

## Developments in arbitration in Liechtenstein

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### **I. Introduction**

Liechtenstein is in an ideal position to serve as an arbitration forum for international disputes. On the one hand, players in the financial centre Liechtenstein have decades of experience in handling international matters and in managing large asset portfolios. On the other hand, prestigious law firms are available to provide the legal expertise necessary for the professional conduct of international arbitration proceedings, which, as a rule, require specialist knowledge and appropriate litigation experience. In addition, political neutrality, a central geographic position as well as an excellent infrastructure all contribute to the country's attractiveness as an arbitration location.

In recent times, the legal framework for arbitration in Liechtenstein has been improved considerably so that the door for forum shoppers will be wide open. The improvements stem from the complete revision of Liechtenstein's law of arbitral procedures, Liechtenstein's accession to the New York Arbitration Convention and the creation of its own set of arbitration rules, which are known as the Liechtenstein Rules.

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### **II. Complete revision of Liechtenstein's law of arbitral procedures and Liechtenstein's accession to the New York Arbitration Convention**

In 2010, Liechtenstein subjected its law of arbitral procedures, which is regulated in its Civil Procedure Code (*Zivilprozessordnung* – ZPO), to a complete revision. This entailed heavy reliance on the UNCITRAL Model Law on International Commercial Arbitration (the "UNCITRAL Model Law"), which is aimed at the international harmonisation of arbitration law, as well as the legislative provisions enacted into national Austrian law. The adoption of the Austrian provisions has the advantage, among others, that reference can be made to Austrian case law and legal doctrine to assist in the application of the legislation in Liechtenstein, which in turn guarantees legal certainty and continuity.

Another important step in the direction of increasing Liechtenstein's appeal as an arbitration location occurred with its accession to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Arbitration Convention") in 2011. Up to this point, Liechtenstein had not become a party to any multilateral agreements on the recognition

and enforcement of foreign arbitral awards; only two bilateral agreements, namely those with Switzerland and Austria, had, to a limited extent, allowed arbitral awards issued in Liechtenstein to be recognised and enforced abroad. Now, thanks to Liechtenstein's accession to the New York Arbitration Convention, its arbitral awards can also be recognised and enforced in any of the other contracting states. Since the judgements and orders of state courts can generally either not or only with difficulty be enforced abroad, arbitration in Liechtenstein now also offers a significant advantage in terms of enforceability over the state judicial system.

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### **III. The Liechtenstein Rules**

These dynamic developments in the Liechtenstein law of arbitral procedures were the catalyst for the creation of a set of arbitration rules which parties could choose to govern their contracts. In May 2012, the Liechtenstein Chamber of Commerce and Industry (LCCI) finally adopted the Liechtenstein Rules, whose origins can be traced back to a private initiative started by experienced arbitration lawyers who had grouped together to establish the Liechtenstein Arbitration Association (LIS) in 2011. The new Liechtenstein Rules represent an enactment that, on the one hand, effectively complements its revised law of arbitral procedures and, on the other hand, combines the advantages of a variety of tried and tested sets of arbitration rules, in particular the universally recognised UNCITRAL Arbitration Rules as well as the Swiss Rules.

Art. 611(1) of the Civil Procedure Code states: "*Subject to the mandatory provisions [...], the parties are free to determine the rules of procedure. The parties may thereby refer to other rules of procedure. Failing such agreement, the arbitral tribunal shall, subject to the provisions of this Code, conduct the arbitration in such manner as it considers appropriate.*" Accordingly, the principle of "party autonomy", which allows the parties to freely choose the law or rules of law governing their contract, largely applies to the conduct of arbitration proceedings and the parties may incorporate procedural rules for arbitration proceedings in their contract, such as, for example, the ICC Rules of Arbitration, the UNCITRAL Arbitration Rules – or also, as of late, the Liechtenstein Rules.

