

International Comparative Legal Guides



International Arbitration 2021

A practical cross-border insight into international arbitration work

18th Edition

Featuring contributions from:

Ashurst LLP

Attorneys at law Ratiolex Ltd

Bae, Kim & Lee LLC

Baker McKenzie

Bär & Karrer Ltd.

BDO LLP

Boss & Young, Attorneys-at-Law

Cadwalader, Wickersham & Taft LLP

Cartier Meyniel Schneller

Charles Russell Speechlys LLP

Costa Tavares Paes Advogados

Dentons Eric Silwamba Jalasi and Linyama

Diana Hamade Attorneys at Law

Dr. Colin Ong Legal Services

ECC

Fatur Menard Law Firm

Georgiev, Todorov & Co. Law Offices

GrahamThompson

Gregoriou Law Firm

GST LLP

HFW

Kachwaha and Partners

Kanokanga & Partners

Kennedys

LawFed BRSA

Legance – Avvocati Associati

Maples Group

Montezuma Abogados

Mori Hamada & Matsumoto

Paul, Weiss, Rifkind, Wharton & Garrison LLP

Pelinari & Pelinari Law Firm

Russian Arbitration Center at the Russian
Institute of Modern Arbitration

SLV Legal

TripleOKLaw Advocates, LLP

Van Doorne N.V.

Victoria Associates

Walser Attorneys at Law Ltd.

Weber & Co.

Williams & Connolly LLP

Wilmer Cutler Pickering Hale and Dorr LLP

Zellberg Advokatbyrå AB



ICLG.com

Preface

Gary Born, Chair, International Arbitration Practice Group & Charlie Caher, Partner,
Wilmer Cutler Pickering Hale and Dorr LLP

Expert Analysis Chapters

- 1** **Climate Change Arbitration and Conflicts of Law**
Charlie Caher & Marleen Krueger, Wilmer Cutler Pickering Hale and Dorr LLP
- 8** **Access to Justice in Arbitration – Costs and Technology**
Katherine Proctor & Alexandra Miller, Kennedys
- 12** **Pre-award Interest, and the Difference Between Interest and Investment Returns**
Gervase MacGregor & David Mitchell, BDO LLP
- 16** **Consequences of ‘Brexit’ on International Dispute Resolution**
Melis Acuner, Simon Walsh & Emma Farrow, Cadwalader, Wickersham & Taft LLP

Asia Pacific

- 21** **Overview**
Dr. Colin Ong Legal Services: Dr. Colin Ong, QC
- 38** **Australia**
HFW: Nick Longley & Chris Cho
- 50** **Brunei**
Dr. Colin Ong Legal Services: Dr. Colin Ong, QC
- 59** **China**
Boss & Young, Attorneys-at-Law: Dr. Xu Guojian
- 72** **India**
Kachwaha and Partners: Sumeet Kachwaha & Dharmendra Rautray
- 85** **Japan**
Mori Hamada & Matsumoto: Yuko Kanamaru & Yoshinori Tatsuno
- 94** **Korea**
Bae, Kim & Lee LLC: Tony Dongwook Kang & Hongjoong Kim
- 102** **Singapore**
HFW: Paul Aston & Suzanne Meiklejohn

Central and Eastern Europe and CIS

- 112** **Austria**
Weber & Co.: Katharina Kitzberger & Stefan Weber
- 121** **Bulgaria**
Georgiev, Todorov & Co. Law Offices: Tsvetelina Dimitrova
- 130** **Romania**
SLV Legal / Pelinari & Pelinari Law Firm: Alexandru Stanescu & Andrei Pelinari
- 140** **Russia**
Russian Arbitration Center at the Russian Institute of Modern Arbitration: Yulia Mullina, Valeriia Butyrina & Arina Akulina
- 153** **Slovenia**
Fatur Menard Law Firm: Maja Menard & Ema Patricija Končan
- 161** **Turkey**
ECC: Ceren Çakır

Western Europe

- 170** **Overview**
LawFed BRSA: Mauro Rubino-Sammartano
- 177** **England & Wales**
Cadwalader, Wickersham & Taft LLP: Melis Acuner, Simon Walsh & Emma Farrow
- 196** **Finland**
Attorneys at law Ratiolex Ltd: Timo Ylikantola & Tiina Ruohonen
- 204** **France**
Cartier Meyniel Schneller: Marie-Laure Cartier, Alexandre Meyniel & Yann Schneller
- 215** **Germany**
Ashurst LLP: Dr. Judith Sawang LL.M., Dr. Nicolas Nohlen LL.M. (Yale) & Tilmann Hertel LL.M.
- 224** **Greece**
Gregoriou Law Firm: Stelios H. Gregoriou & Charilaos-Ioannis S. Gregoriou

233 **Ireland**
Maples Group: Brian Clarke & Graham O'Doherty

243 **Italy**
Legance – Avvocati Associati: Stefano Parlatore,
Daniele Geronzi, Daria Pastore & Bianca Berardicurti

253 **Liechtenstein**
Walser Attorneys at Law Ltd.: Dr. *iur.* Manuel Walser
& Lisa Sartor

262 **Netherlands**
Van Doorne N.V.: Rogier Schellaars, Bas van Zelst &
Bas Keizers

270 **Portugal**
Victoria Associates: Duarte G. Henriques & João
Nuno Frazão

278 **Sweden**
Zellberg Advokatbyrå AB: Lina Bergkvist & Maria Zell

286 **Switzerland**
Bär & Karrer Ltd.: Alexandra Johnson & Nadia Smahi

Latin America

295 **Investment Arbitration Overview**
GST LLP: Diego Brian Gosis, Ignacio L. Torterola &
Quinn Smith

305 **Brazil**
Costa Tavares Paes Advogados: Vamilson José
Costa & Antonio Tavares Paes Jr.

