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Liechtenstein

Enforcement of Judgments in Civil and Commercial Matters

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

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Liechtenstein: Enforcement of Judgments in Civil and Commercial Matters

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

Liechtenstein is a signatory state to the multilateral Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards ('**New York Convention**'). In general, all arbitral awards from jurisdictions, which are a party to the New York Convention, can be directly enforced in Liechtenstein.

This aside, Liechtenstein is a signatory state to only the following bilateral agreements concerning the recognition and enforcement of foreign court judgments:

- Treaty of 25 April 1968 between the Principality of Liechtenstein and the Swiss Confederation on the Recognition and Enforcement of Court Decisions and Arbitral Awards in Civil Matters ('**Treaty between Liechtenstein and Switzerland**');;
- Treaty of 5 July 1973 between the Principality of Liechtenstein and the Republic of Austria on the Recognition and Enforcement of Court Decisions, Arbitral Awards, Settlements and Public Documents ('**Treaty between Liechtenstein and Austria**');;
- Treaty of 1 April 1955 between the Principality of Liechtenstein and the Republic of Austria on the Enforcement of Maintenance Obligations.

Finally, Liechtenstein has also concluded the following multilateral agreements in the area of family law:

- Convention of 15 April 1958 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations towards Children;
- European Convention of 20 May 1980 on Recognition and Enforcement of Decisions relating to Custody of Children and on Restoration of Custody;
- Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption.

Please note that neither the Brussels Ia Regulation

(Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) nor the Lugano Convention applies in Liechtenstein.

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

With regard to the New York Convention, Liechtenstein has made a reservation that it will only recognise and enforce arbitral awards issued in the territory of another Contracting State to the New York Convention.

Liechtenstein has also made some reservations with regard to (i) the Convention of 15 April 1958 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations towards Children and (ii) the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions relating to Custody of Children and on Restoration of Custody.

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

Where no relevant international treaty applies for recognition and enforcement (see answer to question 1), the Liechtenstein law theoretically provides for the possibility of direct enforcement of foreign judgments subject to reciprocity. In practice, a declaration of reciprocity by the Liechtenstein Government is required for this purpose. However, the Liechtenstein Government has not yet issued any such declaration of reciprocity.

In addition to the above, there are specific legal provisions for certain areas of family law, such as recognition of foreign judgments on adoption, separation without dissolution of marriage, divorce or annulment of marriage, as well as on the determination of the existence or non-existence of a marriage, custody arrangements and the right to personal contact. However, in all these cases, the provisions of international treaties take precedence over domestic procedural provisions in their scope of application.

If a foreign judgment is not directly enforceable, Liechtenstein law provides an alternative option to standard civil proceedings. Based on the Act on the Securing of Rights of 9 February 1923 (*Rechtssicherungs-Ordnung – RSO*), a creditor can obtain a Liechtenstein enforcement title in a specific kind of procedure, known as summary proceedings (*Rechtsöffnungsverfahren*), relying on a foreign court decision. However, if persistently defended by the opposing party, such summary proceedings (*Rechtsöffnungsverfahren*) will not avoid a full relitigation on the merits. The summary proceedings (*Rechtsöffnungsverfahren*) and their requirements are described in the answer to question 6.

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

In general, judgment can only be enforced in Liechtenstein if it is sufficiently specified with regard to the enforcing party (judgment creditor) and the obligated party (judgment debtor), the subject matter, the nature and scope of the performance or omission owed, and the time of performance.

As outlined in the following, the respective legal provisions set out additional criteria that must be met for the enforcement of foreign judgments.

In order for a foreign arbitral award to be enforced according to the New York Convention, there must be an arbitral clause in a contract or an arbitration agreement for the legal dispute and there must be no grounds for refusal (i.e., the party against whom the award is invoked was unable to present their case or the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration).

If judgments in civil law matters, rendered in Switzerland or Austria, are to be recognised and enforced in Liechtenstein, (i) the recognition of the judgment must not violate the *ordre public* in Liechtenstein, (ii) the merits of the case must not have been decided in a prior proceeding, (iii) the judgment must have been rendered by a competent Swiss or Austrian court according to the respective Treaty (see answer to question 13) and (iv) the Swiss or Austrian judgment must be *res judicata* and must have become final. In addition to this, a Swiss or Austrian judgment in default may only be recognised in Liechtenstein if the defaulting party was served with the order initiating the proceedings or the summons in good time (see answer to question 14).

