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The International Comparative Legal Guide to:

International Arbitration 2010

A practical cross-border insight into international arbitration

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1 Arbitration Agreements

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

An arbitration agreement needs to be in written form. If parties - including a Liechtenstein party - agree to the submission to a foreign (non-Liechtenstein) arbitration panel, such agreement needs to be authenticated by a Liechtenstein court clerk or peace judge in order to be valid and binding on the Liechtenstein party (Art 53a JN).

Furthermore, arbitration agreements can only be entered into with regard to disputes that may be settled informally between the parties. Thus, issues such as annulment of marriages, paternity issues etc. cannot be handled by an arbitration panel.

Furthermore, of course, parties to an arbitration agreement need to have legal capacity to enter into such agreements.

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

The core provisions of arbitration agreements are the following, though statutory requirements do not exist:

- seat of the tribunal;
- method of appointment of arbitrators; and
- applicable procedural law or specific provisions as to the procedure.

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

There is no (published) jurisdiction of the Liechtenstein courts concerning this issue except for singular statements of the courts, according to which arbitration clauses need to be authenticated if a foreign arbitration tribunal is agreed upon (see also question 1.1).

As the Liechtenstein Code of Civil Procedure, which contains the Liechtenstein Rules on Arbitration has been drafted and issued based on the provisions of the Austrian Code of Civil Procedure, the courts regularly consider Austrian prejudices.

Furthermore, the new Liechtenstein Law on Arbitration - also based on appropriate Austrian provisions - provides for the clear rule that the court shall only intervene if explicitly provided for - therefore, the competences of the arbitration tribunal shall prevail.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in Liechtenstein?

The provisions on arbitration proceedings in Liechtenstein do form a specific section in the Code of Civil Procedure (Art 594 ZPO *et seq.*).

A new law on Arbitration Proceedings is in the process of being enacted (*Bericht & Antrag der Regierung betreffend die Totalrevision des Schiedsrichterlichen Verfahrens - Teilrevision der Zivilprozessordnung*) and is likely to come into effect at the beginning of 2011.

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

In general, there are no separate provisions; however, arbitration agreements providing for foreign arbitration shall only be binding on the Liechtenstein party if agreed upon in an authenticated manner.

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

The governing law on international arbitration is very "basic"; however, a new law is in the pipeline, which is closely drafted according to the Austrian provisions on arbitration - which in turn have been closely drafted along the UNCITRAL Model Law.

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

According to Art 615 there are only three mandatory rules governing international arbitration proceedings.

- Parties are not allowed to waive the right to rule out an arbitrator on the same grounds as they could rule out an ordinary judge (§ 603 ZPO).
- Parties cannot waive their right to receive the office copy of the arbitration award personally or via postal service. The office copy and the original have to bear the date of the arbitration award and must be signed by all arbitrators (§ 609 ZPO).

- The provisions concerning the invalidity of the arbitration award cannot be waived (§ 612 ZPO).

3 Jurisdiction

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

The governing law states that arbitration is allowed and arbitration agreements shall be binding as far as disputes are concerned, which may in general be settled by negotiation by the parties. This excludes specifically issues of legal status (e.g. marriage, paternity).

According to the new law expected to be issued at the earliest at the end of 2009 any and all pecuniary issues shall be arbitrable, non-pecuniary issues shall be arbitrable insofar as the parties may settle such cases out of court.

3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

There are no provisions ruling on this question in the applicable law.

However, the new draft law explicitly states that the arbitrators themselves shall decide on their competences. Such decision may, however, be objected to by the parties; furthermore, an arbitration decision taken by a tribunal in exceeding its competences (e.g. arbitration agreement does not govern disputes decided) may be set aside by the national courts.

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

The courts do not react "*ex officio*" in such circumstances but the parties may object to the jurisdiction of the national courts by referring to arbitration agreements.

3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal?

If arbitration agreements do exist and one party nevertheless involves the national court or if arbitration proceedings are already pending and, parallel thereto, national court proceedings are initiated, the national courts will have to decide whether they are competent to deal with the respective issues or not.

Furthermore, decisions of an arbitration tribunal may be set aside if the arbitrators did exceed their competences (§ 612 ZPO).

