream) could be a breach of applicable capital-maintenance rules. There are exceptions to this general rule, such as transactions carried out on an arm's-length basis or where a subsidiary secures a loan granted to its shareholder which is then passed on to the subsidiary. The arm's-length criterion must be assessed on a case-by-case basis, and is not easy to determine as companies do not usually provide financing or security to unrelated third parties.

The legal literature is still unclear as to the consequences of a breach, ie, whether the underlying contract is only partially void or void in its entirety. However, certain examples of case law favour the latter. In addition, the members of the board of directors are personally liable for any damages that may occur in connection with such transactions.

Given the far-reaching implications of upstream and cross-stream transactions, it is advisable to have the transaction approved in advance by the general meeting of shareholder(s)/the holder(s) of the founder's rights and the board of directors, and to ensure that the statutes of the relevant company (in particular, the purpose clause) permit and cover upstream and cross-stream transactions. In addition, it is standard market practice in Liechtenstein to limit the potential benefit of a security by means of specific limitation language that reduces the security interest to an amount that is in line with Liechtenstein capital-maintenance rules. This can even reduce the commercial value of a security to zero in cases where no funds are available to distribute to the shareholder(s)/holder(s) of the founder's rights of a company.

Financing and/or collateral granted on a downstream basis are not capital-maintenance sensitive from the shareholder's perspective and are therefore possible without the above-mentioned limitations.

5.4 Restrictions on the Target

The same limitations and formalities outlined in **5.3 Downstream, Upstream and Cross-Stream Guaranties** apply.

5.5 Other Restrictions

The two main limiting factors to be taken into account when granting collateral or guarantees are (depending on the type of security) the accessory nature of certain collateral (and the required structural steps to properly pool those security interests – see **3.5 Agent and Trust**

Concepts) and ensuring compliance with Liechtenstein capital-maintenance rules (see **5.3 Downstream, Upstream and Cross-Stream Guaranties**).

In distressed scenarios, insolvency law and in particular claw-back and avoidance rights of the insolvency administrator must be taken into account. Generally speaking, an insolvency administrator can challenge legal acts (eg, the granting of security) which were performed prior to the opening of insolvency proceedings to the disadvantage of the debtor's creditors.

For the creation and the enforcement of mortgages in Liechtenstein real estate, the restrictions of the Liechtenstein Real Estate Transfer Act (*Grundverkehrsgesetz*) must be complied with (see **6.4 A Foreign Lender's Ability to Enforce Its Rights**).

5.6 Release of Typical Forms of Security

Collateral of an accessory nature will automatically cease to exist when the secured obligation is fully discharged (see **3.5 Agent and Trust Concepts**). It is nevertheless customary for security agreements to foresee a certain release procedure to properly document the release. The release by operation of law does not apply to non-accessory collateral (eg, security assignment and guarantees), meaning that additional steps have to be taken to accomplish the release.

The release procedures depend on the asset and the actions undertaken to perfect the security. The security interests are typically released by setting the actus contrarius, ie, by physically re-transferring the assets and documents handed over to the security agent (eg, share certificates and powers of attorney), notifying third parties (eg, account banks and third-party debtors) of the security release, deletion of register entries (eg, share register) and re-assignment of receivables and/or founder's rights to the company.

5.7 Rules Governing the Priority of Competing Security Interests

When it comes to the ranking of multiple security interests, Liechtenstein law follows the principle of priority, meaning that the security interest validly perfected first will prevail and rank ahead of any other security interest subsequently established in respect of that asset. Contractual arrangements that deviate from this principle by setting a ranking of competing security interests are valid under Liechtenstein law. However, it is unclear whether an insolvency administrator would be bound by and uphold such an agreement.

5.8 Priming Liens

The most material security interests that arise by operation of law and that rank ahead of any other (registered) security (even without registration in the Liechtenstein Land Register) are for the benefit of the state and municipalities for taxes, building insurance companies for their insurance premium claims, and claims of public undertakings (eg, land improvements) attributable to the property.

The first-ranking pledge of account banks (see **5.1 Assets and Forms of Security**), although not arising by operation of law, should also be mentioned in this context.

6. Enforcement

6.1 Enforcement of Collateral by Secured Lenders

As a general rule, a lender can enforce its collateral when the secured claim falls due. Security interests are either enforced in court proceedings or, if agreed by the parties, by out-of-court enforcement.

Court Proceedings

If enforced in court proceedings, the respective asset is sold in the course of a public auction in accordance with the provisions of the Liechtenstein Enforcement Act (*Exekutionsordnung*).

Out-of-Court Enforcement

Depending on what has been agreed between the parties, the out-of-court enforcement can take place by public auction, private sale or a so-called self-entry, where the asset is not sold to a third party, but acquired by the lender itself. Enforcement by self-entry is generally only permitted where the asset has an easily determinable market or exchange price. As a general rule, when enforcing the security interest, the lender must take into account and consider the interests of the security provider, which means that the lender must sell the asset at the best possible price.