Enforcement of foreign judgments and arbitral awards in Liechtenstein is not limited to monetary claims.

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

According to the New York Convention, the Treaty between Liechtenstein and Switzerland and the Treaty between Liechtenstein and Austria, the procedure for enforcement of arbitral awards and foreign judgments respectively is governed by the procedural rules of the state in which enforcement is sought. By referring to the procedural law of Liechtenstein, there is essentially no procedural difference between the enforcement of a domestic or foreign judgment (always provided that the foreign judgment is directly enforceable in Liechtenstein like a domestic judgment) which is why referral is made to the answer to question 6.

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

If a foreign judgment can be recognised and is to be enforced directly, enforcement proceedings in Liechtenstein are initiated upon application of the enforcing party (judgment creditor) for the approval of enforcement (*Exekutionsantrag*). This is a unilateral procedure, whereby an oral hearing and examination of the obligated party (judgment debtor) usually do not take place.

The court examines the question of whether a foreign judgment is recognisable as a preliminary issue in the enforcement proceedings. There is no prior and separate procedure to recognise a foreign judgment (*exequatur*) in Liechtenstein.

Foreign enforcement titles, including foreign judgments, must be submitted in the original or as a certified copy upon application for enforcement.

If enforcement (on the basis of a foreign judgment) is granted, the Princely District Court will issue an enforcement order (*Exekutionsbewilligung*).

If a foreign judgment does not fall within the ambit of one of the treaties enumerated under question 1) above and hence cannot be recognised and enforced directly in Liechtenstein, a creditor may, by way of summary proceedings (*Rechtsöffnungsverfahren*; as already mentioned in the answer to question 3) obtain a domestic

enforcement title relying on a foreign judgment as follows:

The first step for the judgment creditor is to apply to the Princely District Court for the issuance of a conditional payment order for the collection of any monetary claims (*bedingter Zahlbefehl*) or for the issuance of an order for the enforcement of any claim other than money (*Rechtsbot*). The order is served on the debtor, who may lodge an objection (*Widerspruch/Rechtsvorschlag*) within 14 days of service without giving reasons. In that case, the order does not take effect and cannot be enforced.

The creditor can have this objection revoked by the Princely District Court (*Rechtsöffnung*) in summary proceedings (*Rechtsöffnungsverfahren*) if (i) their claim is for the performance or surrender of money or any other item and (ii) this claim is evidenced, among other options, by a foreign public deed. Foreign judgments are considered such foreign public deeds. They must be submitted in the original or as a certified copy.

The Princely District Court schedules an oral hearing at which the debtor must immediately substantiate their objections by means of documents or witnesses. At this stage, the claim's existence is only provisionally examined based on the submitted evidence. The summary proceedings conclude with a decision by the Princely District Court (*Rechtsöffnungsentscheid*).

If the creditor loses the summary proceedings, they may lodge an appeal within 14 days. Otherwise, they must assert their claim through standard civil proceedings. If the creditor wins the summary proceedings, the debtor can bring an action within 14 days to have the claim asserted by the creditor dismissed (*Aberkennungsklage*). The roles of the parties are reversed compared to standard civil proceedings. The advantage for the former claimant, who is now the defendant, is that they are not required to lodge a security deposit for costs and fees. To the contrary, their opponent, who is now the claimant, may be required to do so. However, the burden of proof remains the same, i.e. the (former) claimant must prove the validity of the claim. An alternative option for the debtor is to challenge the decision by filing a constitutional complaint with the Liechtenstein Constitutional Court instead of bringing action (*Aberkennungsklage*).

This means that only if the *Aberkennungsklage* is not filed within the required time frame or is dismissed with legal effect by the Princely District Court, the court decision that was issued using a foreign judgment (*Rechtsöffnungsentscheid*) becomes a domestic enforcement title.

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

If foreign arbitral awards are to be enforced in Liechtenstein according to the New York Convention, the party applying for recognition and enforcement has to supply (i) the duly authenticated original award or a duly certified copy thereof and (ii) the original agreement (that is, the arbitral clause in a contract or the arbitration agreement) or a duly certified copy thereof. However, domestic law and supreme court rulings provide for a facilitation whereby a certified copy of the arbitration award issued by the arbitration institution will also be regarded a duly certified copy, provided such copy bears the stamp and signature of an authorised official of that arbitration institution, together with an indication of his or her function. Furthermore, the original (arbitration) agreement or a duly certified copy thereof only needs to be submitted upon request of the courts in Liechtenstein. If the said award or agreement is not in German, the party applying for recognition and enforcement of the award has to produce a translation of these documents that has to be certified by an official or sworn translator or by a diplomatic or consular agent.

