Asset Recovery

Contributing editors
Jeremy Garson, Daniel Hudson and Gareth Keillor
Herbert Smith Freehills LLP

2019

GETTING THE DEAL THROUGH

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Asset Recovery 2019

Seventh edition

Getting the Deal Through is delighted to publish the seventh edition of *Asset Recovery*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Ukraine.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would like to thank the contributing editors, Jeremy Garson, Daniel Hudson and Gareth Keillor of Herbert Smith Freehills LLP for his assistance with this volume. We also extend special thanks to Jonathan Tickner, Sarah Gabriel and Hannah Laming of Peters & Peters Solicitors LLP, who contributed the original format from which the current questionnaire has been derived, and who have helped to shape the publication to date.

GETTING THE DEAL THROUGH

London
September 2018

Liechtenstein

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Civil asset recovery

1 Parallel proceedings

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

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 may be suspended until a verdict is reached (section 191(1) of the Civil Procedure Act (ZPO)).

2 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').

3 Limitation

What are the time limits for starting civil court proceedings?

Provisions regarding statutes of limitation are found under section 1478 et seq of the Civil Code (ABGB). Time limits can vary between three, five, 10 and 30 years, depending on the nature of the matter (sections 1478, 1480 and 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 on 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 after three years, but the ultimate time limit is 10 years instead of 30 years (section 1489a of the ABGB). For the mere non-use of a right, however, the general time limit is 30 years.

4 Jurisdiction

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

Generally, the District Court, as a civil 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 of a person's jurisdiction (usually determined by his or her place of residence) are met.

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

Further, in cases where the court does not examine jurisdiction ex officio 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.

5 Time frame

What is the usual time frame for a claim to reach trial?

Compared to trials in other jurisdictions, Liechtenstein's justice is considerably swift. There are no rules requiring criminal cases to be granted priority. Once the relevant pleadings are filed, a hearing is usually scheduled within weeks. Although the median time from commencement of a lawsuit to judgment is 12 months, it may take longer if the case is complex and international, foreign law must be applied or witnesses who live abroad must be heard in court. Even if all instances of courts are gone through, a final decision in most civil cases can be reached within two or three years.

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

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

In case certain 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 of the ZPO, are handled restrictively to avoid pre-trials and evasion of procedural principles.

Under certain circumstances, hearings of evidence or applications for evidence may also be rejected by the court (eg, in cases where information and evidence could have been provided sooner (section 179(1) of the ZPO)).

7 Witnesses

What powers are available to compel witnesses to give evidence?

According to section 326 of the ZPO, the recognising court decides whether, and in what way, the progress of the proceedings in the main case is influenced by the unjustified refusal to testify, the performance of the witness's oath or by the coercive measures instituted against the witness for this reason. However, in all cases of unjustified refusal to give evidence, the disobedient witness is liable to both parties for the damage caused to them by thwarting or delaying the provision of

evidence (section 333 of the ZPO). In particular, he or she is also obliged to reimburse all relevant litigation costs caused by his or her refusal. Moreover, if the witness's refusal to give evidence was wilful, the witness may be punished with a 'wanton penalty' by the court.

In the case of a duly summoned witness who does not appear at the hearing without a sufficient excuse, the judge is allowed to issue an order to reimburse all costs caused by his or her absence. In addition, the witness will be summoned again and an administrative fine can be imposed. In the event of repeated absence, the fine could be doubled to the legal extent, and the forced arraignment of the witness is ordered.

8 Publicly available information

What sources of information about assets are publicly available?

There are 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 states the publicity of the Commercial Register. Generally, the Commercial Register contains information regarding corporations, trusts, foundations and establishments, etc, that are domiciled in Liechtenstein. The information given about a corporation by the Commercial Register includes the name, domicile and purpose, including members of the board. In specific cases, especially regarding certain foundations, the information may be limited and restricted.

Furthermore, information about real estate and its limitations is available through the Land Register, which is publicly available as well. Anyone who has a vested interest may seek information. However, any person, even without an interest, is entitled to receive basic information such as the name and description of a property, owner's name and type of ownership, date of acquisition, as well as its easements. Information or an extract from the Land Register may only be provided in respect of a specific property. An individual-related inquiry is not permitted (article 551 of the Property Law).

There is no special or publicly available enforcement or insolvency register. However, bankruptcy information is published on the District Court's website (www.gerichte.li/publikationen).

9 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 of files. According to section 183(1), number 3 of the ZPO, the judge may procure documents held by public authorities or notaries if parties relate to these documents.

10 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 by the evidence leader. 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 Criminal Code (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). If a request of evidence is aimed at clarifying a law-producing or law-destroying fact, the elements of which were not clear to the party itself and that were neither presented nor substantiated by it, this is an inadmissible proof of exploration or discovery.

