

# Asset Recovery

In 26 jurisdictions worldwide

*Contributing editors*

**Jonathan Tickner and Sarah Gabriel**



2015

GETTING THE  
DEAL THROUGH 

GETTING THE  
DEAL THROUGH 

# Asset Recovery 2015

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# Liechtenstein

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## Civil asset recovery

### 1 Legislation

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

Private investigation is not specifically regulated by Liechtenstein legislation. Any private gathering of evidence must be in compliance with the applicable laws, such as laws providing for personal privacy and protection of personal data. The excessive infringement of personal privacy can also constitute a criminal offence (articles 118 et seq of the Criminal Code).

The Liechtenstein Civil Procedure Code (CPC) provides several regulations regarding the gathering of evidence in the course of a civil proceeding.

Additionally, rules dealing with asset recovery can be found in the following statutes:

- General Civil Code (GCC);
- Criminal Code (CC);
- Criminal Procedure Code (CrPC);
- Persons and Companies Act (PCA);
- Property Law (PL);
- Enforcement Act (EA); and
- Bankruptcy Act.

### 2 Parallel proceedings

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

Generally there is no restriction at law on parallel proceedings. A civil proceeding can be conducted in parallel with criminal proceedings concerning the same subject matter. At law the facts found in a criminal judgment are not binding for a civil proceeding. The same applies vice versa. In the course of criminal proceedings victims of the offence under investigation may also join as a private party and assert their civil claims in the criminal proceeding.

If the outcome of a criminal proceeding is a prejudicial question for the civil proceeding the judge may suspend the civil proceeding until the decision in the criminal proceeding is final and binding (article 191 paragraph 1 CPC).

### 3 Forum

#### In which court should proceedings be brought?

There is only one first-instance court in Liechtenstein, namely the Princely District Court in Vaduz, which deals with all civil matters. There are different kinds of proceedings, such as civil, non-litigant, enforcement proceedings, etc, which have different procedural requirements. The competence of the District Court does not have any limitation for the amount in dispute. In selected proceedings such as claims for state liability the Court of Appeal is the first instance.

In accordance with article 31 of the statutory regulation on jurisdiction (SRJ), civil proceedings are generally to be brought before the court if the defendant's domicile (natural person) or seat (legal entity) is in Liechtenstein (general forum rule). However, it is also possible to bring a claim before the Liechtenstein courts if the defendant is domiciled abroad, but has assets in Liechtenstein (asset-based jurisdiction, article 50 SRJ).

According to current legislation, in order to file an admissible claim with the District Court the claimant must apply for and hold a mediation hearing with the aim of resolving the case amicably. If this cannot be achieved the mediation office issues a formal confirmation that the mediation has taken place and failed. This law is being amended and the requirement for mediation will most probably be annulled in mid-2015 and thus the requirement for mediation will cease to exist.

### 4 Limitation

#### What are the time limits for starting civil court proceedings?

The regulations dealing with statute of limitations are found in article 1478 et seq GCC. The general statute of limitations is 30 years after the emergence of a claim. However, there are several exceptions and particularities. For claims arising out of a breach of contract the statute of limitation is five years (article 1486 GCC).

Claims for damages have a statute of limitation of three years starting from the time the damaging person, the damaging party and the causal connection become known. The absolute statute of limitation for such cases, however, is always 30 years. If the damage has been caused by an offence, the statute of limitation is 30 years (article 1489 GCC). Additionally, for claims for damages in correlation with financial services business conducted by a financial intermediary the above three-year rule applies. However, the absolute time limit is 10 years after the conduct at the latest (article 1489a GCC).

### 5 Jurisdiction

#### In what circumstances does the civil court have jurisdiction?

#### How can a defendant challenge jurisdiction?

The general rule for international jurisdiction is that the Liechtenstein District Court has international jurisdiction if it has domestic jurisdiction according to the SRJ. Since in Liechtenstein there is only one court of first instance the domestic jurisdiction may be equalised with international jurisdiction. It falls upon the court to examine on a case-by-case basis whether international jurisdiction is given.

