CIVIL LITIGATION

1. **In what language(s) may court proceedings be conducted? What arrangements can be made for translation/interpreter services?**

   The official language in Liechtenstein is German. Court proceedings are therefore conducted in German.

   Regularly, it is also necessary to provide translations into German of any and all documents to be served as documents of proof, if those are in a foreign language, to the court. This is not the case for documents with low complexity in English, as the Supreme Court ruled in 2005 that it would be overdoing formalism if translations are requested for "simple" documents which can easily, without much effort, be read and understood, if necessary by using a dictionary.

   If witnesses are heard which do have a mother language other than German, the court will arrange for and appoint an interpreter to be present at the hearing.

2. **What types of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?**

   Liechtenstein law provides for mandatory mediation before a claim can be filed with the Liechtenstein Courts. There are exemptions for certain types of procedures (e.g. interim injunctions, family law issues etc.), with regard to civil law issues, pre-trial mediation regularly is a must.

3. **What are the costs of civil and commercial proceedings? Who bears the costs?**

   Regularly, lawyers in Liechtenstein enter into fee agreements with their clients and charge for their services on the basis of hourly rates.

   In case of court procedures, the Liechtenstein Lawyers tariff is of relevance. The tariff provides for certain ranges of costs for various court-related services (such as establishing and filing a claim, attending a court hearing etc.) depending on the value in dispute.

   If there is no agreement between client and lawyer e.g. on hourly rates, the lawyers tariff is also relevant for determination of costs the attorney is entitled to charge to his client.

   The lawyers tariff however is of specific importance in determining the costs to be reimbursed to the succeeding party (resp. the entitlement of the succeeding party vs. the counterparty for cost reimbursement) in a court procedure.

   In addition to attorney's fees, in case of court procedures, court charges do accrue (filing fees, minute fees, decision fee). Costs again depend on the value in dispute, comparing court charges becoming due in Liechtenstein to those levied in other jurisdictions, one has to state that court charges payable in Liechtenstein are reasonable.

4. **What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

   Liechtenstein law does not provide for disclosure rules. It is up to each party to proof that the set of facts it presents to the court is correct and the legal conclusions are right, there is however regularly no obligation of the counterparty to provide documents to the court or the counterparty.

   It is only in exceptional circumstances, e.g. when a document can be qualified as a "joint document", such as e.g. a contract, that a party may be obliged to disclose this in court.

5. **What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?**

   Witnesses are heard in court in the presence of the judge, the parties and the lawyers. There is no pre-trial deposition or similar procedure. Witnesses are questioned by the judge and by the lawyers of all parties involved.

   A witness is obliged to appear in court once he / she is summoned by court. Persons with domicile in Liechtenstein can be compelled to appear personally, if persons living outside of Liechtenstein are summoned to be heard as witnesses and do not appear, the Liechtenstein court will try to have them heard by local courts at the place of their domicile

via legal assistance requests. They may then be compelled to attend depending on local laws.

6. **How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e: may not be disclosed to the court)?**

   It is entirely up to the parties how to discuss settlements. It is obviously advisable, once a settlement is found, to document that in writing, preferably in a manner which allows for immediate execution of the agreements, if necessary.

   Settlement discussions are also possible and common throughout pending court procedures. Regularly, court hearings are started with the judges question as to whether a settlement has been considered by the parties. Depending on the type of case, complexity of the case and value in dispute the judges are more or less persistent in triggering settlement discussions. If a settlement is found in court, this will be documented in the court minutes resp. in the form of a "court settlement", which has the quality of a judgment and can immediately be used as a basis for enforcement, if necessary.

   As there are no disclosure procedures in Liechtenstein, it is up to the party holding e.g. settlement correspondence whether to use such documentation in court or not.

7. **How can foreign judgments be enforced?**

   Foreign court judgements are regularly not enforceable in Liechtenstein, as Liechtenstein is not part of the European Union nor party to bi- or multilateral treaties for the acknowledgement and enforcement of foreign judgements. The only exceptions are bilateral treaties with Austria and Switzerland.

   Therefore, immediate enforcement of foreign judgements in Liechtenstein is not possible.

   Liechtenstein law however provides specific procedures in order to enforce foreign judgments. A creditor may demand the Liechtenstein Court to issue a payment order on the basis of a foreign judgement. Such payment order would become valid and binding within 2 weeks and then, as an order of the Liechtenstein Court, is enforceable against the relevant Liechtenstein debtor. However, this is only effective if the relevant Liechtenstein debtor does not object and set the court order aside. This can be done by simple written notice given by the debtor to the court stating that he does "object". As the payment order procedure is a swift procedure and the payment order is issued without the debtor being heard, simply on the basis of allegations of the creditor, it is not necessary for the debtor to now present arguments or proof why he does not owe certain amounts, a simple "objection" is sufficient. If that is the case, the payment order is set aside without the creditor having an opportunity to e.g. respond to the debtors objection.