The Treaty between Liechtenstein and Switzerland and the Treaty between Liechtenstein and Austria also provide for – inter alia – the submission of the original decision or a copy of the decision bearing the official signature and seal or stamp. Additionally, they require a judicial confirmation of the legal validity and, where applicable, the enforceability of the decision.

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

If a foreign judgment is directly enforceable in Liechtenstein, it will take only a few weeks to enforce it.

If a foreign judgment is not directly enforceable in Liechtenstein, summary proceedings (*Rechtsöffnungsverfahren*; as already explained in the answer to question 6) can be initiated, at the end of which, however, the debtor may bring an action to have the claim asserted by the creditor dismissed (*Aberkennungsklage*). This results in standard civil proceedings in which the validity of the claim is fully relitigated.

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

Yes, it is possible to obtain interim injunctions during enforcement proceedings to secure the rights of a party. However, if a foreign judgment is directly enforceable in Liechtenstein, interim injunctions usually provide no additional benefit for the enforcing party (judgment creditor), as they can obtain immediate satisfaction by enforcing the foreign judgment.

An interim injunction to secure monetary claims (*Sicherungsbot*) may be issued if it is likely that the debtor could otherwise frustrate or impede the collection of the monetary claim by acts such as damaging, destroying, concealing or removing assets, or by selling or otherwise disposing of them. The courts in Liechtenstein may, among other measures, order the seizure, custody and administration of the debtor's movable property, the judicial deposit of money and a judicial prohibition on the sale or pledging of such property. However, such interim injunctions are not permissible if the party can obtain enforcement measures against the debtor's assets to secure the monetary claim.

Interim injunctions may also be issued to secure other claims than monetary claims (*Amtsbeehle*).

According to Liechtenstein case law, a foreign judgment can, in general, provide sufficient evidence to prove that the requirements for an interim injunction are fulfilled. However, this does not apply if the foreign judgment violates the *ordre public* in Liechtenstein.

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

Under Liechtenstein law, the limitation period for a claim recognised in a judgment is 30 years.

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

The grounds on which the enforcement of foreign judgments can be challenged are outlined in the answer to question 4.

12. Will the courts in your jurisdiction reconsider

the merits of the judgment to be enforced?

The merits of a foreign judgment to be enforced may not be reviewed (no *révision au fond*), except to ensure that the foreign judgment complies with the requirements of the *ordre public* in Liechtenstein. However, this is only true with regard to foreign judgments which are directly enforceable in Liechtenstein (according to the Treaties listed in the answer to question 1). If a foreign judgment is not directly enforceable, the debtor will be in a position to relitigate the claim on the merits (as explained in the answer to question 6).

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

According to the New York Convention, the courts in Liechtenstein will refuse, upon application by a party against whom enforcement is sought, to recognise and enforce the arbitral award if it deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or if it contains decisions on matters beyond the scope of the submission to arbitration.

If the Treaty between Liechtenstein and Switzerland or the Treaty between Liechtenstein and Austria is applicable, Liechtenstein will only recognise and enforce a judgment issued in Switzerland or Austria if the judgment was handed down by a competent court according to the respective Treaty. This is, to name just the most important example, the case if the defendant has their place of residence or registered office (for non-natural persons) in Switzerland or Austria, respectively.

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

According to the Treaty between Liechtenstein and Switzerland and the Treaty between Liechtenstein and Austria, a judgment in default may only be recognised in Liechtenstein if the defaulting party was served with the order initiating the proceedings or the summons in good time, either in person or through a representative.

15. Do the courts in your jurisdiction have a

discretion over whether or not to recognise foreign judgments?

No. If the conditions for the recognition of the foreign judgment are met, it must be enforced.

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

Under the Treaty between Liechtenstein and Switzerland and the Treaty between Liechtenstein and Austria, recognition may only be granted in civil matters. However, certain matters are excluded from the scope, such as decisions in insolvency proceedings, decisions in criminal proceedings concerning private law claims, interim injunctions and administrative penalties.