The new Liechtenstein Rules differ from traditional arbitration rules, in particular because they have the following characteristics:

a) *Simplicity*

Modern arbitration rules tend to become longer and more complex every time they are revised. In contrast to other sets of arbitration rules, such as the UNCITRAL Arbitration Rules (43 articles) or the ICC Rules of Arbitration (41 articles), the Liechtenstein Rules, which only have 32 articles, are concise and clearly understandable with a special emphasis on the simplicity of the proceedings.

b) *Confidentiality*

In practice, the confidentiality of arbitration proceedings is a matter of particularly high priority. However, in other sets of arbitration rules, the parties' requirement for discretion is either not taken into account or, if it is considered, then only to an insufficient degree. The UNCITRAL Arbitration Rules do not even mention confidentiality but simply provide for hearings to be generally held in camera and for arbitral awards only to be published under certain conditions (Art. 28[3] and Art. 34[5] of the UNCITRAL Arbitration Rules). The ICC Rules of Arbitration at least offer the parties the option of requesting orders to protect the confidentiality of the proceedings (Art. 22[3] of the ICC Rules of Arbitration).

In contrast, the Liechtenstein Rules stand out because they contain particularly wide-ranging provisions to protect the confidentiality of the arbitration proceedings. This protection begins with the eligibility criteria for the selection of arbitrators in that only persons subject to a statutory duty of confidentiality may be selected as arbitrators (Art. 6[1] of the Liechtenstein Rules). The production of documents is, as a rule, based on the Liechtenstein Civil Procedure Code and thus regulated in a very restrictive manner in comparison with the rules that apply in litigation conducted in the common law tradition. In addition, the arbitral tribunal may order, upon request from the producing party, that documents and evidence should not be handed over to the other party but rather be presented for inspection at the seat of the arbitral tribunal or at another suitable location, if the requesting party can show an interest in the confidentiality of the materials. Moreover, the arbitral tribunal is required to make all appropriate arrangements to protect justifiable confidentiality interests of the parties or third parties. In particular, it may order that an expert, who in turn is subject to a duty of professional secrecy, review the documents and report on any relevant content to the arbitral tribunal without the need to produce the documents for inspection by the arbitral tribunal or the other party (Art. 18[2] of the Liechtenstein Rules). All of the parties to the proceedings are subject to a strict duty of confidentiality, which is even guaranteed through the imposition of a con-

tractual penalty in the amount of CHF 50,000 (Art. 29 of the Liechtenstein Rules). No other set of arbitration rules contains such pronounced protection of confidentiality, which is why the Liechtenstein Rules are particularly attractive for parties with a strong requirement for discretion.

c) *Minimal administration*

In contrast to the UNCITRAL Arbitration Rules that are designed for ad hoc arbitral tribunals, the Liechtenstein Rules provide for institutional arbitration. Institutional arbitration involves arbitral proceedings that are administered and supervised by a (private) institution. The advantage of this is that the parties are not compelled to have recourse to the state courts if there are any problems, for example, in connection with the appointment of arbitrators.

It should be mentioned that, contrary to the usual institutional arbitration, the LCCI's Liechtenstein Rules do not provide for it to have its own administration. Unlike some foreign arbitral institutions, the LCCI does not maintain its own permanent and costly organisational structure dedicated to arbitration matters. Instead, the Liechtenstein Rules provide for a "quasi-institutional" system (Art. 31 and Art. 32 of the Liechtenstein Rules): Experienced experts recruited "ad hoc" and therefore on a case-by-case basis ensure the smooth conduct of individual arbitral proceedings. The parties are thus accorded the greatest possible degree of flexibility so as to cater for the special aspects of their individual case. At the same time, as part of their agreed cooperation, the LIS provides the LCCI with a secretariat for arbitration, which is staffed with independent and legally trained persons. On request from the parties, this secretariat will also, for specific arbitral proceedings, appoint an independent commissioner, who will make the decisions which would otherwise have to be made by a state court. Intervention by the commissioner is required, in particular, where the parties cannot agree on the appointment of the arbitrators or an arbitrator is to be removed or one of the parties seeks a review of the arbitration costs. As a rule, therefore, the existence of the arbitration proceedings will not come to the LCCI's attention, since the secretariat for arbitration only becomes involved if a request for the appointment of a commissioner is submitted.

As a result, the "quasi-institutional" system under the Liechtenstein Rules unites one large benefit of institutional arbitration, namely support for the proceedings without recourse to state courts, with the flexibility, cost efficiency and confidentiality of ad hoc proceedings.

