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Liechtenstein: Law and Practice

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LIECHTENSTEIN

Law and Practice

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1. Trends

1.1 M&A Market

In view of the lessons learned during the COVID-19 pandemic, Liechtenstein has invested extensively in the digitalisation of the public sector over the past few years. The digitalisation of administrative procedures has significantly enhanced efficiency for the closing of M&A transactions. Furthermore, shareholder resolutions can now also be passed virtually.

In general, these recent developments strengthen digitalisation and enable faster, more efficient and cost-effective corporate transactions and greater flexibility for all parties involved.

1.2 Key Trends

There have recently been extensive changes in the area of corporate law, to implement Directive (EU) 2019/1151 in the Liechtenstein Persons and Companies Act (PGR). Inter alia, the Liechtenstein legislature created the possibility to incorporate companies digitally and to file electronic applications regarding the commercial register. These changes came into force in 2024, marking a significant milestone in the digitalisation of corporate law matters.

Furthermore, in addition to the new options mentioned in **1.1 M&A Market**, the Notary Act was amended to permit the notarisation of corporate decisions in which not all participants are physically present but exercise their rights in the meeting through electronic means. As of 1 May 2024, digital notarisation and authentication are now permitted, which can facilitate the completion of corporate transactions. The exchange of information via the European Registry Networking System has also been enhanced, which can improve cross-border corporate transparency.

Looking ahead, the implementation of Directive (EU) 2019/2121 regarding cross-border conversions, mergers and spin-offs will be of great importance. This directive and the national provisions for its implementation will not only reform the legal framework for cross-border conversions but also provide a clearer legal framework for cross-border mergers. The implementation of this Directive also introduces specific statutory provisions for both cross-border and purely domestic spin-offs, thus creating a coherent and uniform legal framework for corporate transactions. This constitutes an important legislative step since, in the past, spin-offs were permitted in practice but could not rely on specific rules of statutory law.

While cross-border conversions were already permitted, the new rules impose a more formalised procedure due to European Economic Area (EEA) legal requirements, although this only applies to conversions within the EEA; the rules applicable on conversions to Switzerland or other third countries are likely to remain unchanged. Similarly, the existing rules on cross-border mergers will be further harmonised, with greater formalism offset by numerous procedural simplifications.

Overall, the implementation of the Directive increases legal certainty and transparency in the area of cross-border corporate restructuring. Despite certain procedural adjustments, the new legal framework gives companies greater planning reliability for cross-border transformation processes.

Finally, as the Liechtenstein financial market has grown strongly and constitutes a central pillar of the country's economy, the financial market law was aligned more closely with EEA law as of 1 February 2025. These comprehensive reforms and strategic initiatives, which include the implementation of specific laws for investment firms and the revision of existing rules for banks, position Liechtenstein as a modern and competitive financial centre in the heart of Europe.

1.3 Key Industries

To a large extent, M&A transactions in Liechtenstein concern private equity investments and are cross-border in nature, due to the small size of the country. On the other hand, M&A deals that involve public listed companies based in Liechtenstein frequently take place via stock exchanges situated outside of Liechtenstein.

There is currently increased deal activity amongst regulated financial services providers such as insurers, asset managers and fund management companies, and fintech market players. In addition, cross-border transactions often involve holding companies that have their registered seat in Liechtenstein and have been created as holding entities for family-owned large groups of companies, or for industrial undertakings.

2. Overview of Regulatory Field

2.1 Acquiring a Company

Typically, an acquisition of a Liechtenstein company is made by way of share purchase. However, there are also other transaction types that can lead to the same result, such as (cross-border) mergers or spin-offs/demergers.

Conversely, asset deals are less common in Liechtenstein. They are predominantly chosen for transactions in which only a certain part or a business unit of a target company is to be divested.

2.2 Primary Regulators

The Liechtenstein Financial Market Authority (FMA – www.fma-li.li) is in charge of deciding on applications for approvals or notifications triggered by M&A transactions involving Liechtenstein licensed financial service providers (banks, insurers, asset managers, etc) as targets. In particular, the FMA must decide on applications to approve new shareholders by way of an extensive *"fit and proper test"*. In recent years, the FMA's workload in this area has increased significantly due to the increased number of corporate transactions involving regulated entities subject to the FMA's supervision.