314 **Mexico**
Baker McKenzie: Alfonso Cortez Fernández &
Francisco Franco

321 **Peru**
Montezuma Abogados: Alberto José Montezuma
Chirinos & Mario Juan Carlos Vásquez Rueda

Middle East / Africa

331 **Overview**
Diana Hamade Attorneys at Law: Diana Hamadé &
Nada Al Ghurair

338 **Kenya**
TripleOKLaw Advocates, LLP: John M. Ohaga & Isaac
Kiche

348 **Qatar**
Charles Russell Speechlys LLP: Paula Boast & Niel
Coertse

357 **United Arab Emirates**
Charles Russell Speechlys LLP: Mazin Al Mardhi &
Thanos Karvelis

366 **Zambia**
Dentons Eric Silwamba Jalasi and Linyama: Joseph
Alexander Jalasi, Jr. & Mwape Chileshe

376 **Zimbabwe**
Kanokanga & Partners: Davison Kanokanga & Prince
Kanokanga

North America

386 **Overview**
Paul, Weiss, Rifkind, Wharton & Garrison LLP:
H. Christopher Boehning & Carter Greenbaum

397 **Bermuda**
Kennedys: Mark Chudleigh & Lewis Preston

407 **Turks and Caicos Islands**
GrahamThompson: Stephen Wilson QC

414 **USA**
Williams & Connolly LLP: John J. Buckley, Jr. &
Jonathan M. Landy

Liechtenstein



Dr. iur. Manuel Walser



Lisa Sartor

Walser Attorneys at Law Ltd.

1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

The Liechtenstein law of arbitration is regulated in the eighth section of the Liechtenstein Code of Civil Procedure (“CCP”) (§§ 594–635 Liechtenstein CCP). § 598 *et seq.* of the Liechtenstein CCP govern the content and scope of an arbitration agreement.

§ 598 Liechtenstein CCP provides that an arbitration agreement is an agreement by the parties to submit to arbitration any or all disputes that have arisen or will arise in the future between them, in relation to a contractual or non-contractual relationship between them. The arbitration agreement may be concluded in the form of a separate agreement or as a clause in a contract.

In addition, the arbitration rules of the Liechtenstein CCP also apply to arbitral proceedings initiated on the basis of a last will and testament, certain non-contractual legal relationships, or on the basis of statutes or articles of incorporation of a corporate legal entity.

1.2 What other elements ought to be incorporated in an arbitration agreement?

An arbitration agreement should also specify whether an *ad hoc* or institutional arbitration procedure should be used in the event of a dispute. If an *ad hoc* arbitration procedure is agreed upon, reference should be made to the procedural rules which are to apply to the arbitration. On the other hand, in the case of institutional arbitration, reference should be made to the arbitration rules that the parties wish to apply.

An arbitration agreement should also contain provisions on the number of arbitrators, the seat of the arbitral tribunal and the language in which the proceedings are to be conducted.

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

The ordinary courts are obliged to recognise and enforce validly concluded arbitration agreements on the basis of the legislation under §§ 594–635 Liechtenstein CCP (see question 3.3 below).

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

The arbitration procedure is regulated in the eighth section of the Liechtenstein CCP. The provisions on arbitration proceedings of §§ 594–635 Liechtenstein CCP are divided into 10 titles.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

The provisions of §§ 594–635 Liechtenstein CCP are generally applicable to arbitration proceedings where the seat of the arbitration is within Liechtenstein. Accordingly, Liechtenstein arbitration law does not distinguish between national and international arbitration proceedings.

However, according to § 594 para. 2 Liechtenstein CCP, certain provisions of Liechtenstein arbitration law are also applicable to arbitral proceedings if the seat of the arbitral tribunal is located outside Liechtenstein or if the seat of arbitral tribunal has not yet been determined.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

Since the Liechtenstein law on arbitration is based on the corresponding Austrian law, which in turn is based on the United Nations Commission on International Trade Law (“UNCITRAL”) Model Law, the first eight of the 10 titles of the Liechtenstein arbitration law actually govern international arbitration based on the UNCITRAL Model Law.

In contrast to the UNCITRAL Model Law, however, in addition to international commercial arbitration, national and international commercial and non-commercial arbitration also falls within the scope of the Liechtenstein law on arbitration.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

The mandatory rules of Liechtenstein arbitration proceedings include equal treatment of the parties, the parties’ right to be heard and the parties’ right to be represented by a person of their choice.