#### **IV. Conclusions**

Private arbitration is an interesting and real alternative to the state judicial system. There can be manifold reasons for choosing arbitration. For one thing, there is the frequent wish by the parties for an arbitrator with specialist knowledge, for example, regarding trusts. The fact that the decision-making process in arbitration proceedings is usually faster also plays a not insignificant role. Moreover, parties with a particular requirement for discretion in relation to the legal dispute in question often decide in favour of arbitral proceedings. This is particularly true in the case of corporate disputes, which are frequently the type

of dispute heard in Liechtenstein and especially where there is a dispute involving foundation law. Through the creation of a modern law of arbitral procedures that adopts internationally recognised standards, Liechtenstein's accession to the New York Arbitration Convention and the enactment of the Liechtenstein Rules, which pay special attention to the parties' requirement for discretion, Liechtenstein's prominence as an arbitration location has grown enormously, and it has established the ideal conditions for conducting recognised arbitral proceedings of a qualitatively high standard.

*Author: Hannes Arnold, Batliner Gasser Rechtsanwälte*

## *Liechtenstein: worth a second glance*

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Liechtenstein provides a number of tangible benefits as a place to do business, with problems that seemed to exist at first glance often proving to be unfounded. First Advisory Group reviews and evaluates strategic options for clients in making such a decision and optimises the process of setting up business in Liechtenstein.

In addition to the known benefits in terms of holding structures or foundations, the conditions available to foreign companies looking to establish a physical presence in Liechtenstein are far more favourable than the country's small size would suggest. Liechtenstein welcomes companies looking to set up business that will promote growth, provide economic diversification and create jobs. For example, industry currently accounts for over 40% of Liechtenstein's economic output, clearly outperforming financial services, the sector for which the country is best known.

In most cases, obstacles that at first glance would seem to rule out Liechtenstein as a business location can easily be overcome. Companies requiring substantial space for production facilities, for example, could opt to have a production site very close by in Switzerland combined with administrative offices in Liechtenstein – a solution that would have distinct economic, tax and logistical advantages.

In addition, first-rate office infrastructure is currently available on excellent terms due to recent restructuring in banking, financial services and other sectors. Highly skilled managerial and administrative staff are readily available in Liechtenstein, due in

part to the ease of commuting to Liechtenstein from Switzerland, Western Austria and Southern Germany.

The high standard of living in Liechtenstein and its proximity to Germany, Austria and Switzerland, the mountains and southern European countries enhance Liechtenstein's appeal in terms of key factors for attracting highly qualified personnel.

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#### ***Criteria and benefits of a location in the heart of Europe***

Companies setting up business in Liechtenstein can achieve sustained improvements in terms of basic operating conditions. Traditionally, Liechtenstein offers a stable legal and business environment, a liberal taxation system, ready access to the EEA/EFTA markets and due diligence rules that meet the highest international standards.

With its modern, business-friendly tax system, favourable legislation, a highly skilled workforce in a market where strikes are virtually non-existent and a modern well-connected transport system, Liechtenstein as a business location provides significant added value and optimum conditions for development and innovation.

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#### ***First Advisory Group provides all-round support to clients***

First Advisory Group's specialist departments provide comprehensive services to assist companies in making location

decisions, implementing business plans, obtaining the necessary financing from banks or private investors, selecting the right form of entity and optimising its tax structures. If required, we can also advise on all the formal requirements for incorporation and setting up business.

Based in the centrally located city of Vaduz, with offices in Europe, Central America and Asia, First Advisory Group also has access to the latest benchmark data, comparative studies and appropriate expertise to facilitate objective assessment and decision-making.

Our services also include customised analysis of relevant locations and market conditions and assistance in formulating appropriate business and distribution concepts. First Advisory

Group can also investigate and advise on the contractual aspects of buying or renting office premises and real estate.

Business relocation is usually a highly complex undertaking for companies, which has major economic implications. It is therefore crucial to obtain advice from a partner with extensive local expertise and in-depth knowledge of potential success factors and other aspects relevant to the location concerned.

*Author: Christian Wille, Liechtenstein Market Head*

You can send your new address or any general feedback concerning our Memo to clients to [marketing@first.li](mailto:marketing@first.li)