To the extent corporate transactions lead to changes in the commercial registry entries of Liechtenstein companies, the Office of Justice is

in charge. It is also in charge of granting approvals for the transfer of (direct and indirect) ownership in Liechtenstein real estate properties and so-called real estate companies (*Immobiliengesellschaften*).

To the extent that any state-owned or state-controlled companies in Liechtenstein are the target of a corporate transaction, other governmental agencies are in charge of granting the required approval under the pertinent public laws. In some of these cases, political bodies must consent.

2.3 Restrictions on Foreign Investments

Basically, there are no restrictions on the acquisition of participations or stakes in a privately held Liechtenstein company (except for the regulatory approvals noted in **2.2 Primary Regulators**).

However, any transfer of ownership in Liechtenstein real estate properties is restricted by law and requires the advance approval of the Office of Justice. This applies not only to the direct transfer of ownership in a real estate property but also to an indirect acquisition by way of acquiring shares in a Liechtenstein real estate company. Under the applicable statutory provisions, such transactions are null and void if the required approval from the Office of Justice is not obtained. Consequently, particular focus on these requirements is necessary during the legal due diligence phase of a transformation.

Further restrictions exist for the acquisition of shares in state-owned or state-controlled Liechtenstein companies.

Finally, as a result of the conflict between Russia and Ukraine, further sanctions were enacted to restrict investments by certain Russian investors.

2.4 Antitrust Regulations

As a member state of the EEA, Liechtenstein is subject to the European antitrust/merger control regime as applicable in the EU/EEA. As a consequence, the pertinent EU/EEA Regulations and thresholds also apply in relation to Liechtenstein companies, in principle. Liechtenstein does not have any additional national/domestic antitrust or merger control legislation.

2.5 Labour Law Regulations

Liechtenstein labour law sets forth certain provisions for the transfer of employees in the event of an asset deal. However, these provisions are not applicable regarding share deals.

Some requirements to inform or consult with the target's employees or employee representative body can apply, but a transaction cannot be stopped or prevented by any of these bodies, nor by labour unions.

If an M&A transaction leads to a mass dismal of employees in Liechtenstein, specific proceedings before the Office of Public Economics must be initiated, aimed at mitigating the financial and social consequences for the respective employees. In addition, internal decision-taking processes that involve a company's employee representative body must be complied with.

The planned amendment to the Persons and Companies Act and the statutory rules on the participation of employees in the event of a cross-border merger of limited liability companies includes further protective measures such as information and consultation rights as well as participation rights for employees.

2.6 National Security Review

There is no such review in Liechtenstein.

3. Recent Legal Developments

3.1 Significant Court Decisions or Legal Developments

The FMA is publishing an increasing amount of guidance and decisions on landmark cases regarding transactions with regulated and supervised financial services providers. Conversely, relatively little case law regarding litigation before the courts has been published. The implementation of Directive (EU) 2019/212 regarding cross-border conversions, mergers and spin-offs will constitute the most significant legal development directly related to M&A transactions in Liechtenstein.

3.2 Significant Changes to Takeover Law

There have been no such changes. The Liechtenstein Takeover Act (*Übernahmegesetz*) is the result of the implementation of EU Directive 2004/25. Once this EU Directive is amended, the Takeover Act is expected to be amended accordingly. However, the Takeover Act was adjusted to implement Directive 2013/50/EU regarding the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

4. Stakebuilding

4.1 Principal Stakebuilding Strategies

It is quite customary for a bidder to build a stake in the target prior to launching an offer, with large and institutional investors frequently building stakes in targets that qualify as start-up companies. In such cases, stakebuilding strategies and the legal steps for the implementation are usually dealt with in a shareholder agreement that is entered into between the investor and the other shareholder.

4.2 Material Shareholding Disclosure Threshold

The material shareholding thresholds and filing obligations predominantly depend on the specific area in which the transaction takes place. Under statutory law, there are specific disclosure thresholds for licensed financial service providers such as banks, insurers, asset managers, etc. Typically, these thresholds are 10%, 20%, 30% and 50% of the share capital and of the voting rights. For listed companies, the disclosure thresholds set forth by the Disclosure Act (*Offenlegungsgesetz*) apply. The Act also contains additional rules for the aggregation and calculation of the applicable percentages.