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

Whilst the legal situation as to this aspect seems to be a bit unclear for the time being, according to the new provisions on arbitration, which are expected to enter into force at the earliest at the beginning of 2011 § 598 ZPO (new), it is clearly stated that the provisions on arbitration shall not only apply as a consequence of written agreements between the parties but also in cases where arbitration tribunals are provided for e.g. by a last will or by another "legal declaration not based on an agreement between the parties" to a dispute, the law explicitly mentions "*Statuten*" - company's articles.

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

The limitation periods are ruled by the ABGB (General Civil Code of Law) and are in most cases 3 years (for obligations), 5 years (for possession of movables) and 30 years (for possession of immovables). Such rules are considered by the national courts of Liechtenstein if Liechtenstein Laws are material to the case and they had not been abrogated by the parties.

There are no specific prescriptions on limitation periods for the commencements of arbitrations. If the parties agreed upon such rules in the arbitration agreements the national courts will consider them. There are no specifics concerning the choice of law rules in this respect.

4 Choice of Law Rules

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

The law applicable to the substance of a dispute is either agreed on by the parties in the respective agreement or has to be determined by the provisions of the Liechtenstein International Private Law.

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

Mandatory laws (of the seat or of another jurisdiction) will prevail over the law chosen by the parties if the *ordre public* of Liechtenstein (legal principles that are regarded essential within the Liechtenstein legal system) was violated in case provisions of the law chosen would be applied. As for the mandatory rules, see question 2.4. Especially in connection with the enforcement of judgments/awards be they arbitrational or not, the Liechtenstein legal system does not allow for a choice of law insofar as procedural law issues are concerned.

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

Jurisdictional basis for the formation, validity and legality of an arbitration agreement is the accordance of wills of the parties to the agreement. Substantive questions and questions resulting from the accordance of wills as to the validity, operation and purview of the agreement are to be assessed by the law, the regime, chosen by the parties. This may be limited by the *ordre public* of the state of decision, the state of recognition or the state of enforcement. If the parties did not make a choice of law, the law of the state where the award has been rendered comes into effect; if this state, in case of an objection against the award, is not determinable, the conflict of laws rules of the state of the judge are applied.

The parties are free to choose the law of procedure which also governs the validity of the arbitration award. Such power is limited

by coercive procedural provisions of the state of recognition or the state of enforcement or the state where the legal proceedings are pending in connection with the objection against the arbitration. Further limitations can be deduced from the *ordre public* of the respective state of the procedure and the law chosen.

5 Selection of Arbitral Tribunal

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

Judges of the Princely Liechtenstein Courts must not accept the mandate as an arbitrator. Furthermore, an arbitrator may be objected to by the counterparty for reasons of being biased etc.

Apart there from, the parties are generally free to mandate arbitrators - the arbitration award may, however, be set aside in case a party appeals to it with the argumentation that the arbitration tribunal was not appropriately constituted in such a manner that basic procedural principles (e.g. to hear both parties) have not been complied with.

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

In case the arbitration agreement does not provide for a specific method of appointment of arbitrators, § 597 ZPO states that each party shall appoint an arbitrator, which arbitrators shall then agree on an umpire.

In case the parties cannot agree on an arbitrator to be appointed by them jointly according to the terms of the arbitration agreement, the Princely Court has to state that the arbitration agreement is no longer valid (§ 600 ZPO).

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

Upon application of (i) the parties to a dispute, or (ii) appointed arbitrators, the court, if it was competent to deal with such dispute lacking an arbitration agreement, appoints (a) an arbitrator, if a party failed to do so on time, or (b) if the two appointed arbitrators do not manage to agree on an umpire.

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

The parties may object to and demand removal of an arbitrator for the same reasons a party to a court proceeding may demand removal of a judge. This is specifically the case if there is reason to believe that such person is biased.