If the asset does not have a market price, such as share interests in unlisted companies or property, independent valuations must be obtained to ensure that the asset is not sold at a below-market price. Any surplus, meaning the amount of enforcement proceeds exceeding the secured obligation, will have to be handed over to the security provider.

Being a member of the EEA, Liechtenstein has also transposed the Financial Collateral Directive (Directive 2002/47/EC) into national law. If the requirements under the directive are met, and if the parties agree to establish the security in the form of financial collateral, the security taker will have, inter alia, the right to appropriate the asset.

6.2 Foreign Law and Jurisdiction

Under Liechtenstein law, the law governing the agreement may be freely chosen by the parties (subject to certain limitations) as far as contractual aspects are concerned (*Vertragsstatut*). However, this does not apply to the law governing the creation, extinction and the content of rights in rem. It is therefore standard market practice that assets that are located in Liechtenstein are pledged under a Liechtenstein law governed security agreement which then stipulates the respective perfection steps to be taken in compliance with Liechtenstein law.

The rights to immunity may be, generally speaking, waived under Liechtenstein law.

6.3 Foreign Court Judgments and Arbitral Awards

Liechtenstein has neither entered into bilateral treaties nor joined multilateral treaties with other countries (except bilateral treaties with the Republic of Austria and Switzerland and a multilateral treaty limited to the subject matter of child support) regarding the mutual acknowledgement and enforcement of foreign judgments. Judgments of foreign courts (except Austrian and Swiss judgments and child support judgments) are, therefore, not enforceable in Liechtenstein without instituting summary proceedings to validate foreign judgments. However, such summary proceedings will, if persistently defended by the opposing party, not avoid a full re-litigation on the merits. As a consequence, judgments of a non-Liechtenstein, non-Swiss and non-Austrian court will not be directly enforceable against a company in Liechtenstein.

However, Liechtenstein is a party to the New York Convention (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards), and arbitral awards from foreign arbitral tribunals are therefore recognised and enforceable in Liechtenstein in accordance with the terms and conditions of this convention.

6.4 A Foreign Lender's Ability to Enforce Its Rights

When it comes to security interests in real estate located in Liechtenstein, according to the Liechtenstein Real Estate Transfer Act (*Grundverkehrsgesetz*), the transfer of ownership and similar rights requires a legitimate interest of the acquirer in obtaining the property. The transfer of property must also be approved in advance by the Office of Justice (*Amt für Justiz*). Without such approval, the underlying contract is null and void by law. As the declared goal of the Liechtenstein Land Transfer Act is to ensure that the land remains with the local people and businesses (which is reflected in the catalogue of legitimate interest), the market as well as the pool of potential, eligible acquirers in an enforcement scenario is limited.

In the context of regulated companies (eg banks, investment companies, insurance companies), any intended disposal of shares in such companies (therefore also the enforcement of security interests) exceeding certain thresholds have to be notified to and approved by the Liechtenstein FMA.

7. Bankruptcy and Insolvency

7.1 Impact of Insolvency Processes

With the commencement of insolvency proceedings, the debtor is deprived of its control over the insolvency estate, the insolvency administrator takes over the day-to-day management of the company, and all outstanding obligations of such debtor become due. This means that any loan granted to such company becomes due and payable by operation of law without the need for acceleration or termination of the loan agreement. Further, any power of attorney granted to a lender (eg, voting proxies and powers of attorney

to facilitate the enforcement of collateral) will automatically lapse upon the opening of the insolvency proceedings.

In relation to assets that are subject to in rem rights of the lender, Liechtenstein insolvency law foresees a right of separation (*Absonderungsrecht*). With such a separation right, the lender is not entitled to the asset itself, but rather to preferential treatment in relation to the proceeds from the sale of that asset. The asset is sold by the insolvency administrator and the proceeds are handed over to the lender up to the amount of the secured claim. Any excess amount is returned to the insolvency estate. This applies to in rem rights where the full title is transferred to the lender (eg, security assignments) as well as collateral granting a limited in rem right (eg, pledges).

Rights in personam (eg, guarantees, sureties and other joint liabilities) are not "insolvency proof" and do not benefit from any preferential treatment, meaning that creditors with security in personam rank pari passu with the other unsecured creditors of the debtor.

As an EEA member state, Liechtenstein has transposed the EU Financial Collateral Directive (2002/47/EC) into national law, ensuring that close-out netting agreements, when linked to financial collateral arrangements, remain effective even in the event of insolvency proceedings. This means that financial collateral (such as cash, securities or book-entry securities) provided under a collateral agreement can be realised or applied in line with the netting provisions, without being stayed, unwound, or otherwise impaired by insolvency rules.

Liechtenstein law also provides for a claw-back and avoidance regime, under which the insolvency administrator may set aside certain legal acts detrimental to the insolvency estate and to the interests of the debtor's creditors that were performed within a certain period prior to the opening of the insolvency proceedings.

