

# Country Guide

## Liechtenstein

Prepared by

**MARXER & PARTNER**

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# Doing Business in Liechtenstein

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## Overview

### 1. What are the key recent developments affecting doing business in your jurisdiction?

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Liechtenstein is a very stable country, both economically and politically, with a highly sophisticated legal system that has been well advanced for many years. The Liechtenstein legal system is influenced by both Swiss and Austrian law. In the recent past, European legislation and court rulings have also exerted an increasing influence on national legislation and rulings of the Liechtenstein courts.

## Legal system

### 2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

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#### Judicial Order

Liechtenstein is a civil law jurisdiction with strong historic and present-day ties to the legal systems of Austria and Switzerland. The basic organization of the judicial order in Liechtenstein consists of different branches.

#### First Branch

The first branch is the so-called ordinary jurisdiction which is responsible for criminal and civil law cases. The respective courts for this branch are the "Fürstliches Landgericht" (Princely Court; first instance), the "Fürstliches Obergericht" (Princely High Court; second instance) and the "Fürstliche Oberste Gerichtshof" (Princely Supreme Court; third instance).

#### Second Branch

The second branch are the administrative courts, respectively the individual administrative authorities as the first instance, in some cases an administrative appeals authority as the second instance and the "Verwaltungsgerichtshof" (Administrative Court) as the second or third instance depending on the legal matter at hand.

#### Third Branch

The third branch is the constitutional jurisdiction and is exclusively carried out by the "Staatsgerichtshof" as the sole constitutional court in Liechtenstein.

## Foreign investment

### 3. Are there any restrictions on foreign investment (including authorizations required by central or local government)?

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#### Approval of Foreign Investments

Under Liechtenstein law, there are no generally applicable regulations, such as foreign investment rules, that would prohibit foreign investments on grounds of national interest in the Principality of Liechtenstein. In principle, foreign investments are not hindered by significant barriers and there are no considerable

discriminatory effects on foreign investors or foreign-owned investments in Liechtenstein.

However, foreign investments in undertakings operating in regulated sectors might require approval by the respective authority. This includes for example banks and investment firms, asset management companies, and insurance companies. In particular, investments above a certain threshold may need to be authorized by the authorities.

In light of Liechtenstein's stable social and economic order, a high degree of political stability and continuity, liberal company and taxation laws, short and flexible decision-making processes, a strong Swiss franc as the national currency, and a Standard & Poor's credit rating of AAA with a stable outlook, it is fair to say that Liechtenstein is one of the most attractive countries for foreign investors.

### **Procedure and Sanctions in the Event of Non-Compliance**

The steps for foreign investors to obtain approval depend on the respective regulated sector. The same applies for consequences of investing in a regulated sector without prior approval. Sanctions could range from financial fines up to a forced sale of assets.

The process and timing are straightforward and can be completed within a few weeks up to several months depending on the individual case.

### **Commitments Required from Foreign Investors**

As already stated, there are no general regulations applicable that would prohibit foreign investments on grounds of Liechtenstein's national interests. However, investments above a certain threshold may need to be authorized by the respective authority. In order to ensure a fit and proper management of a bank and investment firm, asset management company, or insurance company, the authorities examine the suitability of the (national or foreign) investor on the basis of his reliability, reputation and experience, as well as financial soundness.

### **Right to Appeal**

If the authorities do not authorize an investment, there is always the possibility of challenging such decision in court.

## **4. Are there any restrictions on doing business with certain countries or jurisdictions?**

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Since joining the UN in 1990, Liechtenstein has been committed under international law to implement sanctions passed by the UN Security Council in the form of resolutions. Such sanctions are measures of a non-military nature against individual States, organizations or persons and relate in particular to the trade of goods, services, payments, capital and transport of persons.

Furthermore, Liechtenstein participates in individual sanctions of the European Union (EU).

The legal basis for such sanctions is the Act on the Enforcement of International Sanctions (Gesetz über die Durchsetzung internationaler Sanktionen ["ISG"]).

### 5. Are there any exchange control or currency regulations?

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There are no controls or restrictions imposed on the import or export of capital, other than taxes.

### 6. What grants or incentives are available to investors?

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Liechtenstein's economic area is business- and investment-oriented. The flat income tax rate for companies in Liechtenstein is 12.5 %. The value added tax amounts to 7.7 %. In addition, there are several double-taxation treaties and tax-information agreements in force.

Grants and/or subsidies of funds to investors are either granted in cash, subsidies or other forms of dispersals.

In the past, tax incentives were also granted to investors, which primarily featured tax exemptions for certain periods.

In order to increase energy efficiency, the state and municipalities in Liechtenstein offer financial subsidies for appropriate measures.

In addition, subsidies are granted in relation to the export of services.

#### Foreign Tax Credit

A foreign tax credit may be claimed in an amount not exceeding the amount of Liechtenstein corporate income tax payable on the income subject to foreign taxes.

#### Tax Incentives

The following tax incentives are applicable under the Liechtenstein tax law:

- tax exemption of dividend income and capital gains from participations under consideration of anti-avoidance provisions;
- tax exemption of income from foreign real estate and permanent establishments situated abroad;
- general tax exemption, upon application, of legal entities and trusts that have a charitable purpose without the intention of making a profit;
- privileged taxation as a Private Asset Structure (PAS) is available to entities that do not conduct any economic activity; a PAS is only liable to the minimum corporate income tax of CHF1,800 annually; and
- notional interest deduction (see below).

#### Notional Interest Deduction

A deduction of 4% on the modified equity poses a commercially justified expense. The modified equity is calculated as follows: equity at the beginning of the tax year; plus equity increases; minus equity decreases, own shares, participations in legal entities, assets not required for business operations, and 6% of the assets that have not already been deducted; equals modified equity.

The corrections of equity as at the beginning of the tax year (see above) are weighted and deducted pro rata

temporis, aggregated per quarter and considered to have occurred in the middle of the quarter.

If the modified equity is negative, the notional interest deduction is CHF0. The notional interest deduction cannot lead to a loss or increase an existing loss. A double-dip through interest expenses at the parent company and notional interest deduction at the subsidiary is not possible.

## Business vehicles

### 7. What are the most common forms of business vehicle used in your jurisdiction?

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#### Most Common Forms of Legal Entities

Liechtenstein law recognizes a large number of different legal forms. The most common types of corporate vehicles are stock companies (Aktiengesellschaften), establishments (Anstalten), foundations (Stiftungen), and trusts (Treuhanderschaften).

#### Stock Company (Aktiengesellschaft)

Due to its international recognition, the stock company is one of the most popular and most common types of legal entities in Liechtenstein.

**General meeting of shareholders:** The general meeting of shareholders constitutes the supreme corporate body of the stock company. It must be convened at least once a year for the approval of the annual accounts and other duties which are laid down in the law and the articles of association. In general, the board of directors is responsible for managing the company's business and representing the company vis-à-vis third parties.

**Requirements:** The appointment of an audit authority is a requirement as the stock company is obliged to file audited annual accounts. The minimum share capital is CHF50,000, EUR50,000 or USD50,000 and must be fully paid up or contributed upon the formation of the company. The liability of the company is limited to its assets.

The purpose of a stock company can be of economic or non-economic nature. However, the purpose must be lawful and in line with good morals.

#### Establishment (Anstalt)

The establishment under private law is a flexible legal entity with its own legal personality. The establishment may be designed similar to a foundation or to a stock company. An establishment always requires a founder who wishes to incorporate the establishment.

The founder can be any individual or legal entity. At the time of incorporation, the founder contributes the minimum capital requirement of CHF30,000. In return, the founder acquires the so-called founder's rights in the establishment.