Similar but additional specific thresholds are laid down in financial services laws (eg, the Insurance Supervision Act, the Banking Act or the investment fund legislation), which apply even if the target is not listed on a stock exchange but is subject to the FMA's supervision.

Please note that certain disclosure thresholds can also be set forth in the articles of a Liechtenstein (target) company. This should be borne in mind when carrying out legal due diligence.

4.3 Hurdles to Stakebuilding

Any thresholds requested by mandatory statutory law cannot be opted out of by a company in its articles or by-laws, so a company's leeway in this regard is limited. However, on a shareholder level, shareholder agreements often impose certain restrictions on the participating shareholders when intending to sell their shares to another shareholder or to a third party. Such restrictions can consist of or trigger pre-emptive rights, rights of first refusal, or tag-along or take-along obligations. They can also constitute hurdles to stakebuilding. Under Liechtenstein law, it is also

possible to incorporate such restrictions into the articles of a Liechtenstein company.

4.4 Dealings in Derivatives

Basically, a Liechtenstein company is entitled to perform dealings in derivatives to the extent its corporate purpose permits such dealings. However, for any commercial activity (on behalf or for third parties), a licence issued by the FMA is required for dealing in derivatives.

4.5 Filing/Reporting Obligations

Liechtenstein financial service laws provide for specific obligations in this regard. In addition, due to Liechtenstein's membership of the EEA, the Markets in Financial Instruments Regulation (MiFIR) is directly applicable in Liechtenstein.

4.6 Transparency

In certain circumstances, shareholders have to make known the purpose of their acquisition and their intention regarding control of the company. For instance, such transparency is required during a fit and proper test carried out by the FMA in relation to a significant participation in a regulated Liechtenstein financial service provider.

If a Liechtenstein target company has set forth transfer restrictions regarding its own shares in its articles, the approval of the target's board of directors must be sought in advance for such share transfer. In such cases, and depending on the scope of the transfer restrictions, the company can be required to disclose the identity of the new shareholder to the board, and to provide the aforementioned transparency.

5. Negotiation Phase

5.1 Requirement to Disclose a Deal

Target companies that are listed on a stock exchange or regulated market need to disclose deals in accordance with the applicable stock exchange rules and their articles of association. As Liechtenstein does not have its own stock exchange for shares, the applicable rules are typically part of foreign laws and their listing rules. In most cases, public Liechtenstein companies have listed their shares either on the Swiss stock exchange (SIX) or on a stock exchange in the EEA.

Private companies whose shares have not been listed must disclose a deal only internally if their articles contain an obligation to do so. Target companies that are under the supervision of the FMA must make such disclosure as soon as there is an intention to enter into the deal, typically at the stage after the negotiations have commenced but before any definitive agreements are signed. In many cases, a clause containing a condition precedent in the transaction agreement ensures that disclosure is made in a timely manner.

5.2 Market Practice on Timing

Market practice on the timing of disclosure does not differ from the legal requirements; see **5.1 Requirement to Disclose a Deal**.

5.3 Scope of Due Diligence

If the target is a Liechtenstein company, the scope of the legal due diligence is usually extensive. Mere red-flag due diligence exercises are less common but are regularly carried out, for instance, for Liechtenstein companies that are material subsidiaries of a foreign target.

A broad legal due diligence exercise covers corporate law issues, material agreements (change of control clauses), employment law issues, litigation issues, compliance and KYC issues, regulatory issues (to the extent applicable to the target), data protection issues, IT and IP issues, commercial contracts, real estate issues, increasingly ESG issues, etc. Depending on the industry in which the target is active, environmental law issues have also become increasingly important.

5.4 Standstills or Exclusivity

Granting a bidder exclusivity during the negotiation phase is quite common. Standstill agreements are less common, considering that hostile takeovers are not very frequent in Liechtenstein.

5.5 Definitive Agreements

It is permissible for tender offer terms and conditions to be documented in a definitive agreement if said agreement clearly demonstrates the will of all parties to accept such terms and conditions. However, the documenting of such tender offer terms and conditions in a definitive transaction agreement does not occur very frequently.