There are no specific rules on the procedure of disclosing conflicts of interest of arbitrators (compare also question 5.1). An arbitrator can be ruled out due to the same reasons as civil judges (§ 603 in connection with §§ 10 and 11 GOG = Law on the organisation of courts). Thus by indication of one of the following points a ruling out is enforceable:

- if an arbitrator holds a personal interest in the case;
- if an arbitrator is or was married to or is/was a live-in companion of one of the parties;
- if an arbitrator is closer related than the fourth degree of relationship or connected by marriage to one of the parties (including relationships by adoption, step relationships or fostering);
- if an arbitrator stands in a relation of representation, authorisation, engagement or belongs to a body of one of the parties;
- if the arbitrator was member of a subordinate panel or attorney of one of the parties, expert or witness in the case;
- if an arbitrator stands in close friendship or personal hostility to one of the parties or if there is a special relationship based on duty or dependence; or
- if an arbitrator is involved in a litigation with one of the parties or someone else being involved in the arbitration or any other case that raises doubts concerning his impartiality.

The new law provides detailed provisions on the ruling out of arbitrators following article 13 UNCITRAL Model Law.

6 Procedural Rules

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

The parties are free to provide for procedural rules for "their" arbitration tribunal; there are no specific statutory provisions in Liechtenstein governing procedure before an arbitration tribunal. If the parties do not provide for specific provisions, it is in the free discretion of the arbitrators to decide on procedural issues. Regularly, they will do so by closely applying the Liechtenstein Code of Civil Procedure (*Zivilprozessordnung - ZPO*).

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

Apart from a written and signed arbitration agreement, Liechtenstein Law clearly requires that the basic principles of civil law procedure are complied with in arbitration proceedings as well. Specifically, § 604 ZPO requests that the arbitrators must hear both (all) parties to the dispute and investigate in and consider the facts of the case. The arbitration award must be dated and signed by all arbitrators and served to the parties.

6.3 Are there any rules that govern the conduct of an arbitration hearing?

No, the parties - alternatively the arbitrators - are free to decide on the conduct of the proceedings. As a sole but major "rule", the law states that both parties must be heard.

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

The powers and duties of the arbitrators primarily depend on the powers and duties vested in them by arbitration agreement or eventually by reference to a specific procedural code. The law clearly states that the arbitrators do not have power to apply coercive measures (e.g. force witnesses to appear in court) or interim measures.

The law, however, does explicitly state that the arbitration award does have the effects of a court judgment.

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

Generally, there are, according to the Rules and Regulations of the Liechtenstein Bar, restrictions for foreign lawyers to appear in legal matters in Liechtenstein. However, this does not apply for arbitration proceedings. The parties can appear in person or may be represented or assisted by any person of their choice, which can also be a lawyer of another jurisdiction. A person representing a party shall produce a power of attorney to the arbitrators.

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

There are no specific rules on arbitrator immunity. Still, the arbitrators named by a party have a duty to conduct arbitral proceedings in an appropriate way, a duty to render an award, and a duty to give leave of enforcement on the award; moreover, the arbitrators must be objective. If an arbitrator fails to comply with a duty he or she can be held liable for damage caused by the arbitrator's wrongful behaviour (§ 601 Abs 2 ZPO). However, these rules do not apply if the arbitration agreement provides otherwise. The parties may, in addition, request the appropriate court (normally the district court) to declare the arbitration agreement has ceased to have effect (§ 600 Abs 2 ZPO).

In terms of the arbitrator's personal liability for legal irregularities apparent gross negligence and in connection with defective awards gross carelessness are required; a comparable measure has to be applied as in connection with such claims against civil judges.

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

As the arbitrators do not have the power to apply coercive measures or interim measures, if they consider it necessary, the arbitrators may request the national courts to apply such measures in their stead (§ 606 ZPO).

6.8 What is the approach of the national courts in Liechtenstein towards *ex parte* procedures in the context of international arbitration?

As the law clearly states that both parties must be heard, *ex parte* procedures are not admissible in Liechtenstein arbitration proceedings. Furthermore, it is a clear rule in the law that the arbitrators do not have the power to decide on interim measures - which regularly are issued in *ex parte* proceedings.

7 Preliminary Relief and Interim Measures

7.1 Under the governing law, is an arbitrator permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

No, the arbitrator would need to seek the assistance of the court (§ 606 ZPO).

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?