In addition to several others, the following rules are also considered mandatory: 1) limitations imposed on the arbitrability of disputes; 2) rules on the form of the arbitration agreement; 3) rules on application to the ordinary court for the granting of preliminary or interim relief; 4) rules on the impartiality and independence of arbitrators; 5) principles of the gathering of evidence and the consideration of evidence; 6) right of the defendant to reply to the statement of claim; 7) rules on judicial assistance; 8) rules on the arbitral award and its effects; 9) rules governing the closing of the arbitral proceedings and the right to challenge the arbitral award; and 10) rules on consumer and employee protection.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is “arbitrable”?

According to § 599 Liechtenstein CCP, the subject of an arbitration agreement may be any claim involving an economic interest (“*vermögensrechtlicher Anspruch*”) for which the ordinary courts would have jurisdiction.

However, an arbitration agreement whose subject matter is not connected with an economic interest also has legal effect if the subject matter can also be settled by means of a settlement.

Pursuant to § 599 para. 2 Liechtenstein CCP, family law matters and claims arising from apprenticeship contracts under the Law on Vocational Training are not arbitrable.

In accordance with § 599 para. 3 Liechtenstein CCP, the jurisdiction of the Liechtenstein courts in proceedings that can only be initiated on the basis of mandatory provisions of Liechtenstein law (i.e. *ex officio* or upon application or notification by the foundation supervisory authority or the public prosecutor’s office) cannot be waived by an arbitration clause in the statutes or equivalent constitutional documents of a corporate entity, foundation or trust.

Commercial disputes are without doubt arbitrable. Similarly, according to prevailing opinion, certain non-commercial disputes involving corporations, foundations or trusts are arbitrable unless these proceedings would aim at the initiation of supervisory proceedings. On the other hand, claims for the dismissal of a member of the board of trustees of a Liechtenstein foundation and claims for the rescission or nullification of resolutions of the board of trustees of a Liechtenstein foundation are not arbitrable.

3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?

Pursuant to § 609 para. 1 Liechtenstein CCP, the arbitral tribunal shall decide on its own jurisdiction. The decision can be made with the decision on the merits of the dispute, but also separately in a separate arbitral award.

3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

§ 601 para. 1 Liechtenstein CCP provides that if an action is brought before court in a matter which is subject to an arbitration agreement, the court shall dismiss the action for formal reasons unless the defendant raises the merits of the case or gives an oral hearing without objecting.

3.4 Under what circumstances can a national court address the issue of the jurisdiction and competence of an arbitral tribunal? What is the standard of review in respect of a tribunal’s decision as to its own jurisdiction?

A national court shall deal with the issue of the jurisdiction and competence of an arbitral tribunal either if a party commences ordinary court proceedings following a decision of the arbitral tribunal denying its jurisdiction because of the absence of an arbitration agreement or because the arbitration agreement is invalid, or if a party files an application to challenge an arbitral award on the grounds that the arbitral tribunal unduly assumed or denied its jurisdiction.

3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

Of great importance from a Liechtenstein perspective is the personal scope of arbitration clauses in the statutes of Liechtenstein corporations and foundations and in the trust deeds/declarations of Liechtenstein trusts. An arbitration clause that is part of the statutes of a corporation is binding upon the corporation, its shareholders and corporate bodies. An arbitration clause may be unilaterally ordered by the founder upon the foundation’s formation. It is in principle binding for the founder, the beneficiaries, and – depending on the nature of the respective claim – also the foundation bodies.

There are also several other instances where an arbitration clause under Liechtenstein law may have binding effect on non-signatories: for example, in cases of (singular or universal) succession, the successor is, in principle, automatically bound by the arbitration agreement. Furthermore, a third-party beneficiary of a contractual relationship may also invoke the arbitration clause, which is part of the underlying contract, when asserting his claim.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

Limitation periods of arbitration proceedings are regulated by the provisions of §§ 1451 *et seq.* Liechtenstein General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, “ABGB”) and can last up to 40 years. These limitation periods are considered to be substantive and not procedural. From a conflict-of-law perspective, the limitation period is therefore generally governed by the law applicable to the underlying claim.

3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

In accordance with Liechtenstein law, all court and arbitration proceedings are discontinued as soon as insolvency proceedings are formally opened. Discontinued arbitration proceedings may be resumed by the receiver, by related parties on the side of the insolvent party and by the opposing party in the arbitration proceedings. If the disputed claim needs to be filed in the insolvency proceedings, the arbitration proceedings may, however, only be resumed after the hearing on the recognition of the filed claims.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

According to § 620 Liechtenstein CCP, the arbitral tribunal shall decide the dispute in accordance with the legal provisions or rules agreed by the parties. Unless the parties have expressly agreed otherwise, a choice of law refers to the substantive law of the relevant jurisdiction and not to its conflict-of-law provisions.