6. Structuring

6.1 Length of Process for Acquisition/Sale

The length of such process depends on the specific transaction structure. It goes without saying that the process takes longer if regulatory approvals and consents are required to be issued between signing and closing. This is particularly relevant in view of the implementation of Directive (EU) 2019/2121 for cross-border conversions, mergers and spin-offs. It is expected that cross-border conversions into EEA member states will become technically more complex and also more time-consuming.

In the absence of such approval or consent requirements, it is quite common to close smaller transactions on the same day as the signing takes place. This can considerably abbreviate the length of the transaction process.

The flexibility of the Liechtenstein legislature to introduce the possibility to hold virtual and hybrid shareholder and board meetings has contributed to the avoidance of such delays or impediments. The upcoming digitalisation measures will also have a positive impact on and accelerate the process.

6.2 Mandatory Offer Threshold

Outside of regulated business areas and industries, there is no mandatory offer threshold for private companies. However, for public companies the thresholds under the Liechtenstein Disclosure Act must be complied with.

In addition, according to the Liechtenstein Takeover Act, certain price rules must be observed for both mandatory and voluntary bids. Accordingly, the price offered in a mandatory bid must not be lower than the last price that was granted or agreed to be paid for the same security during the 12 months preceding the notification of the bid. Furthermore, the price must be at least equal to the average market value of the security in question over the six months preceding the date of the announcement of the intention to bid.

Further requirements pursuant to foreign listing rules may also be applicable.

6.3 Consideration

Cash is more common than shares as a consideration type. Several tools are used to bridge

value gaps between the parties, ranging from performing several staged closings to agreeing on escrow arrangements. Earn-out structures are also quite popular. In some transactions, the introduction of targeted incentive bonus plans for the target's management team has been chosen as an additional measure.

6.4 Common Conditions for a Takeover Offer

Common conditions for takeover offers are contained in the Takeover Act. While regulators do not interfere unnecessarily with the use of offer conditions, they can decide to restrict the use of offer conditions in certain specific circumstances – eg, if a financial service provider under the regulator's supervision is sold as part of an extraordinary liquidation or dissolution.

6.5 Minimum Acceptance Conditions

The Liechtenstein Takeover Act includes minimum acceptance requirements if the target company is a listed company. Therefore, a mandatory takeover bid is triggered by the direct acquisition of more than 30% of the offeree company's voting securities or by the indirect acquisition of a controlling stake of 30% in such company. Individuals acquiring such a majority shareholding – whether by acting alone or in concert with other persons – are obliged to notify the FMA without undue delay and to make an offer for all securities issued by the target company within 20 days, in accordance with the Takeover Act.

The Takeover Act also allows for certain limited exceptions from the obligation to submit a mandatory takeover bid. Under the Takeover Act, the obligation to launch a mandatory takeover bid also extends to the indirect acquisition of control (of more than 30% of the share capital of the target company). Furthermore, the offeree company is entitled to opt out of the aforementioned thresholds and requirements by including adequate opting out clauses in its articles.

6.6 Requirement to Obtain Financing

It is possible to condition a business combination on the bidder obtaining financing. However, it is more common for the bidder to ensure it has adequate financing before submitting a formal bid or entering into negotiations on a business combination.

6.7 Types of Deal Security Measures

Break-up fees and non-solicitation provisions are often agreed between the parties of a transaction, but force-the-vote provisions are not very frequent in Liechtenstein. It is the exception rather than the rule that the shareholder meeting of a target company must vote on or consent to the sale of shares in the target or on a business combination (if the latter does not result in a merger or demerger). There are other ways of securing the influence of the shareholders on a transaction – eg, through shareholders' agreements or the representation of the main shareholders on the board of directors of the target.

There have been no recent significant changes to the regulatory environment that have impacted the length of interim periods.

6.8 Additional Governance Rights

A variety of measures can prove useful to the bidder, such as entering into a shareholder agreement that gives the bidder certain rights to acquire the shares of other shareholders in certain events, or the increase of any quota in the target company's articles in order to ensure that material decisions cannot be taken without the consent of the bidder. In addition, the bidder has an interest in being adequately represented on the board of directors by having delegated board members appointed.