As the arbitrators do not have such competences the Liechtenstein national courts are entitled to grant such measures if so requested by the parties, notwithstanding the fact that arbitration proceedings may already be pending. Interim measures require an element of "urgency"; the measure requested (often: freezing of an account) needs to be shown to be necessary to eventually enforce a final and binding decision, whereas without such interim measure enforcement would no longer be possible (e.g. transfer of assets out of Liechtenstein).

The interim measure does not have any effect on the arbitration proceeding and cannot specifically be considered prejudicial as interim measures are regularly issued in *ex parte* proceedings and based on a lower level of evidence than required in regular proceedings.

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

The courts do not distinguish between interim injunctions requested in the context of arbitration proceedings or otherwise.

7.4 Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

Arbitral tribunals are normally free to do so or not - as they/the parties are free to decide on procedural rules - often, a security is demanded.

8 Evidentiary Matters

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

There are no statutory rules for evidence in arbitral proceedings. If the parties/arbitrators do not decide otherwise, the rules of the Code of Civil Procedure will apply.

8.2 Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure of discovery (including third party disclosure)?

"Disclosure" is an institution not known to Liechtenstein procedural law. To a very limited extent only, a party may demand that certain documents to be specified shall be disclosed by the counterparty (e.g. "joint" documents such as contracts).

Again, the parties to an arbitration/arbitrators are free to apply the provisions of the Code of Civil Procedure or to decide on a broader field of application of disclosure. However, as arbitrators do not have the power to apply coercive measures, they can only weigh this fact in case a party refuses to disclose documents.

8.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

There is no possibility of intervention of the courts in matters of

disclosure/discovery. In case a party refuses to comply with an order to disclose, this fact will be considered by the deciding judge/arbitrators when issuing the judgment/award.

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? Is cross-examination allowed?

Again, this is up to the parties/arbitrators to decide on these procedural issues. The provisions on arbitration proceedings clarify that the arbitrators shall not have the power to swear in witnesses or to apply any coercive measures whatsoever against witnesses or parties.

Usually, the arbitrators will apply the procedural rules of the Code of Civil Procedure. Liechtenstein law does not know "written" testimony of witnesses. Witnesses are regularly obliged to appear in court and to give oral statements. In doing so, they are questioned by the judge as well as the parties (or their lawyers).

8.5 Under what circumstances does the law of Liechtenstein treat documents in an arbitral proceeding as being subject to privilege? In what circumstances is privilege deemed to have been waived?

There is no legal institution in Liechtenstein comparable to the common law attorney-client-privilege - at least not with regard to documents. If a party has documents in its hands it is not restricted in using them as evidence in arbitration proceedings (or proceedings before the national courts).

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award?

The arbitral award needs to be dated, signed by all arbitrators and served to the parties.

10 Appeal of an Award

10.1 On what bases, if any, are parties entitled to appeal an arbitral award?

An appeal from an arbitral award to a second-tier arbitral body is only possible if the parties have so agreed in the arbitration agreement.

An application for the setting aside of an award can be made exclusively to the appropriate court (normally the district court) on any one of the following grounds for which an award is invalid according to the ZPO:

The award shall be set aside:

- if an arbitration agreement does not exist, if the arbitration agreement has become invalid before the award has been issued or has ceased to have effect for the particular case;
- if a party was lacking capacity to conclude the arbitration agreement;
- if the party applying to have the award set aside was unable to present its case in the proceedings before the arbitrators;
- if required by statute, was not appropriately represented by an agent or guardian;
- if statutory or contractual provisions concerning the composition of the arbitral tribunal or the method of reaching a decision have been infringed or if the original of the award has not been signed;
- if a challenge to an arbitrator has been rejected unjustifiably by the arbitral tribunal;
- if the award infringes mandatory provisions of law; or
- if the award condemned a party to an inadmissible act or a tortious act.

Furthermore, an award shall be set aside in circumstances where a court judgment can be set aside and the case reopened, e.g. when an award was based on false witness statements or false documents.

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

No, parties cannot waive their right to appeal against an arbitral award (§ 615 iVm 612 ZPO).

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

No, the reasons for setting aside an arbitration award as set forth in the law and laid out above in the answer to question 9.1 are considered to be enumerated conclusively.