The bearer(s) of these founder's rights constitute(s) the supreme corporate body of the establishment and therefore determines its destiny. The bearer of the founder's rights may dispose of the founder's rights with the exception that they cannot be pledged. The transfer of the founder's rights inter vivos takes place by assignment and the transfer mortis causa according to the applicable law of succession.

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**Board and beneficiaries:** Each establishment must have a board of directors. It is initially appointed by the founder and, subsequently, by the bearer of the founder's rights. The board of directors is primarily responsible for the conduct of the establishment's affairs and the representation vis-à-vis third parties.

Furthermore, each establishment must have beneficiaries. By default, the bearer of the founder's rights is assumed to be the beneficiary of the establishment.

### Foundation (Stiftung)

A foundation is a legally and economically independent special-purpose fund which is formed as a legal entity through a unilateral declaration of the founder. Therefore, the founder must transfer at least the minimum foundation capital in the amount of CHF30,000 to the foundation. The foundation assets shall only serve to fulfill the purpose for which it has been formed.

A Liechtenstein foundation has full legal capacity and has all the rights of a legal person, including the right to own property or to enter into contracts. However, a Liechtenstein foundation is not permitted to run a commercial business.

Anyone can be the founder of a Liechtenstein foundation. It could be one or more natural persons or legal entities, regardless of their place of residence or nationality.

**Beneficiaries:** Unlike a corporation, a foundation has no owners or members but does have beneficiaries who may receive economic benefits pursuant to the provisions of the foundation's statutes and by-laws. Beneficiaries are individuals, in whose favor the foundation purpose is implemented and which may include the founder himself. The founder has complete freedom regarding whom he wants to designate as the beneficiary of the foundation.

**Other functions:** As opposed to other jurisdictions in which foundations (or legal forms similar to a foundation) may be used for family purposes only and thus have natural persons as beneficiaries only, a Liechtenstein foundation may also be designed to serve as a so called "enterprise foundation" (Unternehmensstiftung). An enterprise foundation is normally the sole shareholder of a company which runs an operational business. The specialty of such enterprise foundation is that its assets shall be used only to maintain and support such operational business, as the case may be.

The purpose of an enterprise foundation is to exert a dominant influence on the operational business' policy. A Liechtenstein enterprise foundation is, therefore, a highly attractive vehicle where operational business shall be preserved and protected indefinitely.

### Trust (Treuhanderschaft)

Liechtenstein is the only continental European country that codified the legal form of a trust in its Persons and Companies Act. A trust is established when a natural or legal person (settlor) transfers assets (trust property) to the trustee with the provision that the trustee shall hold or make use of the trust property in his own name and as proprietor of the trust property against all others, however, in accordance with the trust instrument and on behalf of one or more third parties (beneficiaries).

As opposed to the stock company, the foundation and the establishment, the trust is not a legal person. In

general, the institution of a trust is better known to persons from Anglo-American jurisdictions than, for example, a foundation. In contrast to Anglo-American trust law, however, Liechtenstein law neither prohibits the accumulation of income, nor does it have a rule against perpetuities, thereby allowing the creation of a trust with an unlimited duration.

**Creation and beneficiaries:** A trust can be created by a written instrument (trust deed) between the settlor and the trustee. The trust deed must always be in writing and determines the trust between the settlor, trustee, and beneficiary in the first instance.

The settlor appoints the beneficiaries in the trust deed for whose benefit the trust property is to be applied. Whilst the settlor may also be a beneficiary, the trustee may not be the sole beneficiary.

### 8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

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#### Registration and formation

Depending on the legal entity, an application or registration must be submitted to the Liechtenstein Trade Register, including a variety of different documents. The registration process with the Liechtenstein Trade Register usually takes about one week.

#### Reporting requirements

Depending on their legal form, companies operating in Liechtenstein are obliged to provide more or less comprehensive information about their financial year and to disclose their annual accounts. Liechtenstein legislation provides for some simplifications for small and medium-sized companies. If a company is obliged to disclose the annual accounts, the legal representatives must submit the following documents to the Office of Justice:

- the duly approved (consolidated) annual accounts: these consist of the balance sheet, the income statement and the notes, as the case may be;
- the auditor's report: the annual financial statements and the consolidated financial statements must be audited by an auditor or an audit company; and
- a proposal for the appropriation of the result and the decision on its distribution.

The following companies are obliged to disclose their annual financial statements:

- stock companies (AG);
- limited liability companies (GmbH);
- partnerships limited by shares; and
- Societates Europaeae.

After the above documents have been filed, the Office of Justice will publish in the electronic gazette under which registration number the documents were filed. This is done at the expense of the company.

Companies whose bonds or shares are listed on a stock exchange must also publish the (consolidated) annual



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accounts in printed form and make them available to the public and to anyone else on request. At present, Liechtenstein does not have a stock exchange and therefore Liechtenstein companies may only be listed on foreign exchanges.

Anyone who violates disclosure obligations will be fined by the Office of Justice.

### Share capital

The minimum capital or minimum assets must be at least 50'000 Swiss francs in the case of a share corporation and other legal entities whose capital is divided into shares.

In the case of a limited liability company, the minimum capital or minimum assets must be at least 10'000 Swiss francs, and in the case of a legal entity whose capital is not divided into shares, the minimum capital or minimum assets must be at least 30'000 Swiss francs.

In addition to the registration of the minimum capital or the minimum assets in Swiss francs, such registration may also be made in EUR or US-Dollars. In this case, the minimum capital or minimum assets in the case of share companies and other legal entities whose capital is divided into shares must be at least 50'000 EUR or 50'000 US-Dollars.

In the case of a limited liability company, at least 10'000 EUR or 10'000 US-Dollars, and in the case of a legal entity whose capital is not divided into shares, at least 30'000 EUR or 30'000 US-Dollars.

Minimum capital and minimum assets must be fully paid up or contributed, respectively.

### Non-cash consideration

Regarding a share corporation – which is the most common type of corporation in Liechtenstein – payment in kind is permissible. If assets or rights are contributed in exchange for a part of the share capital, an authorized expert is in general required to report in writing, describing and valuing the assets in detail and stating whether the contribution in kind corresponds to the value of the shares to be issued in exchange. Reference must be made to the report in the public register.

### Rights attaching to shares

Unless otherwise provided by law or the Articles of Association, share membership is indivisible, transferable and heritable.

Financial rights (such as the right to receive a dividend or liquidation proceeds) and Personal membership rights (such as the right to attend shareholders' meetings, voting rights and information rights) are considered vested rights and as such directly linked to the shares.

## 9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

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### Management structure

The typical management structures of the most common Liechtenstein forms of legal entities are as follows:

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### **Stock Company (Aktiengesellschaft)**

The general meeting of shareholders is the supreme corporate body of a Liechtenstein stock company. The company is managed by a board of directors but may have other appointed corporate bodies depending on its structure and business model.

### **Establishment (Anstalt)**

As the Liechtenstein establishment under private law is a flexible legal entity, different management structures are possible.

If the respective establishment is designed similar to a stock company and therefore has so-called founder's rights (which closely resemble shares in a stock company), the bearers of these founder's rights constitute the supreme corporate body of the establishment. Similar to a stock company, this type of establishment is managed by a board of directors.

If the respective establishment is designed similar to a foundation and does not have so-called founder's rights the establishment is governed by its board of directors which is bound to the corporate documents, in particular the statutes and by-laws.

### **Foundation (Stiftung)**

A foundation is governed by its foundation council which is bound to the corporate documents, in particular the statutes and by-laws. The purpose and objects of the foundation are to be observed at all times. The foundation council is the supreme and only compulsory body of any Liechtenstein foundation.

Additional supervisory or executive bodies may be established in the statutes and/or by-laws.