11 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 applicant, a party might obtain measures for interim relief from a court upon motion. During the pendency of extrajudicial proceedings, interim relief (such as an injunction) may be rendered ex officio (article 270(3) of the Enforcement Act (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. Though 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 applicant 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 as follows:

- the seizure, custody and compulsory administration of movable tangible property;
- the deposit of funds in court;
- an injunction by order of the court on the sale or seizure of movable 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 must 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 may not be effected until that amount has been paid (article 286 (paragraphs 1 and 3) of the EO).

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 197 of the ZPO). The judge may punish improper behaviour through a fine, a short prison sentence or exclusion from a court hearing. The exclusion of a lawyer from a court hearing is not possible. However, the latter may be fined in cases of non-compliance with court orders.

If a party does not comply with a (final) decision of a 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 prison 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 of 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, taking parties to disputes, the production of documents and expert opinions from other jurisdictions.

Parties not signatories 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 jurisdictions unless the assistance would be against the law of Liechtenstein, or there would be no reciprocity (section 27 of the JN).

Foreign judgments are generally not enforceable in Liechtenstein. There are bilateral agreements with Austria and Switzerland. Although Liechtenstein is a member of the European Economic Area, 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 usually be 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?

Civil asset recovery claims may be brought on the basis of many different causes of action. In general, the main cause of action in civil asset recovery cases is 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*. Contract-based claims may be filed for breach of contract (section 1295(1) of the ABGB). This cause of action also applies where there is no contract but a party unlawfully caused damage to another party (eg, through fraud). Claims based on illegal enrichment (section 1041 et seq of the ABGB) as well as liability regarding entities (article 218 et seq of the PGR) are also possible. With respect to insolvency and bankruptcy matters, legal acts, provided that the debtor carried them out within the year before an enforcement was granted and that he or she was already overindebted at the time of execution, are also contestable according to article 66 of the Liechtenstein Code of Securing Legal Rights (RSO).

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

16 Remedies

What remedies are available in a civil recovery action?

There are several remedies when it comes to a civil recovery action. However, applicable remedies usually depend on the cause of action.

According to section 1323 of the ABGB, the first remedy is always restitution in kind if the cause of action allows it. If restitution in kind is not possible, damages may be awarded in cash. Regarding a breach of contract, a party may seek fulfilment of the agreement (specific performance) or sue the other party for damages. With respect to tort-based claims, remedies are usually granted in the form of damages.

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, the 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 a *Rechtsöffnungsverfahren*: a motion for setting aside the debtor's protest (section 49 et seq of the RSO). In contrast to full trial proceedings, this simple and swift proceeding is particularly favourable to foreign creditors.

For non-pecuniary claims, in order to assert any claim to a declaration, legal form, performance or omission, the ZPO also allows a simplified procedure, the *Rechtsbotverfahren* (section 593a et seq of the ZPO).

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 court judgments:

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

Article 201 of the EO states several provisions regarding pecuniary claims that must be considered during enforcement proceedings. As mentioned in question 12, a creditor may also file a motion for a fine or a prison sentence to honour the binding judgment if a judgment obliges a party to perform or not perform a specific action (articles 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?

In general, each party bears his or her own costs a priori (section 40 of the ZPO). However, the party wholly unsuccessful in a legal dispute must reimburse its opponent all costs caused by the conduct of the lawsuit, which were necessary for appropriate legal prosecution or legal defence (section 41of the ZPO). If each party wins or loses in part, costs are usually set off against each other or divided proportionately. However, even in such cases, the court may order one party to reimburse the other party for all costs incurred by the other party, if the prerequisites set forth in section 43(2) of the ZPO are met.

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.

Another common funding arrangement is an insurance regarding legal expenses.

Lawyer's fees are regulated by a statutory tariff. This tariff is applicable on a party-to-party basis and determines what costs must 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, parties themselves fund court proceedings. Even though there are no specific provisions with respect to third-party funding, litigation funding by an independent third party is possible.

Criminal asset recovery

21 Interim measures

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

The Criminal Procedure Act (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 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 movable 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 the as yet undiscovered proceeds of such a crime, he or she usually notifies the public prosecutor; in case any suspicion concerning money laundering arises, financial intermediaries under the Due Diligence Act are obliged to issue a notification to the relevant financial intelligence unit.

Regarding the proceeds of serious crimes, see the aforementioned measures in question 21, such as the seizure of assets and bank accounts. Moreover, a court may declare assets as 'forfeited' in cases where assets have been obtained for or through the commission of an offence punishable by law (section 20 of the StGB). Liechtenstein has adopted its forfeiture provisions from Austrian law.

23 Confiscation – legal framework

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

There are several measures relating to confiscation of the 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 StGB states, inspired by Austrian jurisdiction, the following measures to confiscate the proceeds of crime:

- section 19a (confiscation of tangible assets or objects); and
- section 20 et seq (forfeiture provisions with regard to assets).