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

According to § 612 ZPO, an arbitral award shall be null and void if one of the circumstances as set forth above in the answer to question 10.1 takes place. Therefore, formally spoken, the party wishing to contest the award does not file a formal "appeal" but a regular claim with the request to the national court to set the arbitral award aside (to decide that it does not have any effect).

11 Enforcement of an Award

11.1 Has Liechtenstein 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 plans to ratify - or at least to internally discuss ratification - of the New York Convention. As a prerequisite thereto, the Liechtenstein provisions on arbitration proceedings are in the process of being modernised, the new provisions are expected to come into force at the beginning of 2011 at the earliest.

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

Liechtenstein is not subject to European Regulations on mutual acknowledgment of foreign jurisdiction. Furthermore, Liechtenstein is not a party to the Lugano Convention or other multilateral or international Conventions on the acknowledgment and enforcement of foreign judgments or arbitral awards.

Liechtenstein has concluded bilateral treaties containing provisions on the recognition and enforcement of arbitral awards only with Switzerland and Austria.

As a consequence, judgments of an arbitral tribunal are not

enforceable in Liechtenstein. Trying to enforce an arbitral award regularly leads to a special procedure ("*Rechtsöffnungsverfahren*", release/discharge proceedings) in the course of which the Liechtenstein party may, *inter alia*, claim inconvenience of the foreign forum if, contrary to § 53a JN, the jurisdiction clause has not been publicly certified (and notwithstanding a party's contractual obligation not to claim inconvenience). The consequence of a *Rechtsöffnungsverfahren* regularly is that an entire new procedure on the claim will be initiated in Liechtenstein. The Liechtenstein court will newly opine on the facts, the Liechtenstein judge will take evidence himself whereby the foreign judgment including any and all results of the foreign procedure will regularly be entirely ignored. According to § 614 Liechtenstein Code on Civil Procedure a party cannot waive her right to eventually appeal against the judgment of an arbitral tribunal for reason of substantial defects in the arbitration as set forth by § 612 ZPO (e.g. invalidity of jurisdiction clause, no fair trial).

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

An arbitral award has the force of a final and binding court judgment between the parties unless the parties have provided in the arbitration agreement for the possibility of appeal to a second-tier arbitral body. Any party to the arbitration may request the arbitrators to confirm in writing, on a copy of the award, the final binding nature and the enforceability of the award. This confirmation is a prerequisite for the enforcement of a domestic award in Liechtenstein. The award is enforceable under Liechtenstein enforcement law without requiring prior recognition.

A settlement reached by the parties during a domestic arbitral procedure can be recorded in the form of a settlement agreement. The settlement agreement is enforceable once the arbitrators have confirmed in writing, on the document itself, its enforceability. A settlement agreement can therefore be enforced by Liechtenstein courts in the same manner as an arbitral award.

11.4 What is the effect of an arbitration award in terms of *res judicata* in Liechtenstein? 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?

As, according to § 611 ZPO, an arbitral award has the effect of a final and binding court judgment, an issue dealt with and decided in an arbitral award would be considered *res judicata* and thus preclude court proceedings.

12 Confidentiality

12.1 Are arbitral proceedings sited in Liechtenstein confidential? What, if any, law governs confidentiality?

Contrary to court proceedings, arbitration proceedings are not accessible to the public and are regularly treated as confidential. There are no statutory provisions specifying confidentiality in arbitration proceedings, thus, this will need to be mentioned either in the arbitration agreement or in the procedural rules set forth by the parties, subsidiary, this will be considered implied and included in the mandates/appointments of the arbitrators.

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

Again, the scope and extent of confidentiality depends on the agreement between the parties. If it is not explicitly excluded in the arbitration agreement, the parties to the procedure do of course have access to the files of the arbitration tribunal and may also use information and documentation obtained in the arbitration proceedings in eventual subsequent court proceedings.

The "confidentiality" obligation is regularly understood to have effect *vis-à-vis* third parties (other than the national courts). Even if a party would make use of information and documentation obtained in the arbitration proceedings in breach of an eventual confidentiality commitment the national courts would not ignore such additional arguments or evidence.