### **Trust (Treuhanderschaft)**

The settlor may appoint one or more natural or legal persons as trustee(s). The trustee as an independent legal owner has an absolute right in rem to the trust property. Their position is bound to the will of the settlor under the trust deed only internally – consequently, the trustee “can” legally do more than they “may”.

The trustee must manage and invest the trust property with the due diligence of a prudent businessman and in strict accordance with the trust deed. The settlor may additionally appoint a protector to assist and advise the trustee in accordance with the settlor's wishes.

### **Management restrictions**

At least one member of the Management Board of a legal entity authorized to act on behalf of the legal entity must be a resident of a contracting party to the agreement on the European Economic Area, a person treated as such on the basis of an intergovernmental agreement, or a legal entity, and must be licensed in accordance with the Trustee Act.

### **Directors' and officers' liability**

In general, the directors owe their principal duties to the legal entity. Provided they have fulfilled their

duties, all members of the board of directors are entitled to be discharged by the supreme corporate body (Article 225 of the Persons' and Companies' Act (PGR)).

In some instances, the directors may also be held accountable for their actions towards third parties.

According to Article 220 (6) PGR, directors may refuse to follow an instruction given by a superior corporate body if by doing so they would breach their respective duties. In this case they cannot be held liable for this respective action.

### **Liabilities**

Article 218 et seq PGR encompass several provisions revolving around the liability of directors for their actions. The law differentiates between liabilities to the corporation, to individual members of the corporation and to third parties. In general, directors are only liable for willful misconduct or negligence. Nonetheless, the different types of liabilities described often require/allow different degrees of negligence on the part of the director in question.

Generally speaking, directors are liable for the damage caused when they do not live up to their responsibilities as outlined by law or the respective corporate documents (Article 220 (1) PGR).

Primarily, the corporation as such is entitled to the claim for damage against the director. If the corporation has no such claim, its members may directly enforce their respective claims for damages (Article 222 PGR).

### **Piercing the Corporate Veil**

Liechtenstein law does recognize the principle of "piercing the corporate veil" under certain circumstances. The separation principle (Trennungsprinzip) is applicable to Liechtenstein legal entities and leads to a clear legal separation between the foundation and its members/founders. In general, there is a possibility of piercing the corporate veil in case of misuse of the legal entity.

There is no statutory law with regard to this latter possibility. In fact, it is solely based on case law, despite Liechtenstein being a civil law country.

The Liechtenstein courts are very restrictive with regard to piercing the corporate veil in cases of misuse. According to the Liechtenstein Supreme Court, piercing the corporate veil is subject to an objective and a subjective component.

First, the existence of a de facto body is required for piercing the corporate veil due to misuse of the legal entity. A person who exercises control functions without having been formally appointed as a body of the entity is a de facto body (objective element).

Secondly, when forming the respective legal entity, the founder(s) must have had the intention of misusing the foundation, to act dishonestly or to act in a way damaging another person's assets (subjective element) from the outset. However, this latter subjective intention of misuse is extremely difficult to prove since it requires a retrospective legal analysis....

### Parent company liability

Subject to an opposing individual agreement, a parent company is not liable for the debts of its subsidiaries unless it qualifies as a shadow director.

## Employment

### Laws, contracts and permits

#### 10. What are the main laws regulating employment relationships?

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Liechtenstein employment law is comprised of different tiers of rules and regulations.

The Liechtenstein Civil Code (ABGB) provides for a major part of the codified legal provisions of Liechtenstein employment law.

Apart from the provisions of the ABGB there are collective employment agreements in different branches and individual employment agreements.

As Liechtenstein is a civil law jurisdiction case law only plays a subordinate and supporting role in determining the legal content of individual legal provisions.

#### 11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

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##### Characteristics of Employment Contracts

An individual employment contract can be concluded in writing or orally. However, a written employment contract is strongly recommended in any case. If the contract is only concluded orally, the employer may be obliged to provide the employee with a document setting out the most important working conditions. This document has to contain:

- the employer's personal details, registered office or residence;
- the date of commencement of work (for fixed-term contracts, the duration of the contract);
- daily or weekly working hours and rest periods;
- Information about the workplace;
- Information on work performance;
- the title, function and grade;
- duration of free time and holidays;
- periods of notice;
- any collective or standard employment contract in force; and
- wages (cash and/or wages in kind, allowances, gratuities, expenses).

### Collective Labor Agreements

In many economic sectors, collective agreements are in force; so called collective labor agreements (Gesamtarbeitsverträge or CLAs). They contain the general provisions for the respective industry, such as working hours, holidays, notice periods, minimum wages, etc. The minimum wages are redefined annually in a wage and protocol agreement.

CLAs can be declared generally binding by the government. If this is the case they apply to the entire industry and to all employers, both domestic and foreign. The SAVE Foundation was set up by the social partners to monitor and enforce collective labor agreements declared generally binding. The Central Joint Commission (ZPK) was set up by the foundation for the enforcement and monitoring. The ZPK has the task and competence to control and enforce compliance with and implementation of the CLA provisions in their respective area of application.

Currently, there are CLAs in the following sectors which are generally binding:

- car industry;
- master builder and pavers;
- retail trade;
- electrical-electronic and radio-TV trades;
- gardeners and florists;
- building cleaning and caretaker services;
- plasterers and painters (including scaffolding);
- building services and plumbers/building envelope;
- information technology industry;
- interior Decoration;
- metal industry;
- stove fitter and tiler;
- personnel service provider (personnel rental);
- joiner; and
- master carpenter and roofer.

### Negotiating CLAs

CLAs are negotiated by the social partners. On the employee side, this is the Liechtenstein Employees' Association (LANV) and on the employer side the Chamber of Commerce (WKL), the Chamber of Industry and Commerce (LIHK) and PostBus Liechtenstein Anstalt. If a CLA has not been declared generally binding, it applies only to companies that have signed the CLA.

Currently, there are CLAs in the following sectors which are not generally binding:

- bakers and confectioners;
- hairdressing industry;
- gastronomy;
- commercial industry;
- graphic arts industry;
- floor layer;
- textile cleaning trade; and
- metal and non-metal industry.

Moreover, the government may issue so-called standard employment contracts (Normalarbeitsverträge or NAV). This means that the government regulates the employment relationship between employee and employer in a particular industry. The provisions of the NAV apply directly to the employment relationships within its respective scope, unless otherwise agreed in the individual employment contract. Currently, NAVs exist for employees in domestic service and agriculture.

### **Working Time**

Working time is defined as the time during which the employee must be available to the employer. Travel to and from work, however, is not considered working time. If the work has to be performed outside the usual place of work and the travel time is longer than the usual commuting time to work, the time difference is considered working time.

### **Working Hours**

In any case the length of the working hours must be determined and documented (e.g., by time recording systems or respective reports).

Under Liechtenstein law daily work may not begin before 6 am and may not last longer than 11 pm. The start and end of the day's work may be changed between 5 am and midnight if employees are represented within the company, or in case there is no such representation, the majority of the affected employees agree. In this case too, the maximum daily working time is 17 hours. The daily working time of the individual worker must be within a daily time period of 13 hours, including breaks and overtime.

The maximum weekly working time in Liechtenstein is:

- 45 hours for employees in industrial companies, for office staff, for technical and other employees including sales staff in large retail trade companies (retail trade);
- 40 hours for young people between 15 and 18 years; and
- 48 hours for all other workers.

For certain groups and entities, the weekly working time may be temporarily extended by up to four hours.

### **Overtime/Overtime Work**

Under Liechtenstein Law a distinction is made between overtime (Überstunden) and overtime work (Überzeitarbeit).