Provisions concerning the confiscation of the proceeds obtained through illegal enrichment are incorporated in section 20 et seq of the StGB. Usually, the convicted person is ordered by the 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, should be confiscated and must 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 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 must 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, 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 naming the assets concerned, including the specific bank accounts. For a successful investigation and the ordering of appropriate measures, these facts must be known and shown to the public prosecutor or a private participant. Regarding the seizure of bank documents during criminal investigations, the law does not protect bank secrecy. Consequently, bank documents can be seized. Legally privileged documents, such as the confidential correspondence between a lawyer and a suspect, cannot be sequestrated (Constitutional Court of Liechtenstein, 28 February 2000, StGH 1999/23, LES 2003, 1).

In the case 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 StPO).

Nonetheless, declaring proceeds as forfeited 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 the 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 must 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 been converted into other assets. Regarding secondary proceeds consisting of tangible assets, ownership by the perpetrator (section 19a of the StGB) must be given in a first-instance decision, otherwise confiscation is not allowed.

However, the court must always determine who has been enriched by the crime and if proceeds have been converted into other assets. Regarding the forfeiture procedure in section 20b of the StGB, it is upon the suspect to prove that assets do not issue from criminal organisations, terrorist organisations or terrorist financing. In the event of

Update and trends

With regard to relevant developments, reference should be made to the forfeiture provisions that have been in force since 1 June 2016 and the latest case law issued in connection to them. The core elements of the amendments were the replacement of the net principle by the gross principle, a new and very broad understanding of the term 'assets', the extension of forfeiture to include emoluments and replacement values, and the explicit inclusion of assets saved by the commitment of a criminal offence. The first case law on these new provisions shows that the objective of the amendment ('crime must not be worthwhile') has been achieved (see decisions of the Supreme Court 6 October 2017 OGH 12 RS.2013.2001 and December 2017 OGH 13 UR.2016.112, and decisions of the Court of Appeal 10 April 2018 OG 13 UR.2018.73, 24 April 2018 OG 09 KG.2014.1 and 24 April 2018 OG 11 UR.2017.176).

undetermined inflows of assets, it is upon the suspect to make the legal acquisition credible.

Further, it is not possible to declare assets as forfeited if a third party, inter alia, obtained bona fide ownership, or the perpetrator must use the proceeds in satisfaction of civil claims (section 20a of the StGB). In cases under section 20b of the StGB, these rules also apply, but section 20c of the StGB provides for further exemptions.

27 Third-party ownership

Is it possible to confiscate property acquired by a third party or close relatives?

It is possible, if certain prerequisites are met and if exceptions do not apply, to declare assets as forfeited, or confiscate property acquired by a third party or close relatives. If assets are under control of a criminal organisation or a terrorist group, or have been provided or collected as a means of financing terrorism, they could be confiscated regardless of whether they were acquired by a third party (section 20b of the STGB).

As mentioned in question 26, there are several prerequisites that could prevent forfeiture to third parties or confiscation of assets acquired by a third party (section 20a of the StGB). Further, the declaration of assets as forfeited 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 the law, there are no special provisions regarding the recovery of costs arising out of tracing and confiscating assets. However, note the general provisions in section 300 et seq of the StPO.

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-based confiscation are given.

In fact, section 20(2) of the StGB states a value-based forfeiture of assets, which means the declaration of assets as forfeited may also affect alternative rights or assets. However, for a legally binding verdict, assets must be located in Liechtenstein when declaring them as forfeited.

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 usually lies with the public prosecutor. Regarding confiscation proceedings and forfeiture proceedings, he or she must 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. With respect to section 20b of the StGB, it is upon the suspect to prove credible legal acquisition of asset inflows.

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(2), number 2 of the StGB expressly states that the forfeiture of assets is not allowed if the perpetrator has, or had, to pay any damages or compensation for a civil claim arising from the conviction. Furthermore, the extended forfeiture of assets is not allowed as far as third parties that 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 forfeiture. In particular, section 20(2) of the StGB explicitly states that forfeiture of assets 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 domestic verdict is not necessary to confiscate proceeds or declare them as forfeited. Instead, the public prosecutor files a charge of a new and objective proceeding (article 356 of the StPO). Regarding the forfeiture of proceeds, fulfilment of the necessary and objective conditions is sufficient. Regarding proceedings for the forfeiture of assets, the two conditions are 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 must 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, tax 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 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 following:

- 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 (the Mutual Legal Assistance Act) and the Law on Cooperation with the International Criminal Court and International Tribunals 2004 serve as the 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 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 for complying 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(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 1990.

38 Private prosecutions

Can criminal asset recovery powers be used by private prosecutors?

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

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