The arbitral tribunal shall apply such laws as it considers appropriate where the parties have not chosen any. However, the arbitral tribunal may only decide on the basis of principles of equity if the parties have expressly authorised the arbitral tribunal to do so.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

The application of mandatory substantive provisions of the law of the forum is not regulated by law. If a violation of procedural or substantive public order constitutes a ground for challenge of the arbitral award, the arbitral tribunal shall, however, be obliged to prevent it.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

Since Liechtenstein arbitration law does not contain any provisions on the law governing the formation, validity and legality of the arbitration agreement, the general provisions of the Liechtenstein Code of International Private Law on mutual contracts shall apply. The arbitration agreement is generally governed by the law chosen by the parties. If no (valid) choice of law has been made, it is governed by the law of the forum.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

Apart from the fact that according to § 605 Liechtenstein CCP, the arbitrators must be independent and impartial, the parties have absolute autonomy in determining the criteria to be met by an arbitrator in order to act in that capacity.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

Yes, there is a default procedure for cases where the parties have not agreed on a procedure for selecting arbitrators or where the agreed procedure fails. The ordinary courts intervene in such cases.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

If the parties have not agreed on a procedure for the selection of arbitrators, they may do so within four weeks of receipt by the other party of the relevant request from one party for the selection of a sole arbitrator. If the parties do not agree within the specified

time limit, the court shall, upon request of one of the parties, appoint the sole arbitrator. The same procedure shall in principle also apply if a party fails to appoint an arbitrator in the context of the selection procedure for the composition of an arbitral tribunal.

§ 604 para. 3 Liechtenstein CCP provides that if the parties have agreed on a procedure for the selection of arbitrators and one of the parties does not act in accordance with this procedure, or if the parties or arbitrators cannot reach an agreement in accordance with this procedure, or if a third party fails to perform a task assigned to him or her over the course of this procedure, either party may request the court to appoint arbitrators accordingly, unless the agreed selection procedure provides otherwise.

5.4 What are the requirements (if any) imposed by law or issued by arbitration institutions within your jurisdiction as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?

Pursuant to § 605 Liechtenstein CCP, a person who is willing to act as an arbitrator must disclose any circumstances which may raise doubts as to his impartiality or independence or which may conflict with the agreed criteria of the parties. Active judges of ordinary courts may not accept an appointment as arbitrator during their employment.

In addition, the Liechtenstein Rules issued by the Liechtenstein Chamber of Commerce and Industry ("LCCP") contain corresponding provisions. Art. 10.2 of the Liechtenstein Rules provides that the appointing party is obliged to provide the requested arbitrator with the information about the parties and the subject matter of the dispute which is necessary for this purpose.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

§§ 611 *et seq.* Liechtenstein CCP specify the rules governing the conduct of the arbitration procedure. Section I.C. Art. 15 *et seq.* of the Liechtenstein Rules contain more specific provisions on the arbitration procedure, which shall apply if these rules have been agreed by the parties to the arbitration.

6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

The Liechtenstein CCP contains default provisions on the arbitration procedure. In principle, the parties may autonomously determine the criteria for the conduct of the arbitration procedure.

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

There are no specific rules that govern the conduct of counsel in arbitral proceedings. The general rules of the Attorneys' Act and the Code of Conduct apply.

6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

The arbitral tribunal is obliged to conduct the arbitration proceedings and render the arbitral award. Prior to accepting their appointment, they are also required to disclose any potential conflict of interest. The arbitrators must take part in the vote of the arbitral tribunal on the arbitral award and are obliged to execute the award in writing and sign it. The arbitrators shall also be required to act impartially and independently, to render accounts and to provide all relevant information in this regard. It is disputed whether the arbitrators are obliged to render an enforceable arbitral award.

Based on a principle of general civil law, arbitrators are also obliged to maintain the confidentiality of the arbitral proceedings. Information in relation to the deliberations of the arbitral tribunal may therefore not be disclosed. There are other specific provisions on confidentiality governed by the Liechtenstein Rules. Ultimately, the arbitrators are liable in the event of a breach of their duties and obligations.

The arbitrators shall be reimbursed for their expenses. In addition, they are entitled to a fee and may request advances on costs.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

Yes, there are such rules. These are contained in the Attorneys Act. In principle, only lawyers admitted to practise in Liechtenstein and the European Economic Area may provide legal services or represent parties professionally in judicial or extrajudicial proceedings. However, there are no specific rules governing the issue of the appearance of lawyers from other jurisdictions in arbitral proceedings conducted in Liechtenstein. It is therefore not clear whether such restrictions do not apply to arbitration proceedings.

6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

There is no provision on arbitration under Liechtenstein law that provides for the immunity of arbitrators.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

According to § 595 Liechtenstein CCP, ordinary courts may only intervene in matters governed by the Liechtenstein law on arbitration if this is expressly provided for. The provisions on judicial assistance contained in § 619 Liechtenstein CCP are the only provisions in connection with the conduct of the arbitration proceedings as such, which refer to the court's authority to intervene in these proceedings. However, the court may act only at the request of the arbitrators or the parties, provided that in the latter case the arbitrators have given their prior consent.

The arbitrators or the parties may request the court to take judicial measures that the arbitral tribunal would not be entitled to take. The court may also, in the context of a request for judicial assistance, request a foreign court or authority to take the requested measures. The provisions of §§ 27, 28 and 29 of the Liechtenstein Act on Jurisdiction apply.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitral tribunal in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitral tribunal seek the assistance of a court to do so?