7.2 Waterfall of Payments

The Liechtenstein Insolvency Act (*Insolvenzordnung*) provides for a mandatory waterfall of claims as follows:

- claims of segregation (*Aussonderungsansprüche*, eg, assets in the insolvency estate that are owned by third parties) and claims of separation (*Absonderungsansprüche*, eg, creditors that are secured by a pledge or security assignment);
- estate claims (*Masseforderung*), such as the costs of the insolvency proceedings itself and contractual arrangement made by the insolvency administrator; and
- claims of unsecured creditors.

7.3 Length of Insolvency Process and Recoveries

The length of the proceedings depends largely on the complexity of the company's business and the number of creditors, and can range from one to several years. Insolvency proceedings in Liechtenstein often involve creditors from several different jurisdictions, which further slows down the proceedings. The full value of the company is seldom fully recovered during insolvency. However, there have been instances where the recovery quota has exceeded 50% of the owed amounts.

7.4 Rescue or Reorganisation Procedures Other Than Insolvency

Liechtenstein reformed its insolvency law in 2021 to provide a regime more focused on the survival and restructuring of a company rather than its liquidation. The Liechtenstein Insolvency Act (*Insolvenzordnung*) distinguishes between two types of proceedings, namely insolvency proceedings (*Insolvenzverfahren*) aiming at the liquidation of the company's assets and restructuring proceedings (*Sanierungsverfahren*) focusing on the continuation of the company. The latter has two sub-variants, namely restructuring proceedings with self-administration (*Sanierungsverfahren mit Eigenverwaltung*) and restructuring proceedings without self-administration (*Sanierungsverfahren ohne Eigenverwaltung*).

Restructuring Proceedings With Self-Administration

Restructuring proceedings where the debtor retains control of the company, therefore with self-administration, can only be opened and approved where the debtor itself has filed for insolvency. This subvariant of restructuring proceedings is not available

to the debtor if insolvency proceedings have already been opened. In addition to the insolvency petition, the debtor has to submit a restructuring plan (*Sanierungsplan*). In the restructuring plan, the debtor has to offer to its creditors a minimum quota of 20% to be paid within the next two years. The restructuring plan must then be accepted by the creditors with a double majority, ie, the majority of the votes of the creditors present at the court hearing, which must represent more than 50% of the total amount of the insolvency claims of the creditors present at the hearing. Provided that the debtor complies with the terms of the restructuring plan and meets its payment obligations in full, the residual debt is discharged. If the debtor fails to comply with its duties under the restructuring plan, regular insolvency proceedings are opened.

Restructuring Proceedings Without Self-Administration

In proceedings without self-administration, the debtor is deprived of its control over the company and the insolvency court appoints a restructuring administration to manage the company's affairs. Unlike restructuring proceedings with self-administration, restructuring proceedings without self-administration may also be commenced after insolvency proceedings have already been opened. The debtor has then to submit a restructuring plan offering its creditors a minimum quota of 20% to be paid within the next two years. The restructuring plan is put to the vote of the insolvency creditors, which have to approve the plan with a double majority (regarding restructuring with self-administration, see above). If the debtor complies with the terms of the restructuring plan and discharges its payment obligations thereunder in full, the residual debt is discharged. If it fails to comply with its duties under the restructuring plan, regular insolvency proceedings are opened.

7.5 Risk Areas for Lenders

The Liechtenstein Insolvency Act (*Insolvenzordnung*) in conjunction with the Liechtenstein Legal Protection Act (*Rechtssicherungs-Ordnung*) provide for a claw-back and avoidance regime under which an insolvency administrator may challenge certain legal acts taken within a certain period of time prior to the opening of the insolvency proceedings. This includes certain disposals:

- for no consideration or only inadequate consideration, made within one year prior to the opening of insolvency proceedings;
- made at a time the debtor was already illiquid within one year prior to the commencement of insolvency proceedings; and
- made with the purpose of disadvantaging the other creditors of the debtor, regardless of when this act has been taken.

8. Project Finance

8.1 Recent Project Finance Activity

Infrastructure projects in sectors such as transportation, energy, water supply and public health do not play a significant role in Liechtenstein due to its size. Furthermore, the state maintains a major stake in this infrastructure.

8.2 Public-Private Partnership Transactions

See **8.1 Recent Project Finance Activity**.

8.3 Governing Law

See **8.1 Recent Project Finance Activity**.

8.4 Foreign Ownership

See **8.1 Recent Project Finance Activity**.

8.5 Structuring Deals

See **8.1 Recent Project Finance Activity**.

8.6 Common Financing Sources and Typical Structures

See **8.1 Recent Project Finance Activity**.

8.7 Natural Resources

See **8.1 Recent Project Finance Activity**.

8.8 Environmental, Health and Safety Laws

See **8.1 Recent Project Finance Activity**.

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