If overtime (meaning more working hours on a specific working day) is necessary, employees are only obliged to do overtime to the extent that they are able to do so and can be expected to do so. Overtime must be compensated by time off or paid at a premium of at least 25% compared to the respective regular salary, unless otherwise agreed upon in writing. Overtime may not exceed two hours per day for the individual employee, except on non-working days or in emergencies.

Overtime work, on the other hand, is defined as exceeding the maximum working hours. This may only be exceeded in exceptional cases, for example in the case of: urgency of the work, extraordinary workload, inventories, clearance of accounts and liquidation work, work to prevent or eliminate operational disruptions (unless the employer can be reasonably expected to take other precautions).

### **Overtime Calculation and Wages**

The employer must pay the employees a wage supplement of at least 25% for overtime work. However, this is only the case for office staff and technical and other employees, including sales staff in large retail trade enterprises, if the overtime work exceeds 60 hours per calendar year.

The average weekly working time, including overtime, may not exceed 48 hours within four months. If, with the consent of the individual employee, overtime work is compensated by free time of equal duration within a reasonable period of time, no bonus payment is due.

Depending on the duration of work, the following minimum break times must be granted:

- 15 minutes for a continuous working time of more than five and a half hours;
- 30 minutes for a continuous working time of more than seven hours; and
- one hour for a continuous working time of more than nine hours.

### **Breaks, Rest Time and Days Off**

Breaks are considered to be working time if the employees are not allowed to leave their workplace. Breaks of more than 30 minutes may be divided in agreement with the employee. In the case of flexible working hours, such as flexible working time, the average daily working time is decisive for calculating break times.

After the end of the daily working time, a rest period of at least eleven hours must be granted in the default scenario. At shift changes, the rest period may be reduced to eight hours once a week, provided that the average of 11 hours in two weeks is observed. The weekly day of rest shall by default be Sunday. The weekly day of rest and the daily rest period shall together constitute at least 35 consecutive hours.

If the weekly working time is spread over more than five days, the employee must be granted a weekly half-day off. The employer may, with the consent of the employee, grant the weekly half-days off for a maximum of four consecutive weeks.

### **Sundays**

By default, working on Sunday is not permitted. However, if Sunday work is necessary for a company, it can be authorized by the Office of National Economy, provided specific legal requirements are met. In case of temporary Sunday work, a wage supplement of 100% must be paid and a substitute rest day must be granted in the preceding or following week.

In shops or petrol stations, only a 50% supplement must be paid for permanent or regularly recurring Sunday work. In a calendar year, employees in shop and petrol station businesses must be granted at least 26 Sundays off. They may be distributed irregularly over the year.

The number of free Sundays may be reduced to a minimum of four, provided that the employee's weekly working time does not exceed 18 hours on average over four weeks. Public holidays are considered equivalent to Sundays.

### **Night Work**

In principle, night work is not permitted. However, if night work is necessary for a company on a temporary, permanent or regularly recurring basis, it can be approved by the Office of Economic Affairs. The legal requirements for this must be met.

In case of night work, the daily working time may not exceed eight hours. Additional specific provisions for night work exist.

## **12. Do foreign employees require work permits and/or residency permits?**

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The legal requirements differ depending on whether an employment activity without taking up residence or one with taking up residence in Liechtenstein is undertaken.

### **EU member states (excluding Bulgaria, Romania and Croatia) and EFTA nationals**

The legal basis in particular are the provisions of the Personenfreizügigkeitsgesetz (Act on the Free Movement of Persons).

Most EU and EFTA nationals pursue their professional activities in Liechtenstein as cross-border commuters.

The complete notification of the respective cross-border commuter activity must be submitted to the Immigration and Passport Office no later than 10 days after the commencement of the respective employment.

Cross-border commuter registration certificates are issued to employed or self-employed EEA nationals who have their place of work and employer in Liechtenstein and return daily to their place of residence outside of Liechtenstein.



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In addition, there is an option to apply for a permit in letter form (Bewilligung in Briefform, BIB). The BIB is designed for employees which are physically present in Liechtenstein only for a limited period of time. During the validity period of 12 months a max. presence of 180 days (with at least 50% occupation) is permitted. The general visa regulations remain unaffected.

Furthermore, EEA nationals can apply for a residence permit with the Immigration and Passport Office.

Half of the residence permits to be issued in Liechtenstein are drawn by lot. A total of 28 residence permits for employed EEA nationals and 8 residence permits for non-employed EEA nationals are drawn by lot each year.

The draw procedure is carried out twice a year, in spring and in autumn.

The draw procedure is divided into a preliminary draw and a final draw, each of which is subject to fees.

Furthermore, there is the possibility of applying for a short-term residence permit as well as a substitute employment residence permit.

### **Other foreign nationals**

Generally, similar provisions apply to third-country nationals as they do for EU or EEA nationals. However, the legal basis is the Ausländergesetz (Foreign Nationals Act).

## **Termination and redundancy**

### **13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?**

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The Employee Participation Act (Mitwirkungsgesetz or MWG) encompasses the major part of the provisions regarding employee representation under Liechtenstein law. Employees in the public sector are, however, not subject to these regulations.

Depending on the size of the respective company employee representation and participation is effectuated either directly or by proxy. Nonetheless, employees are merely granted the right to be heard and specific information rights.

Employees only have (limited) participation rights when it comes to mass dismissal, health issues (including health insurance issues), safety issues and certain business transfers....

### **14. How is the termination of individual employment contracts regulated?**

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#### **Termination of Employment Agreements**

An employment agreement entered into for an indefinite period of time may be terminated by the employer as well as by the employee at any time without justification. However, the individual termination dates and termination periods have to be observed.

During a trial period the employment relationship can be dissolved at any time by either party, subject

to a seven-day period of notice effective from the end of a working week.

### **Termination Periods**

Unless otherwise agreed upon in the individual employment contract, the following termination periods apply once the trial period has been completed during the first year of service: one month as per the end of the respective month;

- during the second year of service up to and including the ninth year of service: two months as per the end of the respective month; and
- from the tenth year of service onwards: three months as per the end of the respective month.

### **Termination for Good Cause or Mutual Agreement**

There is always the possibility to terminate the employment relationship for good cause (e.g., fraud). In these cases, the termination dates and termination dates do not have to be observed. Good cause is given if the terminating party can no longer reasonably be expected to uphold the employment relationship.

At all times it is possible to terminate the employment relationship through mutual agreement. A dissolution with immediate effect is possible in these cases.

## **15. Are redundancies and mass layoffs regulated?**

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Collective redundancies (mass dismissals) are defined by law as terminations of at least 20 employment relationships within 90 days by the employer for operational reasons (Section 1173a Article 59a et seq ABGB).

In the event of a planned mass dismissal, the employer must consult the employee representatives in the company or, if there are no such representatives, the employees and inform the Office of Economic Affairs (Amt für Volkswirtschaft or AVW) in writing. The consultation must be initiated as soon as the mass dismissal is planned, i.e., before the final decision is made, the notification to the AVW and the issuing of notices of termination.

The employee representatives must be provided with all relevant information in good time, in particular, the following information must be provided in writing: the reasons for the planned mass dismissal; the number and categories of employees affected and the reasons for their selection; the number of workers normally employed; the period of the projected collective redundancies; the procedure for determining severance pay (social plan).

The employer must notify the AVW of the planned mass dismissal and send a copy of this notification to the employee representatives. The notification shall contain the results of the consultation and all relevant information on the planned mass dismissal. The AVW will seek ways to mitigate the consequences of the planned mass dismissal.

Planned mass dismissals will, subject to any contractual or statutory provisions to the contrary, take effect no earlier than 30 days after receipt of the notification to the AVW.