If the assertion of a claim becomes impossible or more difficult or in case of a threat of irreparable damage, an arbitral tribunal may award a preliminary or interim relief unless the parties have agreed otherwise. Such preliminary or interim relief shall be granted by the arbitral tribunal after hearing both parties. No preliminary or interim relief will be granted on an *ex parte* basis. Furthermore, the arbitral tribunal does not have the power to grant preliminary or interim relief against third parties ("*Drittverbote*").

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

Pursuant to § 602 Liechtenstein CCP, an arbitration agreement does not preclude a party from applying to a state court for preliminary or interim relief before or during the arbitration proceedings and that the court orders such reliefs. The grant of preliminary or interim relief by a court neither implies a renunciation of the arbitration agreement nor of the jurisdiction of the arbitral tribunal in the main arbitration proceedings. In the context of provisional or interim relief, there is compulsory dual jurisdiction of the ordinary courts and the arbitral tribunal. Although the jurisdiction of an arbitral tribunal for granting interim or provisional relief may be waived, the parties cannot exclude the jurisdiction of the ordinary court in this respect.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

Even before the amendments to the Liechtenstein arbitration law, the ordinary courts had jurisdiction for granting preliminary or interim relief and thus decided on corresponding applications by the parties in the context of arbitration proceedings.

7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?

The court would dismiss applications for injunctions in aid of an arbitration, as anti-suit injunctions are not recognised in Liechtenstein law on civil procedure.

7.5 Does the law of your jurisdiction allow for the national court and/or arbitral tribunal to order security for costs?

The Liechtenstein law on arbitration does not regulate the ordering of security of costs by the arbitral tribunal. However, the parties may agree on provisions on cost security in the arbitration agreement. In contrast, the Liechtenstein Rules contain extensive provisions on cost security. On the basis of § 611 Liechtenstein CCP, if no agreement in this effect has been

reached between the parties, the arbitral tribunal may, at its discretion, order security of costs based on the general rules of the Liechtenstein CCP governing the arbitration proceedings.

If the claimant in the arbitration proceedings is domiciled outside the European Union and it is likely that the claim for costs will not be enforceable in his country of domicile, the arbitral tribunal may provide the defendant with security for costs.

On the other hand, the national court may order security for costs in accordance with §§ 56–62 Liechtenstein CCP.

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

The ordinary court shall refuse to enforce an arbitral tribunal's grant of preliminary interim relief if: 1) the seat of the arbitration is in Liechtenstein and the measure is defective in such a way that, in the case of a national arbitral award, it would constitute a ground for refusing such an award; 2) the seat of the arbitration is not in Liechtenstein and the measure is defective, which, in the event of an arbitral award, would constitute a ground for refusing recognition and enforcement of such an award; 3) the enforcement of a measure would be incompatible with the enforcement of previous court measures; or 4) the measure provides for an unknown means of enforcement (see § 610 para. 4 Liechtenstein CCP).

The ordinary court will revoke the respective enforcement measure upon application of a party if certain statutory criteria have been met (e.g. the term of the measure has expired or the arbitral tribunal has limited or revoked the respective measure).

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

The rules for the conduct of the arbitration proceedings may be determined autonomously by the parties. The law provides that the parties may submit all the evidence they wish to rely on in their respective submissions (statement of claim, statement of defence), or may indicate in such submissions which evidence they wish to rely on in the course of the arbitration proceedings.

The arbitral tribunal will decide whether an oral hearing will take place or whether the proceedings will be conducted only in writing, unless the parties have agreed otherwise. In addition, it decides on the admissibility of evidence as well as on the conduct of evidence proceedings, the outcome of which the arbitral tribunal must assess at its discretion (see § 616 Liechtenstein CCP). Furthermore, the arbitral tribunal may appoint experts as witnesses and oblige the parties to provide them with all relevant information.

The Liechtenstein Rules contain further provisions on the conduct of evidence procedures which refer to the respective provisions of the Liechtenstein CCP on the taking of evidence in ordinary court proceedings (see Art. 18 of the Liechtenstein Rules and §§ 303 *et seq.* Liechtenstein CCP).

Thus, the arbitral tribunal has wide discretion when deciding on the procedure of taking evidence. It is also possible for an arbitral tribunal to conduct the evidence procedure in accordance with the IBA Rules on the Taking of Evidence, especially in cases involving parties from civil and common law jurisdictions.

8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?

The arbitral tribunal is based on the principle of party autonomy and therefore has no sovereign powers. It may not compel the production of evidence such as the appearance and testimony of witnesses, nor may it request a witness or expert witness to take an oath. For example, the arbitral tribunal may freely consider the refusal of a witness to provide evidence, but has no decisive authority to compel that witness to do so. In such cases, the arbitral tribunal or the parties may, with the prior consent of the arbitral tribunal, request judicial assistance from the ordinary court.

8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?

The court provides judicial assistance upon application if a witness has to be compelled to testify, if a witness has to be asked to take an oath, if documents have to be formally served, if a request has to be made to a foreign court or authority, or if a curator has to be appointed.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal and is cross-examination allowed?