The District Court according to article 31 SRJ generally has domestic jurisdiction if the defendant resides or is based in Liechtenstein. Civil proceedings are generally to be brought before court if the defendant's domicile (natural person) or seat (legal entity) is in Liechtenstein. It is also possible to bring a claim before the Liechtenstein courts if the defendant is domiciled abroad but has assets in Liechtenstein (asset-based jurisdiction, article 50 SRJ). Furthermore, there are additional regulations allowing jurisdiction.

### 6 Admissibility of evidence

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

The Liechtenstein CPC expressly mentions five types of admissible evidence. These are documentary evidence (articles 292 et seq CPC), evidence by witnesses (articles 320 et seq CPC), evidence by qualified experts (articles 351 et seq CPC), evidence by legal inspection (articles 368 et seq CPC) and evidence of the parties (articles 371 et seq CPC). However, the listed types of evidence are not exhaustive and the CPC also accepts other types of evidence such as tape and video recordings, electronic data, biological evidence, etc. Furthermore, subject to exceptions illegally obtained evidence may also be used in the proceeding.

The general rule is that each party has to evidence the facts that form the basis of his or her claim and are favourable to him or her. Each party is entitled to offer evidence to substantiate the claim or respectively the non-existence of the claim and can do so until the taking of evidence is closed. However, the court may reject such offers if they are deemed insignificant or an intention to delay the proceedings.

## 7 Publicly available information

### What sources of information about assets are publicly available?

There are several sources of information which are publicly available and provide information on assets in Liechtenstein.

The Commercial Register contains information on companies, trusts, foundations, institutions, etc based in Liechtenstein. Such information includes name, seat, purpose and directors. The Commercial Register is publicly accessible. However, with regard to some entities, the publicly available information is limited.

The Land Registry contains information on every plot of land in Liechtenstein. The Land Registry can be consulted by anyone who can substantiate a legal interest in the information contained there.

## 8 Cooperation with law enforcement agencies

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

None of the parties of a civil proceeding may directly obtain evidence from law enforcement agencies if no further requirements are met. If the party is either victim or accused in a criminal proceeding or shows particular legal interest in the files of a criminal investigation it will be granted access to the files of a particular proceeding.

According to article 183 CPC the District Court further may obtain documents that are deposited with a public authority if a proceeding party has referred to them in the pleadings. Since the term should be interpreted broadly it encompasses any entity established and financed by the state.

## 9 Third-party disclosure

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

Information from third parties can in particular be obtained by hearing them as witnesses. If a third party is offered by a party as evidence and it is thereafter summoned the court, it generally has the duty to comply with the summoning and to testify completely and truthfully.

However, a third party is allowed to reject to answer questions that could lead to dishonour, criminal prosecution or pecuniary disadvantages against them or their family or could constitute a breach of confidentiality or professional secrecy such as trustees secrecy, attorney secrecy and bank secrecy (article 321 CPC). Furthermore, it is illegitimate to have a third party testify if they are unable to communicate what they perceived or were unable to perceive the facts in question or if they are bound by secrecy (eg, clerics and civil servants; article 320 CPC).

## 10 Interim relief

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

In terms of civil asset recovery it is possible to prevent the dissipation of assets through the means of an injunction. The general regulations regarding injunctions are found in article 270 EA et seq.

Provisions specifically regarding monetary claims are regulated in article 274 EA et seq. According to these regulations, relief can be obtained by seizing the moveables of the debtor and putting them into the District Court's safekeeping. Furthermore, the debtor can be judicially forbidden to alienate or pledge any of his or her moveables. Also any third person against whom the debtor has a claim or receivable can be prohibited from fulfilling his or her obligations or to surrender any objects that are due to the debtor. By these means, all assets located in bank accounts of the debtor and also all receivables of the debtor can be seized. By means of the injunction, the claimant obtains a lien on the assets and receivables that are seized and attached by the injunction.