   If the debtor does object and the Liechtenstein payment order is set aside, the creditor has the option to initiate so-called "re-opening" procedures by which the Liechtenstein Court would confirm the payment order and therefore "re-open" the "enforcement" of the foreign judgement. In this specific type of procedure, which is a swift procedure based on enforcement law, the Liechtenstein court does not deal with the merits of the case but only checks whether there are any obstacles for enforcement of the foreign judgement, such as e.g.

   a) incompetence of the foreign court, i.e. that the foreign court is not competent resp. competence of the foreign court is not „respected" by Liechtenstein Law. Liechtenstein law provides for certain regular legal venues, in case of a Liechtenstein defendant this is normally Liechtenstein (if this is the place of the debtors domicile). Parties to a contract may agree on another legal venue, if this legal venue is outside of Liechtenstein, this must be done in a publicly certified deed according to § 53a JN. If this is not the case, the Liechtenstein courts do not consider the foreign court to be a proper legal venue for claims against the Liechtenstein defendant.

   b) fundamental procedural rights of a debtor have not been respected (e.g. claim has not been properly served to defendant, defendant was not (properly) heard in court etc. – basically anything that could be labelled as being against Art 6 EMRK.)

   c) other "ordre public" issues (infringement of basic, fundamental principles of Liechtenstein Law)

Regularly, it only makes sense for a Liechtenstein debtor to trigger such procedure by raising objections if the foreign judgement does indeed infringe fundamental principles of Liechtenstein law. Apart from procedural issues, this might e.g. be punitive damages in a US judgement, which a Liechtenstein court once considered to be against ordre public and therefore not enforceable in Liechtenstein.

If the creditor is successful in these "re-opening" procedures the Liechtenstein Court will enforce the payment order against the Liechtenstein debtor (provided that the courts decision in the “re-opening” procedures becomes valid and binding and the debtor does not resort to further remedies).

If the Liechtenstein debtor is successful with his objections in the re-opening procedures, the creditor must initiate a fresh new standard court procedure in Liechtenstein on the merits of the claim.

ARBITRATION

1. Are mediation clauses in commercial contracts binding and enforceable?

Mediation clauses constitute civil law obligations between the parties in the sense that the parties consensually and in a binding manner agree to try and find a solution for their conflicting interests by way of mediation. Regularly, the mediation clause describes procedure and duration of such mediation as well as eventual further obligations of the parties during mediation (e.g. confidentiality of negotiations, obligation to nominate a mediator or mediators etc.).

If mediation clauses are therefore properly structured and are detailed enough in order to identify the obligations of the parties throughout mediation, they are enforceable. Mediation clauses however are not enforceable in the sense that it is mandatory for the parties to finally come to a settlement.

2. What is the procedure for mediation? Is it a popular method for resolving commercial disputes?

Liechtenstein law does know formal mediation procedures, which are mandatory for certain civil law issues. Mediation therefore must have been tried before the parties are allowed to approach the civil law courts. However, such mediation on the basis of the Liechtenstein "Vermittleramtsgesetz" is regularly considered to be a mere formality and the publicly appointed mediators (Vermittler) for this type of procedure do regularly not actively guide the parties through mediation.

Apart therefrom, Liechtenstein law also knows voluntary mediation on the basis of the Liechtenstein Zivilrechts-Mediations-Gesetz, which has been enacted in 2005. This law however does not provide for procedural rules or gives further guidance as to the contents of the mediation, the parties rights and obligations throughout mediation etc. It is therefore more or less entirely up to the parties resp. to the mediator (with the agreement of the parties) how to structure the mediation procedure.

Voluntary mediation is not common in Liechtenstein, specifically not for commercial disputes.

3. Are arbitration clauses in commercial contracts binding and enforceable?

Yes, arbitration clauses are binding and enforceable (in the sense that a Liechtenstein Court would dismiss a case and consider itself not competent) if in written form.

4. What type of arbitration is commonly used for resolving commercial disputes: ad hoc arbitration or institutional arbitration?

Ad hoc arbitration is standard in Liechtenstein. This is not at least due to the fact that, until recently, there was no specific local institution for arbitration available in Liechtenstein. Therefore, if the parties wished to chose dispute resolution by arbitration but at the same time wanted the issue to be dealt with locally, ad hoc arbitration was the only possibility.

5. Which arbitration institutes are most popular?

If Liechtenstein parties or parties having links to Liechtenstein chose institutional arbitration, the most popular institutes are the International Chamber of Commerce (ICC), Paris or the Internationale Handelskammer (International Chamber of Commerce, ICC), Vienna.

In 2011, the Liechtenstein Arbitration Association was founded which developed and issued, in cooperation with the Liechtenstein Chambers of Commerce (Liechtensteinische Industrie- und Handelskammer, LIHK) Arbitration Rules ("Liechtenstein Rules"). Though this is not a formal, permanent arbitration institution, the LIHK together with the Liechtenstein Arbitration Association provide a semi-institutionalized platform for Liechtenstein arbitration which will, hopefully, become popular in due course.