The production of written and/or oral witness testimony is regulated by the Liechtenstein CCP, the Liechtenstein Rules and the Code of Conduct for Liechtenstein Lawyers, and the Attorney Act.

Witnesses cannot be sworn in by the arbitral tribunal. To do so, the arbitral tribunal would have to submit a corresponding application to the ordinary court. The law on arbitration does not contain any specific provision prohibiting cross-examination.

8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

Professional privilege in case of attorneys covers all information ever entrusted to a person in his or her capacity as a lawyer.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the award contains reasons or that the arbitrators sign every page?

Pursuant to § 623 Liechtenstein CCP, the arbitral award shall be made in writing and signed by the sole arbitrator or arbitral tribunal. Unless the parties have agreed otherwise, in arbitration proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall be sufficient, provided that the chairman or another arbitrator shall indicate on the arbitral award which circumstance has caused the

missing signatures. Unless the parties have agreed otherwise, the award shall also state the arbitral tribunal's legal reasoning on which it is based. The arbitral award needs to be dated and shall contain a reference to the seat of the arbitral tribunal. The award shall be deemed to have been rendered on that date and in that place.

According to Art. 33 para. 2 Liechtenstein Execution Rules (*Exekutionsordnung*, "EO"), if the arbitral award needs to be enforced in Liechtenstein, the arbitral tribunal must confirm that the arbitral award has become final, binding and enforceable.

9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?

In the event of errors in calculation, clerical errors, misprints or similar errors, the arbitral tribunal may – even without a request to that effect by a party – rectify the arbitral award within a period of four weeks from the date of the arbitral award. According to § 627 Liechtenstein CCP, the parties may request that the arbitral tribunal rectify the arbitral award or that the arbitral tribunal provide them with explanatory remarks on (unclear) parts of the arbitral award. If a claim has been asserted in the course of the arbitral proceedings and the arbitral tribunal has not decided on it in the arbitral award, the parties may also apply to the arbitral tribunal for a supplementary award.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

The only remedy against an arbitral award may be an application to the ordinary court for setting the arbitral award aside. Pursuant to § 628 para. 2 Liechtenstein CCP, an arbitral award shall be set aside on the following grounds: 1) the absence of a valid arbitration agreement, the denial of the arbitral tribunal's jurisdiction despite the existence of a valid arbitration agreement, or the lack of capacity of a party under the applicable law to conclude an arbitration agreement; 2) the absence of any notice to a party of the arbitration proceedings or of the appointment of the arbitrators; 3) the arbitral award exceeded the scope of the arbitration agreement; 4) the composition of the arbitral tribunal did not comply either with the agreement between the parties or with the applicable provisions of the Liechtenstein CCP; 5) the arbitration proceedings were conducted in a manner which violated the Liechtenstein procedural *ordre public*; 6) the requirements which would permit the reinstatement of ordinary court proceedings have been fulfilled; 7) the subject matter of the dispute is not arbitrable under national law; or 8) the arbitral award violated the Liechtenstein substantive *ordre public*.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

The grounds for a challenge of an arbitral award, which are described in § 628 para. 2 sub-para. 7 (lack of arbitrability) and 8 (violation of the Liechtenstein *ordre public*) Liechtenstein CCP (see previous question 10.1), may also be invoked *ex officio*. According to prevailing doctrine, the parties to arbitral proceedings cannot waive these two grounds as bases for challenge either before or after the conclusion of the arbitration proceedings. All other grounds mentioned in § 628 para. 2 Liechtenstein CCP may be waived after the award has been rendered, but not before, in particular not in the arbitration agreement.

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

Since the list of grounds for challenge in § 628 para. 2 Liechtenstein CCP is exhaustive, the parties may not introduce further grounds as a valid basis for challenging an arbitral award.

10.4 What is the procedure for appealing an arbitral award in your jurisdiction?

Pursuant to § 628 para. 4 Liechtenstein CCP, the application to set aside the award must be filed within a period of four weeks from the day on which the applicant received the award. The Liechtenstein Court of Appeal has exclusive jurisdiction (see § 632 Liechtenstein CCP).

11 Enforcement of an Award

11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Liechtenstein ratified the New York Convention on 19th May 2011 with the reservation that arbitral awards are only recognised and enforced on the basis of reciprocity. This is irrespective of whether the disputes were of a commercial or non-commercial nature. The New York Convention entered into force in Liechtenstein on 5th October 2011.

11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

Liechtenstein concluded such a bilateral agreement (only) with Switzerland in 1970 and with Austria in 1975, which established the mutual recognition and enforcement of judgments and arbitral awards.

11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

Pursuant to Art. 1 *lit. m* of the EO, domestic arbitral awards which can no longer be judged by a higher instance are enforced by the Liechtenstein courts. With respect to foreign arbitral awards, the Liechtenstein CCP does not contain any provisions on the recognition and enforcement of foreign arbitral awards. § 631 para. 1 CCP merely states that recognition and enforcement is governed by the Liechtenstein Enforcement Act, which, however, does not contain any provisions on separate proceedings. The question of enforceability must therefore be answered as a preliminary question in enforcement proceedings.