6.9 Voting by Proxy

It is possible for shareholders to vote by proxy. The by-laws of a Liechtenstein company can set forth certain formalities or other requirements for the use of proxies. For instance, it is possible to limit the scope of such authorised representatives to other shareholders. It is possible for a proxy to represent more than one shareholder. Voting by proxy for bearer shares is more complicated (than for registered shares) since it involves the assistance of a custodian.

6.10 Squeeze-Out Mechanisms

The Liechtenstein Takeover Act contains a statutory squeeze-out mechanism. Certain rules of general company law provide for the buyout of a shareholder in cases of serious obstruction, but the threshold is very high.

The squeeze-out rules under the Takeover Act are confined to Liechtenstein companies that are listed on a stock exchange; they do not apply to any private Liechtenstein company. Under the Takeover Act, a bidder who, upon expiry of the term of the bid, owns at least 95% of the voting rights and of the offeree company's capital that entitles them to vote is entitled to request the FMA to order the nullity (*Kraftloserklärung*) of the remaining issued shares. However, such squeeze-out has to occur against payment of the offered price or performance of the offered exchange in shares. The bidder must file such request within three months.

6.11 Irrevocable Commitments

Such undertakings are not common.

7. Disclosure

7.1 Making a Bid Public

If regulatory approval from the FMA is required, the applicable documents must be submitted to the FMA. This does not mean that drafts or copies of the transaction agreements must be submitted to the FMA, but specific parameters may have to be disclosed. Furthermore, the information on the new direct and indirect shareholder(s) required by statutory law and the FMA's Guidelines must be timely submitted to the FMA. Under the Disclosure Act, it is not necessary to make a mere bid public; the disclosure rules thereunder only apply to completed transactions.

In some cases, the articles/by-laws of the Liechtenstein target company contain provisions on the internal disclosure of a bid. For such cases, these provisions must be complied with. Such requirements usually exist if the shares of the target companies are subject to transfer restrictions set forth in the articles/by-laws of the target company.

7.2 Type of Disclosure Required

In addition to the disclosure referred to in **7.1 Making a Bid Public**, the issuance of new shares requires the amendment of the target company's articles/by-laws. If the entity has the legal form of a corporation (*Aktiengesellschaft*, AG) or a company limited by shares (GmbH), the amendment must be performed by way of public deed or notarial deed. In order to record the issuance of new shares and the new share capital in the commercial register, such deed must be filed with the Office of Justice (Commercial Registry) and thereby becomes part of the register file for the target company. As such, any third party is entitled to inspect the register file and, by doing so, the deed.

Under Liechtenstein law, companies are not generally obliged to disclose any other arrangements regarding their corporate governance. However, exceptions apply for Liechtenstein companies whose shares are listed on a stock exchange or traded on another regulated market in an EEA member state; such public companies are obliged to periodically publish a corporate governance report.

7.3 Producing Financial Statements

Under the applicable listing rules, a listed company must timely publish its annual report following the end of its financial year. As part of the annual report, financial statements drawn up in accordance with a recognised standard (IFRS, GAAP) must be included. In accordance with applicable listing rules, listed companies must also timely inform the market of any facts that are price sensitive.

7.4 Transaction Documents

The transaction documents do not typically have to be disclosed in full.

8. Duties of Directors

8.1 Principal Directors' Duties

Under Liechtenstein law, members of the board of directors owe a statutory duty of care and loyalty to the company, and must treat the shareholders of the company equally in the same circumstances. When exercising these duties, the members of the board of directors must safeguard the interests of the company; this is understood to also include employees and other stakeholders. The board members must comply with all duties in the event of a business combination.

8.2 Special or Ad Hoc Committees

It is not common for boards of directors to establish special or ad hoc committees in business combinations, especially if the board of directors does not consist of a large number of members. For certain large companies, the law requires the establishment of certain committees within a board of directors.

8.3 Business Judgement Rule

The Liechtenstein courts regularly apply the business judgement rule, including in situations involving business combinations. The resulting settled case law regularly requires that the board members pass their decisions on an informed basis and free of any conflicts of interest.

