

Asset Recovery

Contributing editors

Jonathan Tickner, Sarah Gabriel and Hannah Laming



2018

**GETTING THE
DEAL THROUGH** 

GETTING THE
DEAL THROUGH 

Asset Recovery 2018

Contributing editors

Jonathan Tickner, Sarah Gabriel and Hannah Laming
Peters & Peters Solicitors LLP

Publisher
Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Senior business development managers
Alan Lee
alan.lee@gettingthedealthrough.com

Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com



Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

© Law Business Research Ltd 2017
No photocopying without a CLA licence.
First published 2012
Sixth edition
ISSN 2051-0489

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between August and September 2017. Be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Global overview	5	Kazakhstan	80
Jonathan Tickner, Sarah Gabriel and Hannah Laming Peters & Peters Solicitors LLP		Yerzhan Manasov and Ratmir Abdrashitov Linkage & Mind LLP	
Australia	9	Korea	87
Tobin Meagher, Andrew Moore and Alice Zheng Clayton Utz		Michael S Kim, Robin J Baik and S Nathan Park Kobre & Kim Yoon-Hee Kim and Jae Hwan Lee Shin & Kim	
Bermuda	16	Liechtenstein	93
Kevin Taylor, Nicole Tovey and Kai Musson Taylors (in association with Walkers)		Thomas Nigg and Eva-Maria Rhomberg Gasser Partner Attorneys at Law	
British Virgin Islands	21	Monaco	99
Tim Prudhoe and Alexander Heylin Kobre & Kim		Donald Manasse Donald Manasse Law Offices	
Canada	28	Nigeria	105
Maureen Ward and Nathan Shaheen Bennett Jones LLP		Babajide O Ogundipe and Cyprian Nonso Egbuna Sofunde, Osakwe, Ogundipe & Belgore	
Cayman Islands	35	Qatar	110
Jalil Asif QC, James Corbett QC and Pamela Mitchell Kobre & Kim		Fouad El Haddad Lalive in Qatar	
Cyprus	41	Serbia	114
Andreas Erotocritou and Antreas Koualis AG Erotocritou LLC		Tomislav Šunjka Law Office of Tomislav Šunjka	
Greece	48	Switzerland	121
Ilias G Anagnostopoulos and Alexandros D Tsagkalidis Anagnostopoulos		Marc Henzelin, Sandrine Giroud and Maria Vinogradova Lalive	
Hong Kong	54	United Arab Emirates	129
Nick Gall and Ashima Sood Gall		Ibtissem Lassoued Al Tamimi & Company	
Ireland	60	United Kingdom	134
Gavin Smith and William Greensmyth Walkers		Jonathan Tickner, Sarah Gabriel and Hannah Laming Peters & Peters Solicitors LLP	
Italy	65	United States	144
Roberto Pisano, Valeria Acca and Chiara Cimino Studio Legale Pisano		Carrie A Tendler, Jef Klazen and Michael A Sanfilippo Kobre & Kim	
Jersey	74		
Simon Thomas and William Redgrave Baker & Partners			

Liechtenstein

Thomas Nigg and Eva-Maria Rhomberg

Gasser Partner Attorneys at Law

Civil asset recovery

1 Legislation

What are the key pieces of legislation in your jurisdiction to consider in a private investigation?

Liechtenstein is based between Austria and Switzerland, making Liechtenstein's legal system closely connected to both of those countries. The legal system itself, as well as the configuration of Liechtenstein's courts, mostly depends on Austrian law. Nevertheless, Swiss law has also significantly left its marks on the legal system.

Special regulations regarding private investigations are non-existent. However, if there are private investigations, they must comply with regulations dealing with privacy and data protection. A violation in the sphere of personal privacy may, for instance, lead to criminal proceedings according to section 118 et seq of the Criminal Code (StGB).

In general, there are different provisions dealing with asset recovery throughout the legislation. As a result, you might find appropriate provisions, *inter alia*, in:

- the Civil Code (ABGB);
- the StGB;
- the Criminal Procedure Act (StPO);
- the Natural Persons and Companies Act (PGR);
- the Law of Property (SR); and
- the Enforcement Act (EO).

2 Parallel proceedings

Is there any restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter?

Under Liechtenstein jurisdiction, there are no restrictions on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter. However, if the outcome of the criminal proceeding is of the utmost importance for the civil proceeding, the latter is suspended until a verdict is reached (section 191, paragraph 1 of the Civil Procedure Act (ZPO)).

3 Forum

In which court should proceedings be brought?

According to section 30 et seq of the Law on Jurisdiction (JN), the District Court has jurisdiction *ratione loci* and *ratione materiae* under the condition that the defendant has his or her common residence in Liechtenstein. Depending on the nature of the matter, there are several particular places of jurisdiction (section 37 et seq of the JN). Under certain conditions relating to the assets of the defendant, it is possible to sue a person who resides abroad if he or she has his or her assets based in Liechtenstein (section 50 of the JN, 'asset-based jurisdiction').

4 Limitation

What are the time limits for starting civil court proceedings?

Provisions regarding the statute of limitation are to be found under section 1478 et seq of the ABGB. The general time limit is 30 years after the cause of action arose. Nevertheless, time limits can vary between three, five and 30 years, depending on the nature of the matter (sections 1478,

1480, 1486 of the ABGB). According to section 1489 of the ABGB, the time limit for a compensation claim is, for instance, three years starting from the date at which the wronged party gains knowledge about the damage and the tortfeasor, regardless of whether the grounds are based in a contract or not. If the damage is caused by crime, the time limit is 30 years (section 1489 of the ABGB). A compensation claim regarding financial services expires by limitation after three years, but the ultimate time limit is 10 years instead of 30 years (section 1489a of the ABGB).

5 Jurisdiction

In what circumstances does the civil court have jurisdiction? How can a defendant challenge jurisdiction?

Generally, the District Court has jurisdiction if the forum is given according to section 30 et seq of the JN. The Court has jurisdiction *ratione loci* and *ratione materiae* if, and to the extent, the qualifications were met.

The District Court has to examine the circumstances of jurisdiction *ex officio* (section 23 of the JN). As in most other jurisdictions, the court first checks on the duty to accept the case. In civil proceedings, this examination is primarily based on the statements of the plaintiff. In case jurisdiction is not given, the claim has to be dismissed at each and every stage of proceedings according to section 24 of the JN.

Further, the defendant must raise the defence of the lack of jurisdiction at the first opportunity before pleading to the merits of the claim. This usually happens in the first statement of defence.

6 Admissibility of evidence

What rules apply to the admissibility of evidence in civil proceedings?

Rules regarding the admissibility of evidence in civil proceedings can be found under section 266 et seq of the ZPO. There are five different types of evidence named in the ZPO, all of which have equal weight:

- evidence by documents (section 292 et seq ZPO);
- hearing of witnesses (section 320 et seq ZPO);
- evidence by (qualified) experts (section 351 et seq ZPO);
- evidence by inspection of the court (section 368 et seq ZPO); and
- evidence by party interrogation (section 371 et seq ZPO).

Under Liechtenstein civil procedure law, a judge is free to weigh and consider the evidence submitted by the parties.

In case evidence is likely to be destroyed or the giving of evidence would be aggravated, the court can take evidence before the trial begins. These possibilities named in section 384 et seq ZPO are handled restrictively to avoid pre-trials and evasion of procedural principles.

7 Publicly available information

What sources of information about assets are publicly available?

Liechtenstein knows different sources of information about assets that are publicly available. One of the most important sources is the Liechtenstein Commercial Register. Article 6 of the Commercial Register Regulation (HRV) states the publicity of the Commercial Register.

Generally, the Commercial Register contains information regarding corporations, trusts, foundations and establishments, etc, which are domiciled in Liechtenstein. The information given by the Commercial Register includes the name, domicile and purpose, including members of the board. In certain cases, the information may be limited.

Furthermore, information about real estate and its limitations is available through the Land Register, which is publicly available as well. Anyone who has legal interests may seek for information. Without having any stated interest, members of the public can seek out basic information such as the description and specification of a property, owner's name, type of ownership, date of acquisition as well as its easements (article 551 of the SR).

8 Cooperation with law enforcement agencies

Can information and evidence be obtained from law enforcement and regulatory agencies for use in civil proceedings?

No party can obtain on his or her own authority evidence for no reason from law enforcement and regulatory agencies in civil proceedings. However, this is different when a party is an additional party in criminal proceedings. In such a case, the court may allow further inspection files. According to section 183, paragraph 1, no 3 of the ZPO, the judge may procure documents held by public authorities or notaries if parties relate to these documents.

9 Third-party disclosure

How can information be obtained from third parties not suspected of wrongdoing?

If a third party is in possession of a required document, the judge can decide upon a motion. After hearing the third party and the other party of the trial, the judge decides through a court order whether the third party must provide the specific document or produce certain types of documents (section 308 of the ZPO).

Furthermore, information from third parties not suspected of wrongdoing can be obtained by hearing witnesses (section 320 et seq of the ZPO). A witness is always cautioned and instructed about section 288 of the StGB, stating that false testimony is a criminal offence. Moreover, a witness is instructed that he or she has the right to remain silent if certain conditions are met (section 321 of the ZPO).

10 Interim relief

What interim relief is available pre-judgment to prevent the dissipation of assets by, and to obtain information from, those suspected of involvement in the fraud?

As in many other jurisdictions, the success of court actions often depends on the effectiveness of interim remedies or provisional measures taken before or in place of the main proceedings. Generally, for preventing (irreparable) injuries to the petitioner, a party might obtain measures for interim relief from a court upon motion. During the pendency of extra-judicial proceedings, interim relief (injunctions) may be rendered ex officio (article 270, paragraph 3 of the EO). The EO deals with interim relief, particularly with such injunctions as described in the following. It is also possible to reduce or avoid the loss of assets through interlocutory injunctions.

Interlocutory injunctions may either take the form of a security restraining order or an official order, the choice of which generally depends on the nature of the claim. While security restraining orders aim exclusively at securing pecuniary claims, official orders deal with claims other than those of a pecuniary nature. That is why the focus hereinafter is based on security restraining orders.

Security restraining order

As long as the party has direct access to enforcement, thereby achieving the same results, injunctions are inadmissible. If the petitioner is already sufficiently secured, either by a right of lien or retention, or the court views him or her as sufficiently protected, an injunction may be denied.

A court will only grant injunctions if two major conditions are met. Besides certifying the claim that warrants such a legally far-reaching measure, it is necessary to establish reasonable security reasons. The applicant must furnish prima facie evidence that he or she is going to

face risk. In some cases, it is sufficient to certify that the opposing party is a 'domiciliary company' (B 27.01.1997, 1 C 208/96-35, LES 1998, 166).

As security for pecuniary claims, the court may order different injunctions such as:

- the seizure, custody and compulsory administration of moveable tangible property;
- the deposit of funds in court;
- an injunction by order of the court on the sale or seizure of moveable tangible property to the effect that the sale or seizure is rendered invalid; or
- an injunction addressed to a third party in which the alleged debtor has to file a pecuniary claim against that third party.

In urgent cases, an applicant may file a preliminary request to the competent authorities to render a provisional order. However, the applicant must file the motion with the court in writing. A preliminary court order loses any effect if the applicant fails to do so (article 272 of the EO).

Interim injunctions are always issued and enforced at the expense of the applicant. Upon service of the injunction, the applicant can be required to pay in advance to the court the amount of money required for the enforcement of the issued injunction. The enforcement of the injunction may not be effected until that amount has been paid (article 286, paragraphs 1 and 3 of the EO).

11 Right to silence

Do defendants in civil proceedings have a right to silence?

Under Liechtenstein law, defendants do not have an expressly stated right to silence. If the defendant resists a court hearing or declines to answer questions, there is no specific provision that allows sanctions (section 380, paragraph 3 of the ZPO). For a witness, who also may be defendant at the same time, the right to silence is stated in section 321 of the ZPO.

Note, however, that section 372 of the ZPO states that certain persons are not allowed to be heard for the purpose of evidence.

Nonetheless, if a defendant does not even attend court hearing, a default judgment may be rendered based on the plea of the counterpart.

12 Non-compliance with court orders

How do courts punish failure to comply with court orders?

There are two types of court sanctions. The first are court orders during court hearings, the second are court orders as final court decisions.

During ongoing court proceedings, a judge may ask the speaker to give up the floor as well as to forbid him or her from making further statements (section 180 of the ZPO). The judge may punish improper behaviour through a fine, a short jail sentence or exclusion of the court hearing.

If a party does not comply with the final decision of a Liechtenstein court, the judgment is enforceable (article 1 of the EO). If a judgment obliges a party to perform or not perform a specific action, the opposing party may file a motion for a fine or a jail sentence to force the party to perform the required action (article 257 of the EO).

13 Obtaining evidence from other jurisdictions

How can information be obtained through courts in other jurisdictions to assist in the civil proceedings?

Liechtenstein is a signatory to the Convention on the Taking Evidence Abroad in Civil or Commercial Matters 1970 (the Hague Evidence Convention). As a result, Liechtenstein obtains evidence such as judicial documents, local inspections, witness statements and taking parties to disputes, the production of documents, providing expert opinions etc, from other jurisdictions.

Parties not signatory to the aforementioned convention may obtain mutual legal assistance but only after case-by-case evaluation.

14 Assisting courts in other jurisdictions

What assistance will the civil court give in connection with civil asset recovery proceedings in other jurisdictions?

As a signatory to the Hague Evidence Convention, Liechtenstein also assists in the service of judicial documents, local inspections, witness statements, taking parties to disputes, the production of documents, providing expert opinions etc.

Furthermore, the District Court is obliged to assist courts from other jurisdiction unless the assistance would be against the law, or there would be no reciprocity (see section 27 of the JN).

Foreign judgments are generally not enforceable. There are bilateral agreements with Austria and Switzerland but although Liechtenstein is a member of the European Economic Area (EEA), Council Regulation (EC) No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (EuGVVO, Brussels I) does not apply. Liechtenstein is not subject to EC regulations and directives in this area and is not a signatory to the Lugano Convention. However, Liechtenstein is a signatory to the New York Convention, which entered into force in 2011, which guarantees enforcement of Liechtenstein arbitral awards and vice versa.

To enforce a foreign judgment in Liechtenstein, the decisions of a foreign court must be usually converted into an enforceable Liechtenstein court order.

15 Causes of action

What are the main causes of action in civil asset recovery cases, and do they include proprietary claims?

In general, the main cause of action in civil cases are damages according to section 1293 et seq of the ABGB. These articles are relevant for nearly every claim for damages, regardless of whether the cause is ex contractu or ex delicto. It is safe to say that the main cause of action in civil asset recovery cases is illegal enrichment (section 1041 et seq of the ABGB) as well as liability regarding entities (article 218 et seq of the PGR).

Moreover, it is possible to take legal actions for the grounds of ownership.

16 Remedies

What remedies are available in a civil recovery action?

Under Liechtenstein law, there are several remedies when it comes to a civil recovery action.

According to section 1323 of the ABGB, the first remedy is always restitution in kind. If restitution in kind is not possible, damages may be awarded in cash. Regarding a breach of contract, a party may seek for fulfilment of the agreement or sue the other party for damages.

The Enforcement Act (article 277 of the EO) grants provisional remedies, such as security restraining orders and official orders.

17 Judgment without full trial

Can a victim obtain a judgment without the need for a full trial?

Under certain circumstances, Liechtenstein law allows a judgment without full trial. If a defendant, for instance, does not attend a court hearing, he or she can be judged, but only under certain circumstances in his or her absence (default judgment, section 396 et seq of the ZPO).

Moreover, the ZPO allows a simplified procedure for pecuniary claims, which is a summary proceeding. For recovery of debt or liquidated demand, summary proceedings are highly relevant. A creditor could simply file a motion for a summary notice to pay the specific amount. The summary notice will be granted by a judge without questioning the merits of the case and subsequently served upon the debtor. The debtor may lodge a protest within 14 days, which leads to the cancellation of this summary notice or, in case such a protest is not lodged within 14 days, to legal validity of the summary notice, which therefore means it is enforceable.

If a protest is lodged within these 14 days, the creditor may bring a claim by way of the *Rechtsöffnungsverfahren* (section 49 et seq of the Liechtenstein Code of Securing Legal Rights (RSO)). The latter is a motion for setting aside the debtors protest. In contrast to the full trial proceedings, this simple and swift proceeding is particularly favourable to foreign creditors.

18 Post-judgment relief

What post-judgment relief is available to successful claimants?

If a judgment becomes legally binding and a party is not willing to honour his or her obligations out of this judgment, the EO states, that judgments are enforceable (article 1 of the EO). Enforcement proceedings are usually initiated by a motion from the prevailing party, which must refer to the enforceable judgment, the settlement or the payment order.

19 Enforcement

What methods of enforcement are available?

Methods of enforcement are enlisted in the EO. Inter alia, the following measures are available to enforce judgments of Liechtenstein courts:

- compulsory creation of a lien;
- compulsory auction;
- seizure of moveable and immoveable assets;
- forced administration through an official receiver; and
- seizure, confiscation and sale of moveable tangible assets.

Article 201 of the EO states several provisions regarding pecuniary claims, that must be considered during enforcement proceedings. As mentioned before, a creditor may also file a motion for a fine or a jail sentence to honour the binding judgment if a judgment obliges a party to perform or not perform a specific action (article 256 and 257 of the EO).

20 Funding and costs

What funding arrangements are available to parties contemplating or involved in litigation and do the courts have any powers to manage the overall cost of that litigation?

Losing a case at trial risks bearing its associated costs. In general, each party bears his or her own costs (section 40 of the ZPO). Nevertheless, a party may seek legal aid if he or she is unable to fund legal costs and lawyer's fees without putting his or her 'daily needs' in danger (section 63 et seq of the ZPO). Legal aid is available for natural persons as well as legal entities and can include a temporary exemption from, inter alia, paying court fees. The interpretation of the latter is restrictive. Another common funding arrangement is an insurance regarding legal expenses (article 58 et seq of the Insurance Contract Act (*Versicherungsvertragsgesetz*)).

The prevailing party can usually recover the amounts expended from the losing party in proportion to the extent to which the prevailing party has succeeded with his or her claim or defence.

In Liechtenstein, lawyer's fees are regulated by a statutory tariff. This tariff is applicable on a party-to-party basis and determines which costs have to be reimbursed to the other party. That aside, lawyers may freely agree their fees. Lawyers are not allowed to assert a contingency fee and are not allowed to purchase a client's claim, which is the object of ongoing court proceedings.

Normally, the parties themselves fund court proceedings in Liechtenstein. Nonetheless, litigation funding by an independent third party is permitted in Liechtenstein. In such a case, there is no assignment of rights or the claim and the third party only gains the right to carry out legal proceedings on behalf of the plaintiff or the defendant.

Criminal asset recovery

21 Interim measures

Describe the legal framework in relation to interim measures in your jurisdiction.

The StPO contains several provisions regarding interim measures in criminal procedures. Regarding assets of criminal origin, the seizure of those assets plays an important role. Further, this issue is of the utmost importance when it comes to anti-money laundering measures.

During investigation proceedings, the seizure of assets is ordered by the court, usually upon request of the public prosecutor. In general, the measures are the seizure of assets (section 96 et seq of the StPO), search warrants and observations (section 98 et seq of the StPO) as well as arrests and custody measures according to section 127 et seq of the

Update and trends

The transposition of the 4th Anti-Money Laundering Directive (EU No. 2015/849 and its innovations and accentuations may play a role in criminal asset recovery in money-laundering cases.

StPO. According to section 97a of the StPO, and upon request of the public prosecutor, the court may order the seizure and administration or depositing of moveable assets or prohibit the disposal of such assets, including cash.

In the wider international context, as well as concerning anti-money laundering measures, one of the important measures is freezing bank accounts.

22 Proceeds of serious crime**Is an investigation to identify, trace and freeze proceeds automatically initiated when certain serious crimes are detected? If not, what triggers an investigation?**

Criminal proceedings before a criminal court are usually initiated upon request or notification of the public prosecutor.

During ongoing criminal proceedings, the identification, tracing and freezing of proceeds is usually initiated upon motion of the public prosecutor. If someone becomes aware of a serious crime, and as yet the undiscovered proceeds of such a crime, he or she usually notifies the public prosecutor; in the case of money-laundering, a person will have to inform the relevant financial intelligence unit (FIU). Financial intermediaries under the Due Diligence Act are obliged to issue a notification to the FIU in case any suspicion concerning money laundering arises.

Regarding the proceeds of serious crimes, see the aforementioned measures like the seizure of assets and bank accounts (see question 21). Moreover, a court may declare an asset as 'expired' (section 20 of the StGB).

23 Confiscation – legal framework**Describe the legal framework in relation to confiscation of the proceeds of crime, including how the benefit figure is calculated.**

Liechtenstein jurisdiction knows several measures in relation to confiscation of proceeds of crime.

During investigation proceedings, provisions under section 97a of the StPO are applicable. These regulations mainly deal with the seizure of assets of all forms during ongoing proceedings to secure possible measures stated in section 19 et seq of the StGB.

The Criminal Code states, inspired by Austrian jurisdiction, the following measures to confiscate proceeds of crime:

- section 19a of the StGB (confiscation of tangible assets); and
- section 20 et seq of the StGB (confiscation of assets, expiration).

Provisions concerning the confiscation of the proceeds obtained through illegal enrichment are incorporated in section 20 of the StGB. Usually, the convicted person is ordered by court to pay back the appropriate sum. Regarding this type of confiscation, the benefit is calculated to the gross principle. When calculating the benefit, the actual enrichment is confiscated, and expenses incurred to obtain the specific assets, are not deducted.

According to section 20b of the StGB, assets issuing from criminal organisations, terrorist organisations or terrorist financing, are confiscated and have to be declared as 'null and void'. For this measure, the public prosecutor has the burden to prove that the proceeds or assets have their roots in crime.

Provisions regarding the specific proceedings are stated under section 353 et seq of the StPO.

24 Confiscation procedure**Describe how confiscation works in practice.**

Most of the investigation procedure is based on applications from the public prosecutor. It is the investigating judge's duty to decide and weigh the facts as to whether he or she will allow specific measures.

If the public prosecutor considers measures according to section 97a of the StPO, he or she has to file a motion. The judge then has several options to obtain evidence. Available measures range from house searches to the seizure of documents and other objects (section 91a et seq of the StPO).

As an example, the freezing of bank accounts is one of the most important instruments in securing assets. Once the account is frozen, the access is very limited. Hence, the owner of the account is not allowed to drain assets from it. However, in practice, the main problem is to name the assets concerned including the specific bank accounts. For a successful investigation and the ordering of appropriate measures, these facts have to be known and shown to the public prosecutor or to a private participant. Regarding the seizure of bank documents during criminal investigations, the law does not protect Liechtenstein's bank secrecy. Consequently, bank documents can be seized. Legally privileged documents, such as the confidential correspondence between a lawyer and the suspect, cannot be sequestered (Constitutional Court of Liechtenstein, 28 February 2000, StGH 1999/23, LES 2003, 1).

Depending on the place where the crime was committed or rather, the trial took place, the court or the public prosecutor initiates further steps. Because of a conviction through a Liechtenstein court, the court itself orders the measures of confiscation (section 20 et seq of the StGB). If a crime was committed abroad but the assets are located in Liechtenstein, the public prosecutor may file for a separate and new proceeding (section 356 of the StGB).

Nonetheless, the confiscation of proceeds is not allowed if prerequisites under sections 20a and 20c of the StGB are met.

25 Agencies**What agencies are responsible for tracing and confiscating the proceeds of crime in your jurisdiction?**

Under Liechtenstein law, it is upon the public prosecutor to propose appropriate measures to the investigating judge, which he or she considers as necessary and useful to secure assets. Only upon request of the public prosecutor, can the investigating judge, who is usually a single judge, order the required measures. The judge has to examine whether the requested measures are necessary and appropriate.

Upon seizure and searching of documents, the police are involved as well.

26 Secondary proceeds**Is confiscation of secondary proceeds possible?**

Under certain conditions, confiscation of secondary proceeds is possible. Secondary proceeds are usually proceeds that have converted into other assets. Regarding secondary proceeds consisting in tangible assets, ownership by the perpetrator (section 19a of the StGB) must be given, otherwise confiscation is not allowed.

However, the court always has to determine who has been enriched by the crime and if proceeds have been converted into other assets. Regarding the confiscation procedure in section 20b of the StGB, it is necessary to prove that assets issue from criminal organisations, terrorist organisations or terrorist financing.

Further, it is not possible to confiscate assets if a third party, inter alia, obtained ownership bona fide or the perpetrator has to use the proceeds in satisfaction to settle civil claims (section 20a of the StGB). In cases under section 20b of the StGB, these rules do not apply since section 20b of the StGB is more far-reaching than section 20 of the StGB.

27 Third-party ownership**Is it possible to confiscate property acquired by a third party or close relatives?**

Under Liechtenstein jurisdiction, it is possible, if certain prerequisites are met, to confiscate property acquired by a third party or close relatives. If assets issue from crimes, they could be confiscated regardless of whether they are acquired by a third party or not. The burden of proof lies with the public prosecutor.

As mentioned in question 26, there are several prerequisites that could prevent confiscation of property acquired by a third party

(section 20a of the StGB). Further, confiscation is not allowed if third parties have legal titles to the concerned assets (section 20c of the StGB).

28 Expenses

Can the costs of tracing and confiscating assets be recovered by a relevant state agency?

Under Liechtenstein law, there are no special provisions regarding the recovery of costs arising out of tracing and confiscating assets.

29 Value-based confiscation

Is value-based confiscation allowed? If yes, how is the value assessment made?

Regarding the confiscation of tangible assets, no provisions regarding a value base are given.

In fact, section 20, paragraph 2 of the StGB states a value-based confiscation of assets, which means the confiscation may also affect alternative rights or assets. However, for a legally binding verdict, declaring assets as confiscated, the latter have to be located in Liechtenstein.

30 Burden of proof

On whom is the burden of proof in a procedure to confiscate the proceeds of crime? Can the burden be reversed?

In criminal proceedings, the burden of proof always lies with the public prosecutor. Regarding confiscation proceedings, he or she has to prove the criminal origin of the assets in question. However, if a third party refers to his or her bona fide ownership, the burden of proof lies on this party.

31 Using confiscated property to settle claims

May confiscated property be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction?

Section 20a, paragraph 2, no 2 of the StGB expressly states that confiscation is not allowed if the perpetrator has, or had, to pay any damages or compensation for a civil claim arising from the conviction. Furthermore, a confiscation is not allowed as far as third parties have legal titles to the concerned assets (section 20c of the StGB).

32 Confiscation of profits

Is it possible to recover the financial advantage or profit obtained through the commission of criminal offences?

Provisions according to section 20 et seq of the StGB allow for profits' confiscation. In particular, section 20a, paragraph 2 of the StGB explicitly states that confiscation is extended to benefits and replacement values. According to legal doctrine and case law, benefits include interest, distribution of profits regarding securities or an increase of value.

33 Non-conviction based forfeiture

Can the proceeds of crime be confiscated without a conviction? Describe how the system works and any legal challenges to in rem confiscation.

If assets are located in Liechtenstein while a criminal investigation or trial takes place abroad, a verdict is not necessary to confiscate proceeds. Instead, the public prosecutor files a charge of a new and objective proceeding. Regarding the confiscation of proceeds, fulfilment of the necessary and objective conditions is sufficient. Regarding proceedings for the forfeiture of assets, the single condition is the location of the assets in Liechtenstein and the proof of the criminal origin of the assets in question.

34 Management of assets

After the seizure of the assets, how are they managed, and by whom? How does the managing authority deal with the hidden cost of management of the assets? Can the assets be utilised by the managing authority or a government agency as their own?

After the seizure of bank accounts, the assets usually remain on the specific account. However, the administration of the assets is controlled by the court. Every single action regarding the assets must be approved by court order. The specific management and investment of these assets has to be evaluated on a case-by-case basis.

Nonetheless, a legal entity who is the owner of a frozen bank account or frozen assets, is allowed to file a motion for a 'part-reversal' of the specific court order to cover running expenses such as legal fees, taxes and necessary administrative expenses. This possibility is handled restrictively and is also evaluated case by case (LES 2015, 57 or LES 2016, 236).

There are no provisions for frozen assets to be utilised by the managing authorities.

35 Making requests for foreign legal assistance

Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

Liechtenstein is a signatory to:

- the European Convention on Mutual Legal Assistance in Criminal Matters 1959;
- the International Convention against the Taking of Hostages 1979; and
- the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents 1973.

Therefore, mutual legal assistance to parties of these conventions is guaranteed.

Additionally, the Law on International Mutual Legal Assistance in Criminal Matters 2000 (Mutual Legal Assistance Act) and the

GASSER PARTNER ATTORNEYS AT LAW

Thomas Nigg
Eva-Maria Rhomberg

thomas.nigg@gasserpartner.com
eva-maria.rhomberg@gasserpartner.com

Wuhrstrasse 6
9490 Vaduz
Liechtenstein

Tel: +423 236 30 80
Fax: +423 236 30 81
www.gasserpartner.com

Law on Cooperation with the International Criminal Court and other International Tribunals 2004 serve as legal framework for foreign legal assistance in criminal matters.

Needless to say, there are several bilateral agreements with neighbouring countries Austria, Germany and Switzerland.

Liechtenstein is signatory to further multilateral agreements on international mutual legal assistance in criminal matters as well as on extradition, which are listed under www.regierung.li/international-mutual-legal-assistance-in-criminal-matters.

The procedure to request legal assistance is usually initiated by an official letter from foreign public prosecution offices to the Liechtenstein Ministry of Justice or District Court, requesting special measures such as freezing specific bank accounts or the seizure of certain documents.

36 Complying with requests for foreign legal assistance

Describe your jurisdiction's legal framework and procedure to meet foreign requests for legal assistance concerning provisional measures in relation to the recovery of assets.

The main legal frameworks to comply with requests for foreign legal assistance in criminal matters are the European Convention on Mutual Legal Assistance in Criminal Matters 1959 and the Mutual Legal Assistance Act.

According to article 55, paragraph 1 of the Mutual Legal Assistance Act, the District Court is the competent authority for foreign legal requests regarding legal assistance. As in many other jurisdictions, the District Court decides whether the required measures comply with the law and can be granted to foreign authorities.

37 Treaties

To which international conventions with provisions on asset recovery is your state a signatory?

Liechtenstein is a signatory to several international conventions with provisions on asset recovery. Among others, it is a signatory to the following international conventions:

- the European Convention on Mutual Legal Assistance in Criminal Matters 1959;
- the European Convention on the Transfer of Proceedings in Criminal Matters 1972;
- the European Convention on Extradition 1957; and
- the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

38 Private prosecutions

Can criminal asset recovery powers be used by private prosecutors?

Under Liechtenstein law, private prosecutors are not known in this context. The power to recover criminal assets belongs exclusively to the public prosecutor. Nonetheless, private individuals can report to the public prosecution office, which is therefore competent to initiate investigation proceedings. Provisions regarding the possibility of using a private prosecutor can be found in section 31 of the StPO.

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Arbitration
Asset Recovery
Automotive
Aviation Finance & Leasing
Banking Regulation
Cartel Regulation
Class Actions
Commercial Contracts
Construction
Copyright
Corporate Governance
Corporate Immigration
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gas Regulation
Government Investigations
Healthcare Enforcement & Litigation
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mergers & Acquisitions
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Product Liability
Product Recall
Project Finance
Public-Private Partnerships
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally



Online

www.gettingthedealthrough.com



Asset Recovery
ISSN 2051-0489



THE QUEEN'S AWARDS
FOR ENTERPRISE:
2012



Official Partner of the Latin American
Corporate Counsel Association



Strategic Research Sponsor of the
ABA Section of International Law