11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

The effects of an arbitral award shall correspond to those of a

final judgment of an ordinary court. Thus, if questions have been finally decided by an arbitral award, a new hearing before an ordinary court is not possible.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

The recognition and enforcement of a foreign arbitral tribunal may be refused if it is in breach of the procedural or substantive *ordre public*. However, the courts exercise restraint in this respect and an appeal is generally only made if the content of the arbitral award contradicts the fundamental principles of the Liechtenstein legal system. A merely unjust result cannot justify an appeal to the *ordre public*.

12 Confidentiality

12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

Liechtenstein arbitration law does not contain any provisions on the question of a possible confidentiality obligation. § 633 para. 2 Liechtenstein CCP merely provides that the public may be excluded from proceedings following the challenge of an arbitral award at the request of a party if a legitimate interest exists. The exclusion of the public is therefore doubly restricted by the requirement of the existence of an application and a legitimate interest. The parties are therefore advised to include provisions on confidentiality already in the arbitration agreement.

In contrast, the Liechtenstein Rules deal extensively with the issue of confidentiality and numerous provisions have been laid down in this regard. For example, Art. 6 of the Liechtenstein Rules provides that only persons who are already subject to a duty of confidentiality due to their professional activities, such as lawyers, trustees and auditors, may be appointed as arbitrators.

Unless the parties have agreed otherwise, they are obliged under Art. 29.1 of the Liechtenstein Rules to maintain secrecy with respect to all arbitral awards and orders as well as all documents or facts submitted or disclosed by other parties to the arbitral proceedings in the course of the arbitral proceedings on which no other right exists, unless and to the extent that disclosure by one party is indispensable to comply with a legal obligation, to preserve or enforce a legal claim or to enforce or challenge the arbitral award. The parties, their representatives as well as the arbitrators and any authorised representatives shall take appropriate organisational measures to ensure confidentiality. If special confidentiality requirements are necessary, the arbitral tribunal shall have the authority to hand over the documents for examination to an expert who is also subject to a confidentiality obligation, but without the other parties having access to the documents.

The Liechtenstein Rules also explicitly state that the obligation to maintain confidentiality is not lifted upon conclusion of the arbitral proceedings, but must be maintained even after the end of the arbitral proceedings. Each breach of this obligation is punishable by a contractual penalty of CHF 50,000.00 (see Art. 29.7 Liechtenstein Rules).

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

Liechtenstein arbitration law does not contain any provisions

in this regard. If the parties agree to the application of the Liechtenstein Rules and the corresponding provisions on confidentiality have not been amended by agreement between the parties, the confidentiality of the arbitration proceedings shall be maintained even after the arbitration has ended.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

The possibility of appeal depends largely on the arbitrability of the subject matter of the dispute underlying the proceedings and the remedies available under the substantive law on the issue in question.

Thus, under the current arbitration law, family law matters and claims arising from apprenticeship contracts, which are governed by the Vocational Training Act, are not arbitrable. In addition, there is a mandatory jurisdiction in favour of the Liechtenstein ordinary courts for cases which can only be initiated upon application by the foundation authority or *ex officio* (namely in supervisory proceedings on foundations and/or trusts). In such cases, the jurisdiction of the ordinary courts cannot be excluded in favour of that of an arbitration court. In contrast, claims for damages are, in principle, arbitrable.

13.2 What, if any, interest is available, and how is the rate of interest determined?

The statutory interest rate under the ABGB is currently 5% *per annum* (see § 1000 para. 1 ABGB).

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

If the pending arbitral proceedings have been terminated, the arbitral tribunal shall decide on the reimbursement of costs, unless the parties have agreed otherwise. In assessing the question of reimbursement of costs, the arbitral tribunal shall take into account all the circumstances of the case and shall also take into account the outcome of the arbitral proceedings. The decision on any reimbursement of costs shall be made in the form of an arbitral award.

If a question pending before the arbitral tribunal is judged according to the provisions of the Liechtenstein Rules, the costs of the arbitral proceedings shall in principle be borne by the losing party to the extent that it has been defeated (see Art. 27 Liechtenstein Rules).

In principle, the fees and/or costs are determined according to the Liechtenstein law on the tariff for lawyers and legal agents.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

Whether or not claims resulting from an arbitral award are taxable depends on the method of payment and where the parties are domiciled at that time.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any “professional” funders active in the market, either for litigation or arbitration?

Liechtenstein law does not provide statutory rules governing third-party funding. Therefore, there are no restrictions as to arrangements between funders and litigants. There is no obligation to disclose funding arrangements either. However, if lawyers act as third-party funders, the general professional restrictions apply, since contingency and conditional fee arrangements (*quota litis*), which give a part of the proceeds to the lawyer, are prohibited between lawyers and their clients.

14 Investor State Arbitrations

14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as “ICSID”)?

No, Liechtenstein is not a party to the ICSID Convention.

14.2 How many Bilateral Investment Treaties (“BITs”) or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?

Liechtenstein is currently party to neither the Energy Charter Treaty nor to any BITs.

14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example, in relation to “most favoured nation” or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

Since Liechtenstein is not a party to any BITs, the question of noteworthy language does not arise.