6. What influence can the parties have on the identity of the arbitrator(s)?

The parties are free to agree on the number of arbitrators and are also free to agree on the manner of their appointment. There are no provisions as to competences et al of an arbitrator. A party may object to the appointment of an arbitrator by the counterparty if there is reason to believe that the arbitrator was biased and not acting independent.

According to the Liechtenstein Rules (applicable if chosen by the parties), parties may only appoint arbitrators which are subject to professional secrecy obligations (such as lawyers, auditors, trustees etc.) – except they agree that this rule, which forms part of the Liechtenstein Rules, does not apply.

7. In what language is an arbitration proceedings conducted?

The parties are free to choose the language, if there is no agreement of the parties on this aspect, the arbitrators decide in which language to conduct the arbitration proceeding.

According to the Liechtenstein Rules, the arbitrators determine the language of the procedure after consultation with the parties.

8. What types of pre-arbitration measures are available and what are their limitations?

It is again up to the parties to agree on the structure of the procedure as well as procedural measures which can be agreed to be applicable. If there is no specific agreement of the parties, the Liechtenstein Civil Procedural Code eventually amended and completed in the free discretion of the arbitrators does apply. General pre-trial procedures, such as e.g. disclosure of document or pre-trial depositions, are not known to Liechtenstein procedural law.

Interim measures may also be applied by the arbitrators, at the same time and notwithstanding arbitration clauses, interim measures may be ordered by a civil law court before or even pending arbitration procedures upon application of one of the parties.

9. What are the costs of arbitration proceedings and who bears these costs?

According to Liechtenstein Law, it is up to the arbitrators to decide on their fees and costs of the procedure in general, furthermore, they decide which party bears the costs of the procedure. Regularly, the arbitrators will more or less follow the rules established in civil law court procedures according to which costs are born by the party which was unsuccessful in the arbitration procedure with an obligation to reimburse costs to the succeeding parties.

The Liechtenstein Rules on the contrary provide for clear rules as to allocation of costs, however with some discretion for the arbitrators. In addition, the Liechtenstein Rules clearly describe costs of the procedure as well as fees of the arbitrators, regularly depending on complexity of the case as well as the value in dispute.

10. What are the basic rules of document disclosure in arbitration? Which documents do not require disclosure?

Generally, it is up to the parties to argue or defend their position and to proof this with witness statements or appropriate documents available to such party. Liechtenstein law does not know mandatory obligations to disclose any and all documentation in general or upon request of the counterparty. If a party refuses disclosure of certain documents specified by the counterparty, it is up to the arbitrators to consider this when evaluating evidences.

Disclosure of certain types of documents may be mandatory in exceptional cases only, e.g. if such disclosure was enforceable on the basis of civil law obligations, e.g. if a document qualifies as a “joint document”, such as a contract.

In general, there is no obligation to disclose documents if such disclosure would lead to the infringement of e.g. professional secrecy

obligations (e.g. attorney-client-privilege) and in such cases, the arbitrators must not consider such refusal to have a negative impact on the position of the party which invokes such right.

11. What is the procedure for witness evidence in arbitration (namely, is it deposition based or witness examination or cross-examination)?

Again, it is generally up to the parties to define procedural rules, subsidiary it is the arbitrators which do so. Regularly, witnesses are examined in hearings in front of the arbitrators, whereby the arbitrators as well as counsel are allowed to question the witness. In general, questions must be posed in an open manner and must not be leading.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e., may not be disclosed to the Arbitrator)?

It is up to the parties how to conduct settlement discussions, regularly this is done between counsel (with the involvement of the parties or not) outside formal procedures, it is however also common that arbitrators try to trigger settlement discussion e.g. at the beginning of hearings.

13. Under what circumstances can an Arbitration Award be enforced, challenged or annulled?

Liechtenstein is party to the New York Convention. Foreign arbitration awards are therefore (contrary to court judgments) enforceable in Liechtenstein, vice versa Liechtenstein arbitration awards are acknowledged and enforceable in member states to the New York Convention.

Liechtenstein arbitration awards can be challenged by civil law claim in exceptional circumstances only:

- no valid arbitration agreement;
- a party was not properly informed of the appointment of an arbitrator or of the initiation of arbitration procedures;
- a party was not able to properly present its case or to defend its position in the arbitration procedure;
- the arbitration award deals with issues which were not covered by the arbitration agreement or the applications of a party;
- the formation of the arbitration panel was not in line with the agreements between the parties or the law;
- the arbitration procedure was conducted in a manner which is against Liechtenstein *ordre public*;
- the arbitration award is based on a false or falsified document;
- a witness or expert witness was giving false testimony or the counterparty has given a false oath and the arbitration award is based on such false statement;
- if counsel to a party, the counterparty or counsel to the counterparty set acts which qualify as fraud under criminal law;
- if one of the arbitrators or the arbitration panel infringed his duties when rendering the arbitration award or a prior award or judgment it is based on;
- if a judgment of a criminal court, which is the basis of the arbitration award, is set aside;
- if the arbitration award deals with issues which can not be made subject of an arbitration procedures (e.g. certain family law issues);
- if the arbitration award is against *ordre public.*