12.3 In what circumstances, if any, are proceedings not protected by confidentiality?

If the parties agree, they may decide that the proceedings must not be treated confidentially or shall even be conducted in public hearings. However, this would be rather unusual.

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)?

No, an arbitration tribunal does have the same powers as a national court (insofar as it can be competent - see initial questions in section 3 above). Thus, it can render decisions and decide on all types of remedies that Liechtenstein (or the applicable) material law provides for.

This is, of course, limited by the general rules which arbitration tribunals as well as national courts have to comply with. Awards as well as judgments must e.g. not decide on remedies which are considered against the *ordre public*. Specifically, "punitive damages" are in general not known to Liechtenstein law and can, to some extent, be considered against the *ordre public*.

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

This depends on the applicable (material) law. According to Liechtenstein law, the statutory interest amounts to 5% p.a.

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 parties have not agreed on rules of reimbursement of cost, the arbitration tribunal can decide on the reimbursement of costs within its discretion. Normally, the results of the proceedings are taken into account.

Usually, the arbitrators do apply the same principles as are used in regular civil law procedure. This means that the losing party is ordered to pay the total amount of the arbitrator's fees and costs of the arbitration including reasonable expenses for the legal representation of the counterparty. Arbitrators may, however, apportion the costs between the parties if they deem it justified.

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

There is no Liechtenstein tax on amounts ordered by a Liechtenstein court or arbitration tribunal with a seat in Liechtenstein. Whether eventual awards paid are subject to taxes to be paid by the parties (income tax) depends on the domicile of the receiving party and the laws applicable there.

14 Investor State Arbitrations

14.1 Has Liechtenstein signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965)?

No, it has not.

14.2 Is Liechtenstein party to a significant number of Bilateral Investment Treaties (BITs) or Multilateral Investment treaties (such as the Energy Charter Treaty) that allow for recourse to arbitration under the auspices of the International Centre for the Settlement of Investment Disputes ('ICSID')?

No, except for the Agreement on the establishment of the World Trade Organisation 1994, which contains some provisions on investment protection and rules on the settlement of disputes, Liechtenstein's involvement in bi- and multilateral treatments in this field is negligible.

14.3 Does Liechtenstein have standard terms or model language that it uses in its investment treaties and, if so, what is the intended significance of that language?

No, it does not.

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

Please see the answers to the questions in section 11 above.

15 General

15.1 Are there noteworthy trends in the use of arbitration or arbitration institutions in Liechtenstein? Are certain disputes commonly being referred to arbitration?

There are no fixed and constant arbitration institutions in Liechtenstein, thus, disputes are referred to *ad hoc* arbitral tribunals regularly. The "need" or wish for discretion reaches a rather high level in Liechtenstein, thus, disputes involving Liechtenstein foundations or other types of entities used for asset structuring and estate planning are commonly referred to arbitration instead of being tried in court.

15.2 Are there any other noteworthy current issues affecting the use of arbitration in Liechtenstein, such as pending or proposed legislation that may substantially change the law applicable to arbitration?

Liechtenstein is in the process of substantially amending its statutory provisions on arbitration proceedings. The new law expected to enter into force at the end of 2009 will follow the UNCITRAL model law and is seen as a first step of Liechtenstein into the direction of ratifying the New York Convention (1958) on the acknowledgment and enforcement of foreign arbitral awards.

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Dr Johannes Gasser, LLM is a partner of the law offices of Dr Dr Batliner & Dr Gasser, the largest law firm in Liechtenstein exclusively providing forensic services to international client before courts of law and authorities. The law office was founded in 1954 and comprises of 13 lawyers. His firm's expertise extends to litigation in all areas, focusing on dispute resolution involving trusts and foundations, and also representing defendants suspected of business crimes, fraud victims and defrauded corporations. The firm advises banks, offshore services companies and financial investors in protecting themselves from money-laundering and other violations of the law. The firm has been very successful in the defence of unfounded legal assistance requests in criminal matters involving banking assets in Liechtenstein.
Dr Gasser is admitted both in Liechtenstein and Austria. He specialises in freezing assets in Liechtenstein banks, including proceeds of crime, and piercing the veil of Liechtenstein corporations. He contributed chapters to the firm's book on Litigation and Arbitration in Liechtenstein.

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