

Overview of Liechtenstein Civil Proceedings

1. General Information

1.1

The Liechtenstein Law of Civil Procedure (Civil Procedure Order (**CPO**)) has mainly been taken over from the Austrian law of Civil Proceedings. However, not all amendments have been adopted. Due to typical Liechtenstein characteristics, several modifications have been made. Liechtenstein Law of Civil Proceedings is based on the following principles: publicity, orality, immediacy, free consideration of evidence, equality of parties, mutual right to hearing, freedom to plead and the right to dispose over the item in dispute.

1.2

With regard to legal costs, it has to be mentioned that, primarily, each party has to bear its own costs, which – provided that the costs were necessary in the context of the legal proceeding – are reimbursed by the opponent in case of winning the trial. For defining the amount of costs, the court does generally not have the power to act at discretion, since they have to consider the official attorney's fees (law on tariffs for attorneys and legal representatives, cf. point 5).

1.3

In case of a trial in connection with foreign countries (frequent in Liechtenstein), there is one crucial regulation. According to this regulation, a plaintiff resident in a foreign country may have to pay a security deposit under certain circumstances for a possible lawsuit to secure the defendant's claim for reimbursement of the costs presumably incurring to him. The technical German term for this deposit is "aktorische Kautio". The provisions of the CPO

providing for that security deposit have been changed in July 2009 due to their inconsistency with European law (cf. point 4).

1.4

In addition, natural persons have the possibility to apply for legal aid. Legal aid means that the legal costs are temporarily cancelled partially or totally and/or an attorney is provided free of charge. Legal aid is granted if a party is not able to bear the costs without affecting its livelihood and if the intended lawsuit does not seem to be mischievous or senseless. Legal entities do not have the right to legal aid.

2. Civil proceedings

a) Civil proceedings after conciliatory hearing

Prior to initiating a civil litigation – with a few exceptions– a conciliatory hearing has to take place. The hearing is aimed to find an amicable solution between the parties. The conciliator is not a court authority. If he fails to achieve an agreement, he has to confirm that in writing. This document has to be filed together with the lawsuit in order to provide proof of the attempt for conciliation.

After having received the complaint, the court serves the complaint on the defendant together with the incitement to submit an answer to the claim. At the same time, the court fixes a first hearing. In the first hearing specific objections to the claim must be brought forward (e.g. lack of jurisdiction or incompetence of the court etc). Apart, the court usually fixes the means of evidence which it will use to decide the case. Witnesses and parties are heard in later hearings, fixed at the end of the prior hearing.

According to the CPO, the court issues judgements (*Urteile*) or decisions (*Beschlüsse*). Resolutions are issued in case of a final ruling in a trial. All other rulings belong to the category of decisions.

Generally, there are two possibilities to appeal a ruling: appeal (*Berufung*) against judgements and recourse (*Rekurs*) against decisions. The deadline for filing appeals is 4 weeks, for recourses 14 days. Second-instance rulings can be appealed in case of judgements by an appeal requesting a formal change to the judgement (*Revision*) and in case of decisions by recourse (*Revisionsrekurs*) to the Supreme Court. This is possible if the procedure does not end before the Upper Court. In case of appeals, it is possible to state new facts and provide new arguments.

b) Civil proceedings after preliminary injunction

Liechtenstein law knows preliminary injunctions, which can be awarded by the court upon application. The purpose of an injunction is to protect claims by suitable means, e.g. freezing of accounts, restraining orders, injunctions etc.

The procedure in which preliminary injunctions are issued does not require full proof of the stated facts, and the court is free to hear the defendant or not. The Princely Court usually rules within one to two days. If the requested measure is granted, the applicant has to file a lawsuit, in which he has to justify the provisional measure. If the claim is not filed in due time, the court rescinds the measure by rights or on application. Injunctions are subject to appeal, too.

3. Payment order and summary legal procedure

In case of certain conditions, there is the possibility to file a payment order, for instance in case of an acknowledgement of indebtedness or if the claim is officially documented. If the

payment order is objected by the defendant, the plaintiff can initiate the summary legal procedure.

4. Security Deposit for the defendant's costs

In its decision of June 30, 2008, (StGH 2006/94), the Constitutional Court repealed the regulations on *security deposits* (§§ 56 to 62, CPO) due to their inconsistency with European law. In response to this decision the Government has changed these provisions of the CPO in July 2009.

Whereas under the old law every foreign plaintiff had to provide a security deposit, the new regulation states that such an obligation is not necessary:

- if this matter is dealt with in a treaty,
- if a decision about the reimbursement of costs is enforceable in the claimant's country,
- if the claimant owns a sufficient amount of real property and a decision that obliges him to reimburse the costs is enforceable in the country where the real property mainly is located,
- for claims in marriage disputes,
- and for claims on interference in possession and counterclaims.

In case of doubt the judge can turn to the Government for an opinion on the applicability of a treaty or regarding the enforceability of Liechtenstein cost awards in a specific country.

In case that the claimant is a legal entity a security deposit has to be paid if there is no sufficient amount of money that is enforceable by a decision to secure the reimbursement of costs for the defendant.

5. Court fees and attorney's fees

Legal costs consist of:

A) cash outlays comprising

- court fees
- other cash expenditure (witness fees, translation costs, etc.)

B) attorney's fees

Court decisions on costs are based on the Liechtenstein Attorney's Tariff Act and the Act on Court Fees. Both acts are based on the value at stake, i.e. the rates depend on the sum in dispute. A high value at stake entails higher attorney's fees. The plaintiff himself can define the amount in dispute for non-monetary claims, if law does not stipulate the amount in dispute. If the defendant objects to the amount in dispute, the court may define another amount in dispute.

The attorney's fees consist of the costs for all activities (written pleadings, court hearings). In case the party did not reach an agreement on fees with its attorney, the fees are charged according to the Act on Attorney's Fees and its regulations. The amount that has to be refunded by the losing party is calculated on the basis of this act, too. For Instance, the costs for a complaint with a sum in dispute of CHF 30'000.-- amount to CHF 1'108.80.

Court fees are calculated according to the sum in dispute. A fee has to be paid for the various procedural steps like filing a complaint, court hearings and judgements. A court hearing of one hour in a civil proceedings costs up to CHF 340.--. The court fee for a judgement ranges between CHF 34.-- and 17'000.--. The sum in dispute in the latter case amounts to CHF 10 Mio. The court fees are divided between the parties in the first place; Finally, the winning party can claim reimbursement of its part from the defeated party.

6. Enforcement of foreign decisions in Liechtenstein

In general, foreign decisions are not enforceable in Liechtenstein, unless there is a treaty concerning enforcement of foreign judgements as it is the case for Switzerland and Austria.

Liechtenstein has not joined the Treaty of Brussels of 1968 nor the Treaty of Lugano of 1988. However, Liechtenstein is member of the Treaty of Hague about the recognition and enforcement of decisions on maintenance. Therefore, decisions of member states in matters of child support are enforceable in Liechtenstein.

If the conditions mentioned above are fulfilled, Liechtenstein enforcement law is applied for the execution of foreign judgements. For an enforcement order, the original certificate or a certified copy has to be filed and the authorisation for enforcement must be applied for at the Princely Court. Enforceability is as easy to be granted as for Liechtenstein decisions.

If a foreign decision that has not been issued in Austria or in Switzerland shall be enforced in Liechtenstein, an enforceable instrument in Liechtenstein is necessary. There are two possibilities to obtain an enforceable instrument: an ordinary court proceedings or the summary lawsuit mentioned above.

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01.02.2011