## Tax

### Taxes on employment

#### 16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

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Individuals (e.g., employees or self-employed persons) are regarded as resident in Liechtenstein if they reside in Liechtenstein with the intention of staying permanently or stay in Liechtenstein temporarily for a period longer than six months. Resident individuals are generally subject to unlimited tax liability on their worldwide income and worldwide net assets. Non-resident individuals are subject to limited tax liability on their income and net assets located in Liechtenstein (i.e., real estate and permanent establishments in Liechtenstein).

#### Wealth Tax

The net value of assets (total assets less debt) at the beginning of the tax year is the base of the wealth tax. Real estate and permanent establishments situated abroad are tax exempt. The wealth tax is integrated into the income tax, meaning that the amount of net assets multiplied by a standard rate of currently 4% becomes a part of the taxable income.

#### Individual Income Tax

Taxable income generally includes employment income, income from self-employment, director's fees, retirement benefits and income from other sources. Income from investments (mainly dividends, interest and rental income), provided that the underlying assets are subject to wealth tax, is tax exempt. Work-related costs (e.g., travel expenses, education) social security contributions, lump sums for health insurance and other personal deductions (e.g., child allowance) are deductible. Taxable income is subject to tax at the progressive rates, varying between 0% and 8%.

Communities levy a surcharge on the income tax due at rates that may range from 150% to 250%. The maximum income tax rate, including the maximum municipal surcharge of currently 180%, can currently not exceed 22.4%.

#### 17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

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#### Tax resident employees

Tax resident employees are subject to property and income tax. A state tax and a municipal tax are levied. The rate of the state tax is progressive (8-step rate; the highest step is 8%). The municipal tax is levied by means of a surcharge on the state tax (surcharge between 150% and 250%). **Non-tax resident employees**

Persons domiciled/residing abroad (limited taxpayers) are subject to source taxes levied on income derived from employment and/or substitute income.

Upon determination of the respective tax levy, the amount of the expected annual income, lump sums for deductions and familial relations are considered.

Social security and unemployment insurance contributions, see above, Tax resident employees.

### Employers

Social security contributions are shared between the employees and employers. The employer is obliged to withhold the employee contributions. The taxable base is the gross salary. The following compulsory social security contributions are due:

- old age, survivors' insurance: 8.1% (employee contribution 3.95%, employer contribution 4.15%);
- disability insurance: 1.5% (employee contribution 0.75%, employer contribution 0.75%);
- family compensation fund: 1.9% (employee contribution n/a, employer contribution 1.9%);
- contribution to administrative expenses: 0.2875% (employee contribution n/a, employer contribution 0.2875%); and
- unemployment insurance (no contribution on income in excess of CHF 126,000: 1% (employee contribution 0.5%, employer contribution 0.5%).

Furthermore, the accident insurance (occupational/non-occupational) and the health insurance are mandatory in Liechtenstein.

## Business vehicles

### 18. When is a business vehicle subject to tax in your jurisdiction?

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#### Tax resident business

##### Corporate Income Tax (CIT)

A company doing business in Liechtenstein is subject to unlimited tax liability if its domicile or place of effective management is in Liechtenstein. Such company is generally taxed on its worldwide income. Non-resident companies are subject to limited tax liability on their income attributable to real estate and permanent establishments in Liechtenstein.

Corporate income tax is levied on taxable net corporate income which is calculated on the basis of annual accounts. Income from foreign real estate and foreign permanent establishments is not taxed in Liechtenstein. Dividends, capital gains and unrealized increases in value from participations in legal persons are generally not included in the taxable net corporate income, subject to anti-avoidance provisions. However, realized and unrealized losses from participations are not deductible.

Furthermore, a notional interest deduction in the amount of currently 4% of the modified equity may be deducted from taxable income.

The corporate income tax rate is 12.5%. A minimum corporate income tax of CHF1,800 per year is levied on companies with unlimited and limited tax liability. Operating small enterprises are, under certain conditions, exempt from the minimum corporate income tax. A tax return must be filed for each business year.

### **Non-tax resident business**

Non-resident companies are subject to limited tax liability on their income attributable to real estate and permanent establishments in Liechtenstein.

### **19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?**

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#### **Profit tax**

Corporate income tax is levied on taxable net corporate income which is calculated on the basis of annual accounts. Income from foreign real estate and foreign permanent establishments is not taxed in Liechtenstein.

Dividends, capital gains and unrealised increases in value from participations in legal persons are generally not included in the taxable net corporate income, subject to anti-avoidance provisions.

However, realised and unrealised losses from participations are not deductible. Furthermore, a notional interest deduction in the amount of currently 4% of the modified equity may be deducted from taxable income.

The corporate income tax rate is 12.5%. A minimum corporate income tax of CHF1,800 per year is levied on companies with unlimited and limited tax liability. Operating small enterprises are, under certain conditions, exempt from the minimum corporate income tax.

A tax return must be filed for each business year.

**Privileged tax status** – Taxation as a Private Asset Structure (PAS) can be granted upon application. If taxation as a PAS is granted, the tax burden corresponds to the minimum corporate income tax of CHF 1'800 per year irrespective of the annual results. Crucial requirement for the granting of the PAS-status is that the respective applicant does not carry out an economic activity.

#### **Capital gains tax**

Capital gains derived from the sale of shares are tax-exempt. Capital gains from the sale of real estate are subject to a separately assessed real estate profit tax (see the Other taxes section for more information).

In 2018 new anti-abuse rules have been introduced to the Liechtenstein legal system with regard to the taxation of capital gains. Capital gains deriving from investments in foreign legal entities are not tax-exempt for income tax purposes anymore if more than 50% of the total income of the foreign legal entity consists of passive income and its taxable income is subject, directly or indirectly, to low taxation. This new rule is applicable as of 2019 for participations established as of 2019 and as of 2022 for participations established before 2019.

#### **Capital tax**

No capital tax is levied in Liechtenstein.

#### **Withholding tax**

No withholding taxes on dividends, interests and royalties are levied in Liechtenstein.

### **Stamp duty**

Based on the customs union treaty between Liechtenstein and Switzerland, the Swiss stamp duty tax law (including the issuance stamp tax and the securities transfer tax) is applicable in Liechtenstein.

### **Issuance Stamp Tax**

is levied on corporations, limited liability companies and establishments with divided capital. Issuance stamp tax of 1% is due in the case of capital increases, with a tax allowance of CHF1 million. Deposits without capital increase cannot benefit from the CHF1 million tax allowance.

### **Securities Transfer Tax**

is levied on corporations, limited liability companies and establishments with divided capital. The transfer of securities by securities dealers is subject to a tax of 0.15% (domestic securities) and 0.3% (foreign securities).

### **Formation Tax**

Legal entities that are not subject to Swiss stamp law are subject to the formation tax of 1% of the statutory capital (not applicable to contributions to the reserves). The formation tax is reduced to 0.5% above CHF5 million and to 0.3% above CHF10 million. Foundations and trusts pay 0.2% of the statutory capital, but at least CHF200.

### **Real Estate Gains Tax**

The seller of a property located in Liechtenstein has to pay a tax on real estate gains at the tax rate of 0%-24%.

### **Value added tax (VAT)**

For Liechtenstein VAT purposes Switzerland is considered domestic territory. VAT is levied on any supply of goods and provision of services in Liechtenstein as well as import of goods and provision of services from abroad to Liechtenstein. Export of goods and services is not subject to VAT.

The standard rate is 7.7%. A special rate of 3.7% applies to accommodation services (i.e., hotels), a reduced rate of 2.5% applies to certain other goods and services (i.e., food, water or medication). Various services are tax exempt, e.g., banking and insurance.

In general, VAT must be declared and paid quarterly or, in special cases, monthly, half-yearly or yearly.