With regard to non-monetary claims, the court can order that the objects in custody of the debtor at which the claim for restitution is aimed are to be deposited at court (article 277 EA). Furthermore, the court may make orders to uphold a status quo and forbid certain actions that would amend that status quo.

An application for injunctive relief can be made separately from or within the action. Such application must substantiate the claim and the endangerment of the claim and therefore the necessity of the injunction (article 282 EA).

## 11 Right to silence

### Do defendants in civil proceedings have a right to silence?

Generally defendants (regarded as parties) are obliged to testify and do not have a right of silence. However, if they refuse to testify, or even to appear before the court, the CPC does not provide any direct sanctions or means of enforcement against them (article 380 paragraph 3 CPC). It should also be noted that defendants who are deemed incapable of testifying (such as clerics and civil servants as far as bound by official secrecy) may not be interrogated (article 372 CPC).

If the defendant does not appear before court for the first hearing or at a later hearing the court may pass a default judgment. Additionally, any refusal of a party to give evidence is taken into consideration by the judge within the scope of the free appraisal of evidence.

## 12 Non-compliance with court orders

### How do courts punish failure to comply with court orders?

With regard to the maintenance of order in the court hearings the judge may forbid any person who does not comply with court orders to make further statements. Also, any person disturbing the hearing in spite of being cautioned can be excluded from the hearing. A party to the proceedings being excluded from the hearing must be informed of the possibility of a judgment by default. It is also possible for the court to impose fines and short detention sentences (up to three days).

If a court decision rules for an obligation of the party for a personal act, omission or performance to the other party, such order, if it is final and enforceable, may be enforced by the entitled party in an enforcement proceeding. If the act or omission is a matter of personal action of the obligator that may not be taken by a third person (article 257 EA), the court may enforce the title by threat of penalty, penalty payments and imprisonment of up to six months. If the action may also be taken by a third party, it will be taken by a third party at the costs of the obligator (article 256 EA).

## 13 Obtaining evidence from other jurisdictions

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

On the basis of the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, it is admissible to request legal assistance by the competent authorities in the respective state (provided that it has ratified the convention as well). Such requests of the court are sent to the Department of Justice, which forwards the request to the foreign country. The foreign authority may take appropriate coercive measures in order to execute the request. Usually the Hague Convention is utilised to execute the questioning of witnesses who are not able or willing to personally appear before court in Liechtenstein.

Furthermore, Liechtenstein has concluded a multilateral treaty agreement regarding obtaining information regarding foreign law and, by this means, the Liechtenstein courts in civil matters may obtain information regarding foreign law.

## 14 Assisting courts in other jurisdictions

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

According to article 27 SRJ, the District Court has a general duty to provide legal assistance upon the requests of foreign courts, provided that international agreements do not specify differently. The Liechtenstein court is obliged to refuse requests for legal assistance if it is not competent to take the requested action (it may, however, transfer the request to the competent authority), if the requested action is prohibited by legal provisions that

are binding for the court or if mutuality between Liechtenstein and the requesting state is not preserved.

If the requesting state has also ratified the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial matters, the provisions of this convention apply. Liechtenstein, however, is not a member of the Lugano Convention.

## 15 Causes of action

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

The most important cause of action is the claim for damages (articles 1293 GCC et seq). This cause of action is relevant for both damages caused by a breach of contract and by tort. The latter is particularly applicable to cases of fraud.

Another relevant cause of action is provided by a claim for unjustified enrichment (articles 1041 GCC et seq).

Furthermore, the PCA also provides for a further basis for liability action in the form of claims for responsibility against the organs of an entity if the organs have taken action damaging the entity (article 218 PCA et seq).

Proprietary claims are possible as well. Any owner who is deprived of their ownership regarding assets can claim its restitution (article 20, paragraph 2 LP).

## 16 Remedies

### What remedies are available in a civil recovery action?

Following the principles of the law of damages restitution is the primary remedy (article 1323 GCC). If restitution is not feasible the claimant may sue for monetary damages. This applies for contractual and for tort claims.