8.4 Independent Outside Advice

Directors regularly obtain legal opinions on the target company or on the other parties in a business combination, and sometimes also on tax rulings, in order to safeguard their duty of care. If companies or targets outside of Liechtenstein are involved, a foreign law firm is usually commissioned to issue an adequate capacity opinion for the transaction.

Depending on the transaction structure, it is also common for independent outside advice to be solicited from other experts.

8.5 Conflicts of Interest

Conflicts of interest of directors, managers, shareholders or advisers have been the subject of judicial or other scrutiny in Liechtenstein. However, it is not possible to quantify these court/regulatory cases since only a limited number of court cases and regulatory orders are published in Liechtenstein.

9. Defensive Measures

9.1 Hostile Tender Offers

Liechtenstein law only contains specific provisions for public/listed Liechtenstein companies. The Takeover Act sets forth rules for such companies in the event of a voluntary takeover bid or a mandatory takeover bid. As long as these rules (to the extent applicable) and any provisions in the articles/by-laws of the Liechtenstein target company in relation to the issuance or the transfer of shares are complied with, tender offers are permitted.

Hostile tender offers are not very common in Liechtenstein. One of the reasons may be that the shares of only a very small number of Liechtenstein companies are listed, which reduces the scope of options for hostile tender offers.

9.2 Directors' Use of Defensive Measures

Directors are allowed to use defensive measures; see **9.1 Hostile Tender Offers**.

9.3 Common Defensive Measures

In addition to the defensive measures permitted by the Takeover Act, the board of directors of a Liechtenstein company frequently benefits from a clause in the articles/by-laws that permits the board to refuse approval of a new shareholder in certain events and if such approval is not in the best interest of the company. For instance, the board of directors can do so if a competitor of the company tries to enter the circle of shareholders.

9.4 Directors' Duties

The duties mentioned in **8.1 Principal Directors' Duties** also apply if the directors enact defensive measures: when doing so, they must also act in the best interest of the (target) company.

9.5 Directors' Ability to "Just Say No"

The directors must always act in the best interest of the company and base their decisions on justified reasons. When resolving on a business combination or the prevention thereof, the directors are well advised not to *"just say no"* (to the extent this would be permissible under the specific articles or by-laws) but to carefully document the reasoning of their decision in adequate minutes of their board meeting.

10. Litigation

10.1 Frequency of Litigation

Litigation before the courts in connection with M&A transactions is not very common in Liechtenstein. However, it is possible for shareholder resolutions to be challenged and for board resolutions to be scrutinised before the Liechtenstein courts. On the other hand, it is quite common for disputes in relation to M&A transactions to be resolved in arbitration proceedings. Obtaining an arbitration award also has the advantage of (increased) enforceability in other jurisdictions.

In contrast, Liechtenstein has only entered into bilateral treaties regarding the recognition and enforcement of court judgments with Switzerland and Austria. As a consequence, the enforceability of a Liechtenstein court judgment in other jurisdictions is limited, which may lower the parties' motivation to initiate international M&A-related litigation before the Liechtenstein courts.

10.2 Stage of Deal

Please see **10.1 Frequency of Litigation**.

10.3 "Broken-Deal" Disputes

In some transactions, the force majeure clause in the transaction agreement was tested based

on the argument that the COVID-19 pandemic constituted an enforceable event that equals a force majeure event.

11. Activism

11.1 Shareholder Activism

Shareholder activism does not constitute a very popular tool in Liechtenstein. Therefore, not surprisingly, Liechtenstein statutory law does not directly address this type of activism. However, the law gives shareholders certain mandatory rights that cannot be opted out of in the articles/by-laws of a company, including the right to call an extraordinary shareholder meeting, the right to place certain motions on the agenda and the right to vote on the discharge of directors.

Exercising these rights can facilitate shareholder activism. However, as mentioned, no significant increase in shareholder activism has been noted over recent years, and no such trend is visible in the Liechtenstein market.

11.2 Aims of Activists

There has been no trend of activists seeking to encourage companies to enter into M&A transactions, spin-offs or major divestitures.

11.3 Interference With Completion

Activists do not seek to interfere with the completion of announced transactions in Liechtenstein.

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