## **Dividends, interest and IP royalties**

### **20. How are the following taxed:**

- 
- Dividends paid to foreign corporate shareholders?
  - Dividends received from foreign companies?
  - Interest paid to foreign corporate shareholders?

- Intellectual property (IP) royalties paid to foreign corporate shareholders?

### **Dividends paid**

Liechtenstein does not levy any withholding taxes.

### **Dividends received**

Liechtenstein does not levy any withholding taxes.

### **Interest paid**

Liechtenstein does not levy any withholding taxes.

### **IP royalties paid**

Liechtenstein does not levy any withholding taxes.

## **Groups, affiliates and related parties**

### **21. Are there any thin capitalization rules (restrictions on loans from foreign affiliates)?**

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No thin capitalization rules are applicable in Liechtenstein.

### **22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?**

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On application, associated companies may form a group for tax purposes and compensate losses within the group with profits in the same year. In order to apply for group taxation, certain conditions (e.g., participation of more than 50% of capital and voting rights of subsidiaries by a Liechtenstein group parent company) have to be met. Losses are allocated on a pro-rata basis according to the participation held.

The allocated losses are taxed retrospectively, inter alia, when the loss-making company makes profits again or leaves the group. After five years, tax is recovered retrospectively irrespective of profits in the group company. This is only a temporary tax suspension.

Liechtenstein does not have special Controlled Foreign Corporation (CFC) rules. However, the Liechtenstein domestic tax law provides for a General Anti-Avoidance Rule (GAAR).

Liechtenstein has recently introduced special anti-avoidance rules for dividends and capital gains. The anti-avoidance provisions cover dividends and capital gains as well as unrealized increases in value from participations in legal persons with more than 50% passive income and low taxation (<6.25% or <50% of the effective Liechtenstein taxes), hence this income are taxable (switch-over).

There is a transitional period with the first application in 2022 for participations acquired before the end of 2018. In addition, dividends which are tax deductible at the paying entity are not tax exempt (hybrid-mismatch)

### **23. Are there any transfer pricing rules?**

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A general principle that intra-group transactions must be carried out at arm's length is applicable in

Liechtenstein. Thus, corporate income and expenses that arise between related parties must be determined in the same way as would be the case for a relationship between independent third parties.

According to the recommendations of the OECD, transfer prices for transactions with related parties and permanent establishments must be documented. Documentation requirements vary according to the size of the companies or the associated group.

### Customs duties

#### 24. How are imports and exports taxed?

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Pursuant to the customs union treaty between Liechtenstein and Switzerland, Switzerland customs duties and import tariffs are applicable for Liechtenstein. The tariffs and duties depend on various specific attributes of the products and are listed on comprehensive tariffs and duties lists; therefore, the specific tariffs and duties must be checked on a case to case basis.

### Double tax treaties

#### 25. Is there a wide network of double tax treaties?

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Liechtenstein has a growing network of double taxation agreements.

## Competition

#### 26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

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##### Competition authority

Liechtenstein has no national merger control rules or antitrust law. However, the competition rules of the EEA Agreement (Articles 53 to 60 and ANNEX XIV, Competition), incorporating certain provisions of the EU Merger Regulation into the EEA Agreement, are applicable. If the transaction in question exceeds certain turnover thresholds, a proposed merger or concentration must be notified either to the European Commission or to the EFTA Surveillance Authority.

The relevant thresholds are set out in the EU Merger Regulation and Annex XIV of the EEA Agreement respectively. The merger provisions of the PGR do not define national thresholds.

Even if the thresholds for a concentration with an EU or EFTA dimension are not met, the provisions of the EU Merger Regulation are nevertheless applicable where:

- the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR2.5 billion;
- in each of at least three EU member states or EFTA states, the combined aggregate turnover of all the undertakings concerned is more than EUR100 million;
- in each of at least three EU member states or EFTA states, included for the purpose of the above



point, the aggregate turnover of each of at least two of the undertakings concerned is more than EUR25 million; and

- the aggregate EU or EFTA-wide turnover of each of at least two of the undertakings concerned is more than EUR100 million.

This last point applies unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same EU or EFTA member state.

### **Restrictive agreements and practices**

A concentration which is subject to merger control must be notified to the competent authority (see 6.1 Merger Control Notification) before it is implemented. Closing without notification or prior to clearance can result in fines being imposed.

**Phase I:** In phase I the European Commission or the ESA issues a formal clearance decision if it finds that the concentration notified does not fall within the scope of the merger regulation or, although falling under the regulation, does not raise serious doubts as to its compatibility with the common market. Where it finds that the concentration falls within the scope of the merger regulation and raises serious doubts as to its compatibility with the common market, the European Commission or the ESA shall decide to initiate proceedings.

**Phase II:** The phase II decision approves or blocks the merger.

**Deadlines:** The deadline for a decision in phase I is 25 working days from a complete notification. Under certain conditions the period may be extended to 35 working days. The deadline for a decision in phase II is 90 working days from the initiation of proceedings and may be extended to 105 days. Under certain conditions, this period may be extended further, provided that the total duration of any extension or extensions in phase II shall not exceed 20 working days.

### **Unilateral conduct**

Article 54 of the EEA Agreement prohibits any abuse by an undertaking – or a group of undertakings – that has market dominance within the EEA, provided that the abuse may affect EEA trade.

Abuse can include:

- imposing unfair prices or trading conditions;
- limiting production, markets or technical development;
- placing trading parties at a competitive disadvantage by applying dissimilar conditions to equivalent transactions; and
- other conduct excluding competitors from the market to the detriment of consumers.

The ESA can impose fines for an infringement of Article 54.

Under certain conditions, an abuse of dominant position may contravene the principle of good faith and, thus, constitute unfair practice within the meaning of the Act against Unfair Competition. In case of a willful

violation of the Act against Unfair Competition, the Princely Court may, upon request, impose a fine of up to CHF100,000 and in case of negligent violation of up to CHF50,000.

### Application for foreign entities

See answers above.

## 27. Are mergers and acquisitions subject to merger control?

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Liechtenstein has no national antitrust law. Cartels may be prohibited by EEA competition law.

## Intellectual property

## 28. Outline the main IP rights in your jurisdiction.

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### Patents

**Definition and legal requirements:** In the Patent Protection Treaty of 22 December 1978, the Principality of Liechtenstein and the Swiss Confederation declared to constitute a unified area for the protection of patents for inventions. Accordingly, the patent law of Switzerland is also applicable in Liechtenstein, the relevant provisions of Swiss law being periodically published in the Law Gazette (Landesgesetzblatt) of Liechtenstein. Patents for invention have the same effect in both states and can only be granted, assigned, and revoked, or will expire for the entire territory of protection.

As from 1995, however, any exhaustion of the rights under a patent that may occur in the Principality of Liechtenstein under EEA law is not deemed to affect the state of such rights under patent law in Switzerland.

An invention or process is eligible for patent protection if it is both:

- novel (that is, it cannot easily be derived from the state of the art by a person skilled in the field concerned at the time of the application); and
- capable of industrial application.

A patent is not granted if the invention or process violates human dignity or is in any other way contrary to public morals or public policy. Also excluded from patentability are:

- methods for treatment by surgery or therapy and diagnostic methods practiced on the human or animal body; and
- plant varieties and animal varieties or essentially biological processes for the production of plants or animals.

The last point applies unless it is a microbiological procedure or product derived from it or the application of the invention is not technically confined to a single plant or animal variety.

The patent holder has the exclusive right to exploit the patent commercially.

**Registration:** By virtue of a Treaty, the competent Patent Office is the Swiss Federal Institute of Intellectual Property (Eidgenössisches Institut für geistiges Eigentum or IGE) with its headquarters in Bern, Switzerland.