14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?

As Liechtenstein is not a party to the above-mentioned conventions and agreements, no information can be given in this respect.

15 General

15.1 Are there noteworthy trends or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the types of dispute commonly being referred to arbitration?

Liechtenstein arbitration law was also comprehensively amended on the revision of Austrian arbitration law; the revised version entered into force on 1st November 2010.

In 2017, a further revision of arbitration law took place which, *inter alia*, provides that arbitration clauses in the articles of incorporation of legal entities, foundation articles and trust deeds are exempted from all restrictions which, until the above-mentioned date, could only apply to arbitration agreements with natural persons. This has the particular consequence that restrictions no longer apply to arbitration agreements with consumers. Furthermore, the requirement for a special power of attorney to conclude an arbitration agreement was abolished.

Another important change in arbitration law took place in July 2011, when Liechtenstein ratified the New York Convention on the Recognition and Enforcement of Arbitral Awards. As a result, one year later, the Liechtenstein Rules were issued by the Liechtenstein Chamber of Industry and Commerce.

In particular, disputes in company law, foundation and trust law are referred to arbitration.

15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

In view of the fact that the provisions on arbitration law have only recently been revised, and that the Liechtenstein Rules are still relatively new in international comparison, no major changes are planned at present.

15.3 What is the approach of the national courts in your jurisdiction towards the conduct of remote or virtual arbitration hearings as an effective substitute to in-person arbitration hearings? How (if at all) has that approach evolved since the onset of the COVID-19 pandemic?

With the Law of 8th April 2020 on accompanying measures in the administration and justice in connection with the coronavirus, the use of technical means of communication (videoconference) became possible for ordinary courts. Prior to the enactment of this law, ordinary courts could not conduct remote or virtual hearings. The arbitral tribunal may conduct remote or virtual arbitration hearings by applying such rules accordingly and depending on what the parties have agreed (e.g. in the arbitration agreement, the terms of reference, etc.). The consent of the parties is thus required.



Dr. iur. Manuel Walser, LL.M. is a lawyer and the head of Walser Attorneys at Law Ltd. in Vaduz. Since 2014, he has been a Board member of the Liechtenstein Arbitration Association as well as a Board member and, since 2019, the Vice-President of the Liechtenstein Bar Association. He regularly acts as counsel and arbitrator in international and national arbitration cases. Since 2017, he has been the official arbitrator of the Principality of Liechtenstein at the Court of Conciliation and Arbitration of the OSCE and a member of the Board of Foundation of Liechtenstein Music School. Since 2018, he has been a member of the Board of Directors of Liechtenstein Broadcasting, and since 2020, a member of the Examination Commission for Notaries. His track record also includes the representation of private and institutional clients in civil and commercial disputes before the state courts, in particular in international corporate, foundation and trust matters. In 2018, Manuel published the monograph *Arbitrability in Liechtenstein Law*; the work provides the first manual for arbitration in Liechtenstein and across its borders. In 2019, he published his work *Seat of Arbitration in Liechtenstein Law*. Furthermore, he regularly publishes on matters of arbitration law and speaks at national and international conferences.

Walser Attorneys at Law Ltd.

Lettstrasse 37
PO Box 580
LI-9490 Vaduz
Liechtenstein

Tel: +423 265 80 80
Email: manuel.walser@walser-law.li
URL: www.walser-law.li



Lisa Sartor, MLaw has been a legal assistant at Walser Attorneys at Law Ltd. in Vaduz since October 2019. She works in the litigation and arbitration department and advises national and international clients.

Walser Attorneys at Law Ltd.

Lettstrasse 37
PO Box 580
LI-9490 Vaduz
Liechtenstein

Tel: +423 265 80 80
Email: lisa.sartor@walser-law.li
URL: www.walser-law.li

Walser Attorneys at Law Ltd. is an international and domestic law firm which advises private clients as well as institutional clients in the various areas of Liechtenstein law, and represents them before state courts, arbitration courts and authorities. The main focus of the firm's activity is in company, foundation and trust law, commercial, corporate and M&A, banking and finance as well as in dispute resolution before state courts and arbitration courts.

The firm advises and represents private clients and companies, foundations and trusts from Liechtenstein and abroad. Its institutional clients include, among others, banks, asset managers and fiduciary service providers, as well as public authorities.

The firm's main areas of practice are:

- Foundations and trusts.
- General corporate law.
- Commercial law and contracts.

- Litigation.
- Arbitration.
- Private clients.
- General capital markets law.
- Law of obligations and contract law.
- Reorganisation and insolvency.
- White-collar crime and international judicial assistance.

www.walser-law.li

walser

ICLG.com

Other titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Finance & Leasing
Aviation Law
Business Crime
Cartels & Leniency
Class & Group Actions
Competition Litigation
Construction & Engineering Law
Consumer Protection
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Tax
Cybersecurity
Data Protection
Derivatives
Designs

Digital Business
Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Environmental, Social & Governance Law
Family Law
Fintech
Foreign Direct Investment Regimes
Franchise
Gambling
Insurance & Reinsurance
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law

Oil & Gas Regulation
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Technology Sourcing
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms