CHAPTER 10

Asset Protection through Liechtenstein Annuities and Life Insurance

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In recent years life insurance contracts under Liechtenstein law have become an interesting alternative to traditional vehicles for asset protection and estate planning like foundations or trusts. Such life insurance contracts offer several advantages. The policy holder is largely free to select the assets to cover the policy. At the same time, he or she benefits from customized estate planning in combination with asset protection in the case of bankruptcy or enforcement proceedings. The contract may be terminated at any time; even a partial surrender in order to withdraw cash is possible. The flexibility and tax advantages of life insurance contracts allow for tailor-made solutions that satisfy policy holders' various needs.

PRINCIPALITY OF LIECHTENSTEIN

Financial Services in Liechtenstein

Financial services represent an important economic sector in Liechtenstein. Due to the high-added-value intensity of this economic sector, persons

employed in the financial services sector contribute a share of about 30 percent to Liechtenstein's gross domestic product. The services offered include in particular private asset management, international asset structuring, investment funds, and insurance solutions. As of the end of 2005, 16 banks, 164 domestic and 239 foreign investment undertakings, 31 Liechtenstein insurance companies, 41 pension schemes, and 1,314 other financial intermediaries (professional trustees, auditors, lawyers, patent attorneys, exchange offices, real estate brokers, dealers in high-priced goods and auctioneers, and other persons subject to due diligence) were working in the Liechtenstein financial center.

Liechtenstein has been a member of the European Economic Area (EEA) since May 1, 1995. Its EEA membership has important consequences for the development of the financial center. For example, it means that Liechtenstein financial intermediaries can profit from the freedom of establishment and movement of services when offering cross-border financial services within the EEA. At the same time, accession to the EEA came with the commitment to continuously implement all EEA-relevant legal acts of the European Union (EU) in the financial services sector into domestic law, in accordance with the provisions established by the EEA agreement.

With regard to supervision, the EEA triggers the commitment to comply with supervisory law standards and principles applicable to the entire EEA. The principles of mutual recognition of the equality of supervisory authorities apply. Thus the other EEA supervisory authorities recognize a priori the relevant Liechtenstein supervisory authority as an equal. This situation facilitates both approval conditions for EEA financial intermediaries and cross-border supervisory activities for the relevant supervisory authorities within the EEA.[1]

Liechtenstein Insurance Center

Insurance Supervision Act (ISA) After signing the EEA agreement in 1995, Liechtenstein initiated the Liechtenstein Insurance Center Project, establishing insurance supervision legislation in conformity with European standards. The law of December 6, 1995, the Insurance Supervision Act (ISA) on the supervision of insurance companies, and the ordinance of December 17, 1996, the Insurance Supervision Ordinance (ISO), entered into force on January 1, 1996, and January 24, 1997, respectively. The ISA circumscribes the organization and content of insurance supervision and in particular aims to protect insured persons and the confidence in the Liechtenstein insurance and financial system.

Insurance companies domiciled in Liechtenstein enjoy free access to the European market, which encompasses over 450 million inhabitants. Their

business activities are subject to insurance supervision that conforms with European and internationally recognized standards.

Before Liechtenstein joined the EEA, only agencies of Swiss insurance companies were operating in the principality. After Liechtenstein joined the EEA, in order to create the same conditions for Swiss insurance companies as for the EEA insurance companies, Liechtenstein and Switzerland concluded a Direct Insurance Agreement, which has been in force since January 1, 1997. Insurance companies domiciled in Liechtenstein and Switzerland are granted freedom of establishment and services with respect to direct insurance activities in the territory of the other state. Thus it is possible to operate directly from Liechtenstein not only in the EEA, but also in Switzerland. This position is unique in Europe.[2]

As a result of EEA membership, the insurance agreement with Switzerland, and the insurance supervision legislation, which complies with the EEA standards, Liechtenstein is in an excellent position to continue to establish itself as an insurance location.[3]

Three principles govern the insurance law in the EEA:

1. Single license
2. Home country control
3. Supervision on solvency of the insurance companies[4]

Under Liechtenstein law, supervision is focused on the solvency of insurance companies rather than on material monitoring of products including tariffs and insurance terms and codifications. Insurance companies are very flexible in their product design, and the policy holders have the additional benefit of freely choosing their investment. The ISA is in full compliance with the European standard and offers the opportunity to provide innovative integral asset management solutions, in particular, in the field of life insurance contracts. Thus, Liechtenstein insurance companies are in the position to provide their clients with tailor-made solutions that take into consideration the clients' complete personal and financial situation. The fact that assets under control grew 84.3 percent from 2004 to 2005 confirms the attractiveness of Liechtenstein life insurance contracts.

For insurance companies whose head office is in the principality of Liechtenstein, the license under the ISA covers the territory of all member states of the EEA. Thus, direct insurance may be offered in another member state of the EEA by way of formation of a branch or cross-border provision of services. The insurance company must notify the home country supervisory authority where it intends to establish a branch. The same applies in the case of cross-border provision of services.

Due to its political and economic stability, location in the heart of Europe, close economic link to Switzerland, membership in the EEA, highly developed banking system, strict secrecy laws, and a sophisticated, fully integrated infrastructure, Liechtenstein has become an important insurance center to both corporate and individual clients.

International Insurance Contract Law With the enactment on May 13, 1998, of the International Insurance Contracts Act (IICA), Liechtenstein has implemented the acquis communautaire in the field of international insurance contract law.

Insurance Contract Act With the enactment on May 16, 2001, of the Insurance Contract Act (ICA), Liechtenstein took an important step closer to realizing the Liechtenstein Insurance Center Project whose goal is to attract insurance companies to the principality. The ICA governs the legal relationship between the insurance company and the policy holder. Before the enactment of the ICA, the Swiss Insurance Act was applicable in Liechtenstein. The ICA is based on the provisions of the Swiss Insurance Act. According to the principle of "law in action," the ICA, where it corresponds to the provisions of the Swiss Insurance Act, is to be construed in accordance with Swiss case law and doctrine. The ICA is seen as a masterpiece of the Europeanization of Liechtenstein law.[5]

LIFE INSURANCE

Life Insurance Contract

A life insurance policy is a traditional choice and a common form of capital investment. It provides a rate of guaranteed interest over the term of the policy as well as offering opportunities for asset protection, tax planning, and insolvency legislation. The parties to the insurance contract are the insurance company and the policy holder. The insurance company issues the policy in return for the payment of the premium while the policy holder receives coverage for him- or herself and/or other persons. The insurance covers the life of the policy holder or another natural person. The beneficiaries are the persons designated by the policy holder who may claim the benefits in the insurance contract upon occurrence of the insured event.[6]

It is also possible to use a life insurance policy as a credit instrument. This flexibility allows the policy holder to utilize it in different forms as capital investment and/or as a credit instrument. Each capital-forming insurance is

not only a savings but also a financing instrument. If necessary, such capital may be used before maturity by loaning or pledging.[7]

For the assignment or pledge of life insurance claims to be valid, the assignment or pledge must be in writing and the policy must be handed over. This is thought to protect from precipitancy and for the preservation of evidence.[8] Thus, the policy is basically just a document of evidence. However, there are certain forms that make the policy similar to a security. This applies, for example, to life insurance contracts containing a bearer clause according to which the insurance company may pay benefits to the bearer. In such case the insurance company acting in good faith is authorized to consider any bearer entitled to the claim.

Since life insurance contracts are frequently effected for a long time period, Article 65 ICA grants a special right of cancellation to the policy holder who may cancel the life insurance contract if the premium has been paid for one year. The cancellation must be submitted in writing to the insurance company four weeks prior to commencement of a new insurance period. If the policy holder does not wish to pay any further premium, the insurance company shall, upon request of the policy holder, be required to convert in whole or in part any life insurance policy for which premiums have been paid for at least three years into a fully paid-up policy. The insurance contract may provide that the surrender value be paid in lieu of the desired conversion if the insurance sum or annuity resulting from the conversion would exceed an agreed amount. Moreover, the insurance company must, upon request of the policy holder, repurchase in whole or in part any life insurance for which the insured event is certain to occur, if the premiums have been paid for a least three years.

Unit-Linked Life Insurance Contracts

The unit-linked life insurance policy is basically a mixed life insurance that combines term coverage with a saving and an investment component. Unlike the traditional mixed life insurance, where the insurer bears the responsibility for the investment of the capital, in unit-linked life insurance contracts the policy holder decides how to invest the capital. Usually the policy holder may choose from a range of investment funds. By combining the funds, the policy holder decides on the investment strategy on his or her own, whether willing to take risks, balanced, or risk-averse. Many contracts allow policy holders to switch funds in order to adapt the investment to changes in the financial markets or to a new life situation. Since the policy holder chooses the portfolio strategy, a warranty for the maturity benefit does not apply. At maturity, the insurance company disburses the value of the shares in the fund but does not guarantee a certain capital as

it does with traditionally mixed life insurances. In the case of death, the beneficiaries have a title in the preestimated and, in case of death guaranteed capital or the equivalent of the shares in the fund, if the amount is higher.[9]

Unit-linked life insurance contracts under Liechtenstein law combines the taxation benefits of insurance with the potential of gains on the capital market and allows policy holders complete freedom to select the portfolio options.

Asset Protection through Life Insurance Contracts

The term "asset protection" is generally used to refer to any arrangement designed and intended to protect assets from claims by creditors and others. It is a means of organizing one's affairs and assets in advance in order to safeguard against potential losses arising from some future calamity. Life insurance contracts, similar to trusts or foundations, usually form part of general estate planning. As such, many different considerations extending well beyond the protection of assets from potential creditors will be relevant and must be taken into account. Asset protection vehicles are essentially symptoms of a changing economic and legal environment. Not only in North America but also in Europe, an explosion in litigation, especially in professional malpractice suits and environmental claims, has occurred. These and other factors account for the appearance and growth of asset protection vehicles.[10]

Whoever seeks the benefits of asset protection vehicles in general benefits from Liechtenstein's banking secrecy. In addition, the Liechtenstein legal system offers insurance secrecy based on the strict banking secrecy. The Liechtenstein legal system protects the individual sphere of any person. The private sphere of a person also includes information relating to his or her financial affairs and personal fortune.[11] While confidentiality is still regarded suspiciously by a number of foreign authorities, it represents protection of privacy and discretion as a personal property based on Liechtenstein legal order in the financial sphere. Competitive financial products, outstanding services, and secrecy aspects make the financial center of the principality of Liechtenstein well suited to investors.

Liechtenstein legislation on due diligence aimed at the prevention of money laundering and terrorism financing today satisfies the highest international standards.[12] Therefore, the belief that only dishonest clients are in real need of confidentiality no longer applies. In particular, Liechtenstein's measures to prevent the abuse of insurance and banking secrecy as well as the confidentiality obligation of trustees contributes to the interest of honest clients who can rely on the fact that a maximum of due diligence permits the

country to defend professional confidentiality in the financial area against fiscally motivated attacks from abroad.

The great importance of insurance secrecy is demonstrated in Article 44 ISA, according to which members of insurance companies and their employees, as well as other persons working on behalf of such companies, shall be required to maintain secrecy with respect to facts that are not publicly known and that have been entrusted to them or made accessible to them on basis of business connections with clients. The secrecy requirement is not time restricted. Furthermore, should representatives of authorities gain knowledge of facts that are subject to insurance secrecy, such facts are regarded as official secrets and remain confidential. A violation of the insurance secrecy may be punished with imprisonment of up to six months or with a fine of up to CHF 360,000. If the offense is committed negligently, the maximum penalties can be reduced by half.

Liechtenstein life insurance contracts offer the protection of the assets of the policy holder in two ways. The first way consists in the irrevocable designation of a beneficiary, while in the second scenario not only the policy holder but also the spouse or descendants are protected from creditors' claims if the policy holder has designated the spouse or descendants as beneficiaries.

Right of Disposal and Beneficial Interest

Right of Disposal According to Article 74 ICA, the policy holder shall be authorized to designate a third-party beneficiary without the consent of the insurance company. Both the policyholder and/or the beneficiary may be natural and/or juridical persons. Thus trusts or foundations may be beneficiaries of a life insurance contract. At any rate the insured person must be a natural one. Note that it is not possible to insure the life of a third party without the consent before signing the contract. Such a third-party insurance policy would continue to exist in the event of the demise of the policy holder and become part of his or her estate. The designation of a beneficiary may refer to the entire insurance claim or to a part thereof. An insurance company shall pay the benefit to the last person named pursuant to the beneficiary rules with debt-discharging effect.

This provision primarily refers to claims resulting from life insurance contracts that are due in the event of demise of the policy holder. The beneficiary acquires the beneficial interest directly, not through provisions of inheritance law. However, the provision is also applicable in the case of survival in an endowment policy where normally the policy holder is also the beneficiary. The life insurance policy with a third-party beneficiary is considered as a provision in favor of a third party.[13] The beneficiary will

acquire the right to benefit from the insurance policy upon occurrence of the insured event.

The policy holder of a life insurance policy may, even if a third-party beneficiary has been designated, exercise free disposal of the payment requests resulting from the insurance among the living and in consequence of death. The right of the policy holder or his or her legal successor to revoke the designation of the beneficiary shall expire only if the policy holder has signed a waiver of his or her right in the policy and has handed over the policy to the beneficiary (Article 75 ICA).

Beneficial Interest By naming of a beneficiary the policy holder disposes of the beneficial right resulting form the policy and a third party acquires the right of a reversioner. The beneficiary will obtain an independent right to the insurance claim as defined in the insurance contract only upon occurrence of the insured event. The beneficiary is then entitled to act in judicial proceedings in his or her own name against the insurance company (e.g., if the insurance company refuses payment). However, the policy holder may withdraw the designation of a beneficiary at any time as long as he or she has not expressly waived such right. Such revocation is not subject to any formal requirement. The instruction to the insurance company may even be given over the telephone.[14] Upon occurrence of the insured event—the demise of the policy holder—the sum payable will not form part of the estate but will be paid directly to the beneficiary. Thus, beneficiaries and family members of the policy holder with an interest in his or her estate may claim the insurance benefit even if they waive their right in a succession. This may be the case if the estate is encumbered by debt.

Life Insurance in Enforcement and Bankruptcy Proceedings

Irrevocable Designation of a Third-Party Beneficiary In general, a life insurance policy may be subject to bankruptcy or enforcement proceedings concerning the policy holder. According to Article 77 ICA, the designation of the beneficiary shall expire if the insurance claim is charged in Liechtenstein or if bankruptcy is opened with respect to the policy holder in Liechtenstein. It shall revive if the charge expires or bankruptcy is lifted. If the policy holder has waived the right to revoke the designation of the beneficiary, the insurance claim arising from the designation shall not be subject to enforcement on behalf of the creditors of the policy holder. The waiver of the right to revoke the designation of the beneficiary triggers the loss of the insurance claim of the policy holder. Such claim is no longer part of his or her patrimony;thus his or her creditors may not seize this particular claim.[15]

However, the interest of the creditors of the policy holder shall prevail in the event of a revocable designation of beneficiaries. If the insurance event has not occurred, the designation shall expire and the policy may be seized by the creditors of the policy holder or be included in the bankruptcy estate of the policy holder. The right of the policy holder to revoke the designation of the beneficiary is considered as expired only if the policy holder has signed a waiver of his or her right in the policy and has handed over the policy to the beneficiary. Due to this special formal requirements, the policy holder shall be aware of the consequences of the decision, as after such waiver a new designation of a beneficiary shall not be admissible.[16]

If a third party has been irrevocably designated as beneficiary, neither the policy holder nor his or her heirs may ever become beneficiaries. The policy holder will never be entitled to the insurance claim, and thus the policy will not become part of his or her bankruptcy estate.[17] Furthermore, according to Article 210 (1) (d) of the Liechtenstein Execution Code (EC, LGBl. 1972/92 II), monetary claims, which due to legal provision are not seizable, may not be subject to enforcement proceedings. Thusthe creditors of a policy holder who has waived the right to revoke the beneficiary will not be able to seize the policy.

In general, after occurrence of the insurance event, the insurance claim of the third-party beneficiary may be seized by his or her creditors or included in the bankruptcy estate of the third-party beneficiary.

Designation of the Spouse or the Descendants as Beneficiaries Pursuant to Article 78 ICA, if the spouse or the descendants of the policy holder are beneficiaries, then, subject to any liens, neither the insurance claim of the beneficiary nor of the policy holder shall be subject (i) to enforcement on behalf of the creditors or (ii) to the bankruptcy of the policy holder or the beneficiary. A person living in cohabitation with the policy holder shall be considered equivalent to a spouse. The designation of the beneficiaries will not expire, and thus the insurance claim will not become part of the patrimony of the policy holder again. The ownership of the insurance contract automatically transfers to the protected beneficiaries, and any order or instructions of the policy holder or on his or her behalf, including a court order, is ineffective.[18] It is irrelevant whether the designation is irrevocable or revocable. The insurance policy will continue to be protected from the creditors even if the designation of the beneficiaries is revocable.[19]

This provision aims to protect the financial security of the policy holder's family. The legislation also has taken into account social realities and has extended the protection to the person living in cohabitation with the policy holder, even if such person is of the same sex as the latter.[20] In such cases, contrary to the general rule and contrary to life insurance contracts governed

by Swiss law, the protection extends also to the insurance claim of the beneficiaries. It may not be seized by their creditors and may not be included in their bankruptcy estate. However, if third parties have acquired any liens regarding the insurance policy, this provision will not affect their rights.

Succession Right of the Spouse and the Descendants If the spouse or the descendants of the policy holder are beneficiaries of a life insurance contract, then they shall succeed in to the rights and duties arising from the insurance contract as soon as the policy holder is subject to enforcement or bankruptcy, unless they expressly reject the succession. The beneficiaries shall be required to indicate the succession to the policy by submitting a certification of the district court regarding enforcement or bankruptcy to the insurance company. If there is more than one beneficiary, then they must designate a representative who shall receive the notifications from the insurance company (79 ICA).

In the event of bankruptcy of the policy holder or enforcement proceedings instituted by his or her creditors, all rights and duties regarding the insurance contract pass to the spouse or descendants if designated as beneficiaries. The protection also extends to bankruptcy proceedings in foreign states and ineffective enforcement proceedings abroad.[21]

Rights of the Spouse and Descendants in the Case of Chargeable Insurance Claims Claims arising from a life insurance contract that the debtor has concluded on his or her own life may be subject to utilization under enforcement or bankruptcy law. However, the spouse or the descendants of the debtor may, with the debtor's consent, demand that the insurance claim be transferred to them in return for reimbursement of the surrender price.

If such an insurance claim is charged and if it is to be utilized under enforcement or bankruptcy law, then the spouse or the descendants of the debtor may, with the debtor's consent, demand that the insurance claim be transferred to them in return for payment of the claim secured by the distraint or, if the claim is smaller than the surrender price, in return for payment of this price.

The spouse or the descendants must make their request prior to utilization of the claim before the district court or the trustee in bankruptcy. This provision may also apply if no beneficiaries have been designated.[22]

Reservation of Action for Rescission The just-outlined provisions of the ICA concerning insurance contracts for the benefit of a third party are subject to the provisions of the Rights Protection Code governing actions for rescission.

In the event that a bankruptcy order is made, the debtor's trustee in bankruptcy has, by virtue of Article 70 of the Bankruptcy Code, the right to challenge all prior legal acts performed by the debtor subject to Articles 64 to 75 of the Rights Protection Code. These provisions explicitly set out the grounds for challenge by judgment creditors whose attempts at execution have gone wholly or partially unsatisfied or where there is a presumption that such execution will not lead to complete satisfaction of the judgment creditor's claim. However, if they are applied by reference in a bankruptcy situation, the trustee in bankruptcy has the sole right over such creditors with regard to contesting transactions undertaken prior to the bankruptcy order.

According to Article 65 of the Rights Protection Code, gratuitous dispositions or transactions for disproportionate consideration can be challenged if they were made one year before the issue of an execution or bankruptcy order. It is assumed that proper consideration has been given in the case of bilateral transactions and that the existence of fraud can be excluded.

Article 67 of the Rights Protection Code permits a challenge of transactions by the debtor (regardless of when undertaken) that have been undertaken with the intention (discernible by the other party) to defraud creditors or to pertain certain creditors.

APPLICABILITY OF THE LIECHTENSTEIN LIFE INSURANCE ACT TO INSURANCE CONTRACTS WITH FOREIGN POLICY HOLDERS

Choice of Liechtenstein Law

The rules of the IICA determine whether Liechtenstein law is the law governing an insurance policy that has a foreign policy holder not resident in Liechtenstein. According to Article 3 IICA, the insurance policy shall be subject to the law chosen by the parties if the risk is situated in the principality of Liechtenstein or in another state granting the free choice of law. Article 11 (3) (d) ISA states that the risk is situated in the state in which the policy holder usually lives or, if the policy holder is a legal person, the state where this legal person has been established or registered. Pursuant to Article 4 IICA, in the case of life insurance, if the prerequisites for free choice of law pursuant to Article 3 IICA are not fulfilled, then the parties may in any event make use of the options for choice of law granted by the state in which the risk is situated. If the policy holder is a natural person and if his or ehr habitual abode is in a different state than the state of citizenship, then the parties may also choose the law of the state of citizenship of the policy holder.

Due to the provisions of the IICA, it must be verified whether the state where the risk is located grants the free choice of law in order to validly choose Liechtenstein law for a life insurance contract between an insurance company and a foreign policy holder.

Limitations to a free choice of law under Liechtenstein legislation may arise out of the public policy rule, as contained in Article 6 of the September 19, 1996, Private International Law. According to this, the corresponding rule of Liechtenstein law shall apply if a provision in the foreign law applicable (according to the choice of law) is in conflict with fundamental values of the Liechtenstein legal system. Under Liechtenstein law, the parties to an agreement are not free to exclude Liechtenstein public laws; these laws include, for example, the Liechtenstein Bankruptcy Code (Konkursordnung) and the Liechtenstein Deed of Arrangement Act (Nachlassvertrag). Thus, should one of the parties become insolvent, a Liechtenstein court would uphold the parties' earlier choice of law as far as matters of private law are concerned. However, Liechtenstein bankruptcy and arrangement law and procedure would, automatically and necessarily, be applied by a Liechtenstein court.

Excursus: Choice of Liechtenstein Law in an Insurance Policy with an Austrian Policy Holder The Austrian Law on International Insurance Contracts in the European Economic Area (EVSG)[23] governs the law applicable to insurance policies with a nondomestic aspect if the risk is situated in a member state of the EEA. In the case of a life insurance contract, the risk is situated in the member state where the natural person has his or her habitual abode. Article 5 EVSG grants the free choice of law to the parties of a life insurance contract if the risk is situated in the ambit of the EVSG (Austria) or in another member state that grants the free choice of law. Thus, the choice of Liechtenstein law in an insurance contract between a Liechtenstein insurance company and an Austrian citizen would be valid and binding.

Article 9, paragraph 1 EVSG limits the choice of law in a contract, which has been stipulated in connection with a service directed to the stipulation of such contracts by an insurance company in a member state of the policyholder's domicile. Imperative provisions of such member state may not be excluded to the disadvantage of the policy holder. This provision aims to protect the policy holder. The imperative provisions of his or her state of habitual abode remain applicable if the provision of the law of choice should be to the disadvantage of the policy holder. However, the law of choice remains applicable if it is more advantageous or if imperative provisions do not conflict with such law.[24]

Bankruptcy Proceedings Concerning a Foreign Policy Holder

Until recently, Liechtenstein courts and authorities did not acknowledge or enforce any decision of judgment of a foreign court or administrative body in foreign bankruptcy or insolvency proceedings. Contrary to earlier decisions, on May 6, 2003 (2 CG 2001.68, LES 2004/28), the supreme court finally held that the international bankruptcy law of Liechtenstein is obliged to follow the principle of "ubiquity." Thus bankruptcy proceedings abroad are to be acknowledged and tangible assets located in Liechtenstein are to be surrendered and delivered to the foreign authority and trustee in bankruptcy, if

- Any claims of third parties for release of the bankrupt's estate or, alternatively, any preferential claim or secured creditors are not impaired.
- No proper domestic insolvency proceedings have been instigated at the date when the Liechtenstein courts decide on such foreign request of delivery of Liechtenstein assets.
- The respective foreign state grants reciprocity.

Reciprocity does not mean that the foreign state is willing to acknowledge a Liechtenstein bankruptcy proceeding. The fact that the foreign requirements for recognition are not significantly more severe than the requirements under Liechtenstein law is decisive.

Thus, in a request for judicial assistance, the foreign court would request the delivery of the claim over the foreign bankruptcy estate. The district court would then request a binding decision from the superior court to determine whether reciprocity is given. The superior court will decide on a case-by-case basis whether the foreign state grants reciprocity according to its bankruptcy law. The court granting such a request must subsequently order the third-party debtor (the insurance company) to release such assets in favor of the requesting party. Further, the insurance company will have to provide information regarding whether it holds such assets and, if so, how much and whether such assets were already claimed by other preferential creditors by order of the court. If the Liechtenstein insurance company, in its capacity as third-party debtor, fails to comply with such order, then it may be sued by the trustee in bankruptcy.

Under this new case law, which did not apply to life insurance contracts, it remains to be determined whether the Liechtenstein courts will deny the delivery of the insurance claim to a foreign bankruptcy estate on grounds of the limitations resulting from public policy (ordre public) applicable in

Liechtenstein. The bankruptcy privilege with regard to the beneficiaries of Liechtenstein foundations[25] is a fundamental value of the Liechtenstein legal system. The scope of the ordre public is to protect the Liechtenstein legal system from foreign legal principles that are not in compliance with the fundamental values of the Liechtenstein legal system. That beneficial rights in a foundation may not be charged is a long-established legal tradition in Liechtenstein. Even if the provisions granting the bankruptcy and enforcement privilege are absent among the provisions that according to Article 94 ICA may not be modified to the disadvantage of the policy holder or the beneficiary, the protection of the family's financial security is part of a long-established legal tradition. This tradition inter alia arises from the entailed estate, which, contrary to many other European jurisdictions, is still recognized in Liechtenstein.[26]

As outlined, the protection of the life insurance extends to bankruptcy proceedings in foreign states and ineffective proceedings abroad. Seen in this context, there is no reason to assume that the legislation intended to grant the bankruptcy and enforcement privilege to Liechtenstein citizens only. If this was the case, it would result in a violation of the fundamental European freedoms and therefore be in a violation of EEA law.

The income a beneficiary receives from a foundation without valuable consideration ("quid pro quo") may be seized by the beneficiary's creditors by injunction, levy of execution, and writ or bankruptcy proceedings only if the said income is not required to cover the necessary living expenses of the beneficiary, the beneficiary's spouse, and the beneficiary's children without means. In the case of family foundations, the founder may stipulate that creditors must not deprive specifically indicated beneficiaries (other than the founder) of such gratuitously acquired benefits by injunction, levy of execution, and writ or bankruptcy proceedings.

The creditors of the beneficiary of a trust[27] may assert claims against the trust property only if the beneficiary him- or herself has a beneficial interest in the trust property and the settlor has not exercised power to exempt such interest from seizure, which power is explicitly provided for by the law. The settlor may thus stipulate that creditors must not deprive specifically indicated beneficiaries of their gratuitously acquired enjoyment of the trust property.[28]

Independent of the question of whether a Liechtenstein court would grant or deny legal assistance in foreign bankruptcy proceedings, it is advisable to ensure that the policy holder in his or herstate of habitual abode benefits from the bankruptcy privilege too. Assuming the validity of the choice of law, many legal systems provide for the principle that bankruptcy may not include assets that by law cannot be distrained.

For instance, amounts due to the policy holder or the beneficiary are under Italian law (Article 1923, para. 1 of the civil code[29]) unchargeable and not liable to sequestration. This also applies in the event of the bankruptcy of the policy holder in accordance with Article 46 of Royal Decree 267/1942,[30] which specifies that the bankruptcy estate does not include assets that by law cannot be distrained. According to prevalent doctrine, Article 1923, paragraph 1 Civil Code must be construed in light of Article 46 bankruptcy law; thus the insurance claim will not be included in the bankruptcy estate.[31] When asked to state its position on this matter, the court of cassation[32] clarified the scope of validity of the above-mentioned provisions, confirming that the insurance claim is exempt from distraint and stipulating that only surrendered amounts (i.e., amounts requested by the policy holder prior to the insured event) are subject to enforcement or precautionary measures on the part of the policy holder's creditors.

Excursus: Bankruptcy of an Austrian Policy Holder As outlined, Article 5 EVSG permits the parties of a life insurance contract the freedom to choose the governing law if the risk is situated in the ambit of the EVSG (Austria) or in another member state that grants the free choice of law.

The doctrine suggests that that the insurance policy will not be included in the bankruptcy estate of the Austrian policy holder if the assets represented by the ducument are located in Liechtenstein. This is the case if the policy is physically deposited in Liechtenstein and requested for the insurance claim. If the policy is located in Austria, the insurance claim is generally to be considered as part of the bankruptcy estate. However, Article 77 seqq. ICA are of material rather than procedural character. An Austrian court will always apply Austrian procedural rules. The applicable material law is Liechtenstein law as lex causea. The bankruptcy privilege is a distinctive element of the life insurance policy under Liechtenstein law, which has to be applied inseparably with the other product-distinctive elements of the ICA. Thus, the life insurance policy under Liechtenstein law also extends its benefits to an Austrian policy holder subject to a bankruptcy proceeding. According to Article 77 seqq. ICA, under material law the insurance claim is not part of the estate of the policy holder. The application of foreign law is limited on grounds of Austrian public policy (ordre public). A foreign material provision may not be applied if it violates fundamental values of the Austrian legal system. Due to Article 77 seqq. ICA, no singular creditor is privileged, and therefore there is no violation of the fundamental principle of par conditio creditorum. Furthermore, the principle of protection of the financial security of the family of the policy holder is also in compliance with the Austrian ordre public. Article 77 seqq. ICA are to be seen as integrated

elements of the ICA and thus to be respected in an Austrian bankruptcy proceeding as well.[33]

Enforcement of Foreign Judgments in Liechtenstein

Pursuant to Article 52 of the Execution Code (Exekutionsordnung), foreign judgments will be enforced by Liechtenstein courts only if, and to the extent that, reciprocity with the foreign country has been guaranteed by government policy statements or international treaties. Applicable enforcement treaties exist only with Austria and Switzerland. There is no possibility of registering a foreign judgment with the local court authorities either. The principality of Liechtenstein did not join the Lugano Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters concluded in Lugano on September 16, 1988, despite its membership in the EFTA states. The Lugano Convention intended to elevate the international jurisdictional law and the international enforcement of judgment law of the EFTA member states to the same standards of the members of the European Union. The rationale for this decision was that accession to the Lugano Convention would have been tantamount to destroying the existence of the judiciary of the ministate of Liechtenstein.[34]

Provided that the venue court is not in Switzerland or Austria, a judgment creditor seeking to enforce a decision obtained in any other country except Switzerland or Austria may bring the claim by way of the so-called payment order proceedings.[35] The judgment creditor simply asserts the (pecuniary) claim, and the court will issue a payment order and serve it on the judgment debtor without a hearing. The judgment debtor has 14 days to lodge an objection (the so-called Rechtsvorschlag) with the court. If the judgment debtor does so (otherwise the claim becomes enforceable), the judgment creditor may apply for annulment of the objection in a summary proceeding called Rechtsöffnung. In such proceedings, the original foreign judgment or certified copy thereof is regarded as an official document evidencing a debt. After a hearing in which the judgment debtor is allowed to present evidence that he or she does not owe the judgment anymore, the court will issue a provisional enforcement decision to the judgment debtor, with the direction to file a suit (Aberkennungsklage) in order to invalidate the claim within 14 days. If he or she does so (otherwise the claim becomes enforceable), regular proceedings start and the judge presiding over the matter will summon the parties to a hearing. The debtor must assume the plaintiff's role, but the burden of proving the existence of the claim remains with the judgment creditor. For non-pecuniary claims the procedure is the same.

The summary proceeding could therefore end again in an ordinary proceeding, which would result in a Liechtenstein court deciding on exactly the

same issue that had been already decided by any other than a Swiss or Austrian court. Even a foreign court decision that orders the forced realization of the policy or the revocation of the beneficiary designation would not be enforceable.

Once the creditor has achieved an enforceable title in Liechtenstein, a Liechtenstein court would have to respect Article 210 (1) (d); this denies any request for the creditor in the case of insurance policies under Liechtenstein law being the subject of attempted forced realization. The insurance company as third-party debtor in the case of enforcement could cite the provision of Article 78 ICA, according to which the insurance claim of neither the beneficiary nor the policy holder shall be subject to enforcement if the spouse or the descendants of the policy holder are the designated beneficiaries.

CONCLUSION

The life insurance contract under Liechtenstein law offers a variety of benefits for the policy holder. One of the most convincing arguments for signing such a life insurance contract is asset protection in bankruptcy and enforcement proceedings, which extends not only to the policy holder but also to the spouse and descendants if designated as beneficiaries. Taxation benefits, flexible portfolio management, and insurance and banking secrecy complete the range of the impressive product characteristics. Due to modern legal provisions, life insurance contracts under Liechtenstein law provide tailor-made solutions that take into consideration the clients' complete personal and financial situation. The strong growth of the Liechtenstein life insurance market in the past few years confirms the attractiveness of the life insurance products under Liechtenstein law.