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The website of the IGE provides detailed information on the application procedure.

**Enforcement and remedies:** Patent-infringers can be prosecuted through both civil and penal proceedings. The competent courts for civil action in patent cases are the Princely High Court (Fürstliches Obergericht) at first instance and the Swiss Federal Tribunal (Schweizerisches Bundesgericht) at the appellate level. The most commonly used remedies include preliminary injunctions and monetary compensation.

Criminal sanctions include a custodial sentence not exceeding one year or a monetary penalty (the maximum fine is 360 times the daily rate of CHF3,000). The calculation is at the discretion of the competent authorities, based on the default and economic ability of the offender.

**Length of protection renewability:** The maximum period of patent protection is 20 years as from the date of the application.

### Trade marks

**Definition and legal requirements:** A trade mark is a distinctive mark of authenticity through which the goods and/or services of a particular enterprise are distinguished from those of other enterprises. Trade marks may have the form of words, letters, figures or pictures, or combinations of such elements with each other. Marks may also be represented three-dimensionally or acoustically.

No trade mark protection is afforded to deceptive marks or marks contrary to morality or marks which are in the public domain, except where the latter have obtained secondary meaning for the products for which they are claimed. Furthermore, no trade mark protection is afforded to marks which are identical with or similar to a prior trade mark and intended to be used for the same or similar goods or services, if they involve a risk of confusion.

The trade mark right grants the proprietor the exclusive right to use the trade mark for the purpose of identification of the goods or services for which it is claimed and to dispose of that trade mark (for example, by sale, pledging, licensing).

**Registration:** The trade mark right arises, on the basis of an application for registration, upon the deposit of the trade mark and its entry onto the register of trade marks kept at the Office of Economic Affairs (Amt für Volkswirtschaft). Registration is made in accordance with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. Currently there are 45 classes.

Having ratified the Madrid Agreement concerning the International Registration of Marks and the Protocol relating thereto, Liechtenstein is a state party to the Madrid System. Accordingly, a batch of trade marks can be obtained through mediation of the Office of Economic Affairs at International level, which has the same effect as the relevant national registration in each of the contracting states designated by the applicant. Vice versa, international registration with protective effect for Liechtenstein has the same effect as deposit and registration in Liechtenstein.

**Enforcement and remedies:** If a legal interest exists, the Princely Court (Landgericht) may, upon request, declare the existence or non-existence of a legal relationship in respect of a trade mark. Moreover, any person whose trade mark right or indication of origin is infringed or jeopardized is entitled to seek judicial

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redress by action for performance. The Princely Court may order the confiscation or destruction of objects that are not in accordance with the indication of origin or with trade mark law.

Any intentional infringement of the trade mark rights of others or intentional use of incorrect indications of origin will, if the infringed party so requests, be punished with imprisonment of up to one year or a fine of up to 360 daily rates (the maximum daily rate being CHF1,000). Furthermore, there are criminal offences committed under aggravating circumstances (for example, fraudulent use of trade marks).

**Length of protection and renewability:** The registration is valid for a period of ten years as from the date of deposit; the protection period may be renewed for further periods of ten years each upon request. If the trade mark has not been used within five years of its registration, or if such use has been suspended during an uninterrupted period of five years, the mark may be subject to cancellation upon request from a third party.

### Designs

**Definition and Legal Requirements:** Design means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colors, shape, texture and/or materials of the product itself and/or its ornamentation.

If a design is new, has individual character and is neither contrary to law nor contrary to morality, it is eligible for protection and may be entered in the design register kept by the Office of Economic Affairs.

The design right entitles the proprietor of a design to prohibit any other persons from using the design for commercial purposes. The proprietor of the design may transfer, pledge or license the design right.

**Registration:** An application for registration must be filed with the Office for the National Economy. Liechtenstein is a state party to the Hague Agreement Concerning the International Deposit of Industrial Designs or Models and other international conventions. Any person who deposits a design internationally obtains the same protection as is granted in the event of a deposit in Liechtenstein.

**Enforcement and Remedies:** The legal protection (action for performance, etc.) and the penal provisions (infringement of design right) are formulated similarly to the relevant provisions of the trade mark law.

**Length of Protection and Renewability:** The period of protection is five years as from the date of deposit and may be extended by four periods of protection of five years each. Thus, the maximum period of protection is 25 years.

### Copyright

**Definition and Legal Requirements:** Literary and artistic works (including scientific works and computer software) are protected by copyright, provided they are original, intellectual creations of the author, and have a unique character.

The author has the exclusive right to decide whether, when and how the work is used.

**Protection:** Protection arises automatically from the moment of creation, with no need for registration.

**Enforcement and Remedies:** The legal protection afforded to the author and the penal provisions are

formulated similarly to the provisions of trade mark law (see 7.2 Trade Marks).

Length of Protection and Renewability: Protection lasts for the entire life of the author and expires 70 years after the death of the author.

### **Other**

Not applicable.

## Marketing agreements

### **29. Are marketing agreements regulated?**

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#### **Agency**

The agent shall endeavor to arrange or conclude business transactions; in doing so, he shall safeguard the interest of the principal. Upon termination of an agreement between the agent and the principal, the agent is entitled to a fair compensation if the principal substantially benefits, even after termination, from the business relations established with the acquired clientele.

#### **Distribution**

There is no specific regulation.

#### **Franchising**

There is no specific regulation.

## E-commerce

### **30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?**

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In addition to the general provisions of the Consumer Protection Act (Konsumentenschutzgesetz, KSchG), the provisions of the Distance Selling and Off-Business Contracts Act (Fern- und Auswärtsgeschäfte-Gesetz; FAGG), the Electronic Commerce Act (E-Commerce-Gesetz; ECG) and the Distance Selling of Financial Services to Consumers Act (Fern-Finanzdienstleistungs-Gesetz; FernFinG) must be considered.

Electronic signatures are equivalent to an autographic signature if based on a qualified certificate of an authorized provider of a certification service.

## Advertising

### **31. Outline the regulation of advertising in your jurisdiction.**

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There is no legal act in Liechtenstein that explicitly regulates advertising. Respective regulations can rather be found in a variety of different acts.

With regard to advertising, and in particular direct advertising, the provisions of the GDPR and the case law developed in this regard must also be considered. In general, direct marketing to customers in compliance

with data protection law is based either on the explicit consent of the recipient or on the legitimate interest of an advertiser. Direct marketing is generally not permitted if the recipient (new or existing customer) refuses or revokes his or her consent or cancels the direct marketing (objection).

In addition, the Liechtenstein Law against Unfair Competition (UWG) states that "The solicitation of customers by persistent and unsolicited approaches..." constitutes an unfair business practice. So even if direct advertising is permissible under data protection law, it must not be solicited in an overly persistent manner.

## Data protection

### 32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

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#### **Data Protection Act of 4 October 2018**

The Data Protection Act has been in force since 1st January 2019. The purpose of this law is to protect the personality and fundamental rights of natural persons with regard to the processing of their personal data and is based on the following EU Regulations.

#### **Regulation (EU) 2016/679**

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); and

#### **Implementation of Directive (EU) 2016/680**

The implementation of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (ABI L 119, dated 4 May 2016, page 89).

#### **The Information Act of 19 Mai 1999**

This act has been in force since 1 January 2000. This law regulates the principles and procedures for informing people about the activities of the authorities, in particular, the right to information and access to files.

#### **The Information Ordinance of 19 October 1999**

This has been in force since 1 January 2000 and lays down rules for informal inquiries about government business or business, which is prepared by an authority on behalf of the government, shall be answered by the member of the Government responsible.