In general, whether according to treaties or under general law, recognition of foreign judgments must be refused if they violate the *ordre public* in Liechtenstein. According to Liechtenstein case law, the *ordre public* is violated in cases of intolerable disregard for fundamental values of the legal system in Liechtenstein, such as the right to be heard. This may also – and in particular – concern the merits of a foreign judgment, but must be examined on a case-by-case basis.

There is no established case law in Liechtenstein on whether enforcing punitive damages, awarded in foreign judgments, would violate the *ordre public* in Liechtenstein. Based on case law in Liechtenstein's neighbouring countries (e.g. Switzerland), it can be assumed that, in principle, the enforcement of punitive damages in Liechtenstein would violate its *ordre public*.

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

No. The foreign judgment must be legally binding according to the Treaty between Liechtenstein and Switzerland, the Treaty between Liechtenstein and Austria and according to general law.

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

If a foreign judgment is directly enforceable in Liechtenstein, the obligated party (judgment debtor) has several options for challenging an enforcement order

recognising a foreign judgment.

In principle, an appeal (*Rekurs*) can be lodged against an enforcement order within 14 days of service.

At the same time, in the case of enforcement based on foreign judgments, an objection (*Widerspruch*) can also be lodged in most cases within 14 days of service of the enforcement order. This legal remedy can be used to challenge violations of the specific provisions governing the enforcement of foreign judgments, in particular if the requirements for recognition, as described in the answer to question 4, are not met according to the Treaties mentioned in the answer to question 1.

Furthermore, the obligated party may seek legal remedies through legal action. During enforcement proceedings, the obligated party may bring an action which allows objections to be raised against the claim pursued on the basis of facts that annul or suspend the claim, provided these facts arose after the enforcement title was issued (*Oppositionsklage*). The obligated party may also bring an action to raise objections on the basis that the claim covered by the enforcement order is not yet mature or enforceable, or because the enforcing party (judgment creditor) has waived enforcement, either temporarily or permanently (*Impugnationsklage*).

If a foreign judgment is not directly enforceable in Liechtenstein, a creditor can initiate summary proceedings. The options available to the debtor to defend their legal position are described in the answer to question 6.

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

If an interest-bearing claim is to be enforced, the enforcement title must specify the interest rate and the date from which interest is due.

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

A monetary claim denominated in a foreign currency remains a claim in foreign currency in Liechtenstein and does not have to be converted into Swiss francs.

21. Can the costs of enforcement (e.g. court

costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?

In principle, the obligated party (judgment debtor) has to reimburse the enforcing party (judgment creditor) for all costs incurred in the enforcement proceedings that are necessary for enforcing the entitled claim. The court has to determine which costs are necessary after carefully considering all the circumstances. The reimbursable amount is determined by a statutory scheme (a tariff) and depends on the amount that was in dispute. The reimbursement is usually lower than the actual costs incurred.

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

There are no specific regulations in Liechtenstein concerning third-party funding of enforcement actions. In general, the legitimacy of third party funding in Liechtenstein depends on the specific business model.

According to Austrian case law, which is frequently relied on by the Liechtenstein courts, third party funders, who receive a portion of the disputed amount as a fee, may not provide comprehensive legal advice themselves (in a way that would interfere with the lawyers' monopoly on representation) and may not exert any direct influence on the funded proceedings. Therefore, it depends on the specific contract terms of the third party funder operating in Liechtenstein.

Since the claim for reimbursement of costs is legally enforceable against the opposing party, third party funders can in principle not be made liable for the costs incurred by the other side.

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

Liechtenstein has a rather restrictive approach to the recognition of foreign judgments. The last significant development in this regard was Liechtenstein's accession to the New York Convention in 2011. The Treaty between Liechtenstein and Switzerland and the Treaty between Liechtenstein and Austria entered into force in 1970/1975. Therefore, we do not expect any significant developments in the next 5 years.

24. Has your country ratified the Hague Choice of Courts Convention 2005, and if so when did it (or will it) come into force? If not, do you expect it to in the foreseeable future?

No, Liechtenstein has not ratified the Hague Choice of Courts Convention 2005. We do not expect it to happen in the foreseeable future.

25. Has your country ratified the Hague Judgments Convention 2019, and if so when did it (or will it) come into force? If not, do you expect it to in the foreseeable future?

No, Liechtenstein has not ratified the Hague Judgments Convention 2019. We do not expect it to happen in the foreseeable future.

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