#### **Geographical Scope**

The Data Protection Act applies to public and non-public bodies. For non-public bodies it applies to

the automated and non-automated processing, wholly or partly, of personal data stored or being stored in a file system.

To non-public bodies the Act shall apply provided that:

- the controller or processor of personal data processes the data domestically;
- the processing of personal data takes place in the course of the activities of a domestic branch of the responsible person or processor; or
- the responsible person or processor falls within the scope of Regulation (EU) 2016/679, although is not established in an EEA Member State.

### **Applicability of the GDPR**

In the scope of Regulation (EU) 2016/679 and according to Article 3 GDPR the GDPR applies to the processing of personal data in the context of the activities of an establishment of a data controller or a data processor in the EU, regardless of whether the processing takes place in the EU or not or in case the processing of personal data of EU data subjects by a controller or processor not established in the EU, where the processing activities are related to the offering of goods or services, irrespective of whether a payment of the data subject is required, or to the monitoring of data subjects' behavior that takes place within the EU.

In compliance of the terms of the local Data Protection Act the GDPR provisions are applicable to foreign companies targeting customers in the Principality of Liechtenstein.

### **Data Protection Agency**

The Data Protection Authority is the national supervisory authority pursuant to Article 51 of Regulation (EU) 2016/679 and Article 41 of Directive (EU) 2016/680. The Data Protection Authority is in charge according to the Data Protection Act of 4 October 2018.

In addition to the tasks set out in Regulation (EU) 2016/679, the Data Protection Authority has the following tasks:

- monitor and enforce the application of the Data Protection Act as well as other regulations regarding data protection and laws and regulations implementing Directive (EU) 2016/680;
- promote public awareness and understanding of the risks, rules, safeguards and rights in relation to the processing of personal data. Activities addressed specifically to children shall receive specific attention;
- advise the Parliament, the government, and other institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to processing of personal data;
- promote the awareness of controllers and processors of their obligations under the Data Protection Act and other data protection legislation, including legislation adopted to implement Directive (EU) 2016/680;

- upon request, provide information to any data subject concerning the exercise of their rights under this Act and other data protection legislation, including legislation adopted to implement Directive (EU) 2016/680, and if appropriate, cooperate with the supervisory authorities in other Member States to that end;
- handle complaints lodged by a data subject, or by a body, organization or association in accordance with Article 55 of Directive (EU) 2016/680, and investigate, to the extent appropriate, the subject matter of the complaint and inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular, if further investigation or coordination with another supervisory authority is necessary;
- co-operate with, including sharing information and provide mutual assistance to, other supervisory authorities with a view to ensuring the consistency of application and enforcement of this Act and other data protection legislation, including legislation adopted to implement Directive (EU) 2016/680;
- conduct investigations on the application of this Act and other data protection legislation, including legislation adopted to implement Directive (EU) 2016/680, also on the basis of information received from another supervisory authority or other public authority;
- monitor relevant developments, insofar as they have an impact on the protection of personal data, in particular, the development of information and communication technologies and commercial practices;
- give advice on the processing operations referred to Consultation of the Data Protection Authority; and
- contribute to the activities of the European Data Protection Board.

The Data Protection Authority shall have powers according the Data Protection Act, which is based within the scope of Regulation (EU) 2016/679, and referred to in Article 58 of Regulation (EU) 2016/679. The Data Protection Authority can, in case of a breach, inform the competent supervisory authority.

### **Violation of Data Protection**

If the Data Protection Authority concludes that, in data processing for purposes beyond the scope of Regulation (EU) 2016/679, public or non-public bodies have violated the Data Protection Act or other data protection legislation or there are other shortcomings with their processing or use of personal data, the Data Protection Authority shall notify the controller of the violation. In the case of a public body the Data Protection Authority will additionally inform the government. The Data Protection Authority shall give the controller and – in the case of a public body likewise the government – the opportunity to notify its opinion within a reasonable period.

The Data Protection Authority may refrain from notifying the controller or requesting a statement, if the infringement is insignificant or was remedied in the meantime. The Data Protection Authority may also



warn the controller, if the intended processing of personal data is likely to violate this Act or any other data protection legislation applying to the respective data processing.

The powers of the Data Protection Authority shall also extend to:

- personal data obtained by public and non-public bodies regarding the contents of and specific circumstances relating to postal communications and telecommunications, and
- personal data which are protected by official secrecy, especially tax secrecy pursuant to the Tax Act.

### **Provision of Compliance Data**

Public and non-public bodies shall be obligated to provide the Data Protection Authority as well as any persons charged with the monitoring of compliance with data protection legislation by the Data Protection Authority:

- after being given due notice by the Data Protection Authority or a responsible person, access to all premises, including to any data processing equipment and means, and to all personal data and all information necessary to perform their tasks; and
- any information which is relevant and necessary to fulfill their tasks.

In the case of a non-public body, the person who is obliged to provide the information may deny the provision of information, if this would expose themselves or another person as set of the Code of Criminal Procedure to criminal prosecution. The person concerned shall be informed accordingly.

The Data Protection Authority advises and provides support to data protection officers and takes into consideration their typical needs. The Data Protection Authority may demand the dismissal of a data protection officer if they do not have the expert knowledge needed to perform their tasks or if there is a serious conflict of interests as referred to in Article 38 (6) of Regulation (EU) 2016/679).

## **Product liability**

### **33. How is product liability and product safety regulated?**

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According to the Product Liability Act (Produktehaftpflichtgesetz, PrHG), producers, importers and, by way of exception, suppliers are directly liable for the damage caused by a defective product if the defectiveness results in a person being killed or injured or an object being damaged or destroyed. Damage to the defective product itself is not subject to product liability, nor is material damage suffered by an entrepreneur who uses the object primarily for his business

### Main business organisations

#### Financial Markets Supervisory Authority (*Finanzmarktaufsicht, FMA*)

W <https://www.fma-li.li/> (German/English)

#### Commercial Registry (*Firmenindex*)

W <https://www.oera.li/cr-portal/suche/suche.xhtml> (German)

#### Liechtenstein Tax Administration (*Liechtensteinische Steuerverwaltung, STV*)

W <https://www.llv.li/inhalt/11610/amtsstellen/steuerverwaltung> (German)

### Work permit/residency permit requirements for foreign employees

Jurisdiction	Work permit/residency permit requirements for foreign employees
Liechtenstein	<p><b>EU (except for Bulgaria/Romania and Croatia) and EFTA nationals.</b> Different permits are required depending on the term of employment and residence of employee:</p> <p>Cross-border commuter: permit for the duration of the employment            Permit in letter form (Bewilligung in Briefform, BIB): permit for a limited period of 12 months plus a max. presence of 180 days.            Residence permit: certain number of applicants get drawn by lot each year.            Short-term residence permit: permit for a limited period of 12 months            Substitute employment residence permit: If a position is occupied by an EEA or Swiss national with a residence, permanent residence or settlement permit and the position becomes vacant as a result of the national's departure abroad, retirement or death, a residence permit may be issued to a person subject to the permit requirement to fill this position.</p> <p><b>Bulgaria/Romania and Croatia, non-EU and non-EFTA nationals:</b></p> <p>Generally, similar provisions apply. Applicants must be highly qualified in the case of an application for residence in Liechtenstein.</p>

### Online resources

W <https://www.gesetze.li/konso/suche> (German)

**Description.** This is the official compilation of Liechtenstein legislation.

W <https://www.gerichtsentscheidungen.li/> (German)

**Description.** This is the official compilation of Liechtenstein court decisions (case law).

W <https://www.regierung.li/law> (English)

**Description.** This website is maintained by the Liechtenstein government and provides unofficial translations of the most important Liechtenstein laws.