In the context of a contractual relationship the claimant is able to request the defendant to fulfil his or her contractual duties (specific performance), but also to claim damages on the basis of breach of contract.

Furthermore, Liechtenstein law also provides for several reasons for restitution because of unjust enrichment. In general, however, unjust enrichment is subsidiary to the claim for damages.

Regarding responsibility claims against organs the entity may request payment of damages because of actions to the detriment and damage of the legal entity based on article 218 PCA et seq.

Furthermore, restitution is also a possible remedy with regard to proprietary claims, especially a claim for surrender of property (article 20 paragraph 2 PL). Monetary damages can also be claimed under certain specific circumstances, such as intentional or negligent infringements of personality rights (article 40 PCA).

## 17 Judgment without full trial

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

The Liechtenstein CPC regulates a simplified civil procedure which is intended to be more efficient in comparison with a 'regular' litigation with regard to its duration and cost. Upon a corresponding petition by the claimant the court issues a payment order without an evidentiary hearing. This payment order is only based on the allegations of the claimant. If the defendant does not oppose the payment order it becomes binding and thus an enforceable title.

If the defendant objects to the payment order it becomes invalid. The claimant thereafter has to file his or her claim by the means of a 'regular' civil litigation. Alternatively the claimant may request the lifting of the objection in a judicial annulment procedure if certain conditions are fulfilled (article 49 Injunction Proceedings Act). If this request is followed by the court the defendant may file a claim for disallowance of the claim.

Furthermore, the court may render a default judgment if the defendant fails to appear at a court hearing to which he or she was summoned correctly. In such a case the court, upon application of the claimant, would issue a default judgment based on the content of the statements of the claimant alone (articles 396 CPC et seq).

## 18 Post-judgment relief

### What post-judgment relief is available to successful claimants?

If the decision is final and binding and the defendant has not complied with his or her obligations according to the decision within the performance period, the decision is enforceable. The claimant may thereafter

request the enforcement of his or her claim under the provisions of the Enforcement Act (EA). The enforcement proceedings are initiated by a respective application that must refer to the enforceable judgment, payment order, settlement, etc, and must contain the methods of enforcement that are to be applied as well as the assets that shall be recovered.

## 19 Enforcement

### What methods of enforcement are available?

The methods of enforcement are specified in the EA. Regarding the enforcement of monetary claims, the applying creditor may request the seizure and auctioning of the debtor's immovables and moveables (articles 58 et seq and 168 et seq EA). The latter also includes the most common enforcement method, namely the seizure of any receivable or monetary claim of the judgment debtor (article 210 et seq EA).

If the decision obliges the judgment debtor to a specific action or performance, the application for enforcement can also request the obtainment of an act or an omission of the judgment debtor. If the act or omission is a matter of personal action of the debtor that may not be taken by a third person (article 257 EA), the court may enforce the title through threat of penalty, penalty payments and imprisonment of up to six months. If the action may also be taken by a third party, it will be taken at the costs of the debtor (article 256 EA).

## 20 Funding and costs

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

In general the parties have the obligation to fund their own representative based on an agreement between the party and the representative. If a party is not able to afford the cost of litigation without preventing itself providing for its own maintenance, it has the possibility of applying for legal aid (article 63 CPC) subject to certain strict prerequisites.

In the relation between the parties of the proceeding the rule is that the losing party has to reimburse the costs of the successful party according to the lawyers' tariff. If the party is only partly successful it is only reimbursed a part of the costs based on the quota of success. The law, however, also provides for several exceptions and special rules.

Furthermore, a foreign claimant is obliged upon request of the defendant to provide a security deposit for the presumed procedural costs of the defendant if he or she resides in a country where Liechtenstein cost decisions are not enforceable. Such deposit may be made by wire transfer but also by bank guarantee and is deposited with the court.

The fees and costs for hearings, pleadings, etc, are strictly regulated by tariffs, thus the courts can manage the overall cost of the litigation in an indirect way. The court has to comply with the principle of procedural economy and proceedings must be conducted as efficiently and cost-effectively as possible. On that basis, applications for taking of evidence can be dismissed if the court finds that they only serve the purpose of delaying the proceedings.

## Criminal asset recovery

### 21 Interim measures

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

The Liechtenstein CrPC contains various regulations providing for interim measures. With regard to the recovery of assets, the seizure of assets that are suspected to stem from criminally relevant behaviour plays an important role. Other interim measures include the execution of a search warrant, the arrest of a suspect and pre-trial detention.

During the preliminary proceedings seizures are ordered by the court in accordance within the applications of the public prosecutor. In the context of the final hearing the court itself is able to order interim measures.

Any orders concerning seizures (or any interim measure) must be passed by means of a written decision with a reasoning, and may be appealed.

## 22 Proceeds of serious crime

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

In Liechtenstein criminal investigations in general are not automatically initiated but require either a complaint or a reporting to the prosecutor. If the public prosecutor finds that a criminal complaint or report contains sufficient grounds for a criminal prosecution it requests the District Court to initiate a preliminary investigation and take certain measures. In the course of the investigation proceeding upon application of the prosecutor documents are seized, assets are frozen, witnesses are heard and the information is analysed by the prosecutor regarding criminal offences.

## 23 Confiscation – legal framework

**Describe the legal framework in relation to confiscation of the proceeds and instrumentalities of crime.**

Regulations regarding seizure during a preliminary investigation are found in articles 96 et seq CrPC. Article 97a CrPC specifically regulates the seizure of proceeds stemming from criminal offences. According to this provision the court may seize immoveables, moveables, bank receivables and prohibit the disposal of the assets or take a lien on them.

The confiscation of assets is regulated in articles 20 and 20b CC. By a decision of skimming-off of unjust enrichment (article 20 CC) the convicted person is obliged to pay the state an amount equal to the unjust enrichment arising out of the offence. It is not necessary for the authorities to locate the proceeds of the crime.

Assets of criminal or terrorist organisations as well as proceeds stemming from money laundering or criminal offences committed outside the jurisdiction of Liechtenstein are subject to forfeiture according to article 20b CC. For forfeiture it must be evidenced that the assets in question stem from a criminal offence. Assets that stem from a crime may also be forfeited if they are in the hands of a third party.

Finally, the procedural provisions regarding the skimming-off of unjust enrichment and forfeiture of the proceeds of crime as well as the confiscation of items are regulated in articles 353 et seq CrPC. In cases of forfeiture usually a separate objective forfeiture proceeding is conducted. In using these procedural provisions foreign forfeiture or confiscation decisions may also be enforced in Liechtenstein.

## 24 Confiscation procedure

**Describe how confiscation works in practice.**

Within the context of a preliminary investigation the public prosecutor requests the investigating judge to order the seizure of assets or specific measures provided in article 97a CrPC. The investigating judge bases the respective decision on the known facts, the suspicion of a criminal offence and whether the requested measure is appropriate and necessary in order to secure a possible future forfeiture or skimming off of the enrichment.

The investigating judge regularly orders that the assets located in a bank account of the suspect or an entity of which the suspect is beneficial owner are frozen. With the seizure the state of Liechtenstein obtains a lien on the frozen assets. If the preliminary proceedings and investigations take longer than two years the court may extend the seizure upon application of the prosecutor and with consent of the Court of Appeal.

If the suspect is convicted in Liechtenstein the court may order as a side decision the skimming-off of the enrichment from the criminal offence. Should the criminal offence have been committed abroad the prosecutor would initiate an objective forfeiture proceeding, which deals with the forfeiture of the assets located in Liechtenstein only and in which only the holder of these assets is a party. In such case a forfeiture decision of the court would be issued.

If the decision on forfeiture or skimming-off of enrichment becomes final it will be enforced in an enforcement proceeding that is similar to a civil enforcement proceeding and the assets are confiscated for the benefit of the state.

Confiscation in particular is excluded according to articles 20a and 20c CC if the assets shall be used to satisfy civil claims of the victims that have been damaged by the offence or if such persons have claims to the assets that have not participated in the offence. Therefore, the frozen assets shall primarily be used to settle claims of the damaged persons.

## 25 Agencies

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

It is the responsibility of the prosecutor to establish what kind of measures need to be taken in the context of the preliminary proceedings. The prosecutor is therefore the driving force in the preliminary proceedings. The investigating judge decides on the applications and whether the requested measure is appropriate and necessary. Furthermore, the police are often involved in analysing seized documents and tracing assets as assistants to the court.

## 26 Secondary proceeds

**Is confiscation of secondary proceeds possible?**

By the means of skimming-off of the enrichment and forfeiture proceedings the confiscation of secondary proceeds is also possible. In the case of a skimming-off of enrichment according to article 20 CC the court has to determine who is enriched by the criminal offence and the conversion of the proceeds of the crime into other property. In a forfeiture proceeding, according to article 20b CC, it is required to prove that the assets that shall be forfeited stem from the criminal offence. Furthermore, the forfeiture proceeding, according to article 20b CC, is particularly relevant if the assets that are to be forfeited stem from a criminal offence committed outside the jurisdiction of Liechtenstein.

## 27 Third-party ownership

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

In both confiscation procedures, the skimming-off of enrichment and the forfeiture proceeding, it is possible that assets held by a person or an entity that neither committed the offence nor participated in it are confiscated. In the case of skimming-off of the enrichment it is sufficient that the person or entity directly received the proceeds of a crime and was enriched in an unjustified way. In such case a judgment for payment would be rendered against the recipient of the proceeds.

In the case of forfeiture it is in general only relevant whether the assets held by the entity or person evidently stem from a criminal offence. In such a case the assets in general will be declared forfeited. However some exclusions may apply. Therefore, assets held by relatives, spouses, etc, may also be confiscated if it is proven that they are proceeds of a criminal offence.

## 28 Expenses

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

There are no specific regulations in Liechtenstein regarding the recovery of costs with regard to tracing and confiscating assets. However, in cases of confiscation of assets by skimming-off of enrichment and by forfeiture the assets in general go to the state and the state recovers its costs of the proceedings from the confiscated assets.

## 29 Value-based confiscation

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

In general the skimming-off of unjust enrichment according to article 20 CC is a value-based confiscation since the offender is convicted to payment of an amount equivalent to the enrichment to the state disregarding the assets found and located in Liechtenstein. In case of forfeiture, however, there is no value-based confiscation; only the assets that are actually found and located in Liechtenstein may be declared forfeited.

## 30 Burden of proof

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

As a general rule in criminal proceedings the burden of proof lies with the criminal authorities. This also applies to the confiscation of any proceeds of crime. In particular in cases of forfeiture there is a strict obligation to prove that the assets stem from a crime.

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

The skimming-off of the enrichment is excluded, according to article 20a CC, if the enriched person has settled civil claims of persons damaged by the offence or uses the assets to settle civil claims or by final and binding decision is obliged to settle civil claims of the damaged persons. Furthermore, forfeiture is excluded, according to article 20c CC, in the case that persons having claims on the assets that shall be forfeited have not participated in the criminal offence or if there is a foreign confiscation decision that shall be enforced in Liechtenstein.

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

The provision of article 20 CC and the skimming-off of the enrichment provides that all profits and benefits obtained from the commission of the criminal offence are skimmed off.

Forfeiture, according to article 20b CC, however, does not take into consideration the financial advantage obtained but is only an asset-based confiscation of those assets found in Liechtenstein that are proceeds of a crime.

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

The skimming-off of the unjust enrichment and the forfeiture of assets does not necessarily require a conviction. The skimming-off of unjust enrichment may also be made without a conviction if the objective requirements for the offence are fulfilled but the offender has not acted culpably.

With regards to forfeiture the only prerequisites are that the proceeds from a criminal offence committed abroad are located in Liechtenstein and that the criminal offence committed abroad must be punishable under Liechtenstein law as well as under foreign law. It is, however, sufficient if the objective requirements of the offence are fulfilled in Liechtenstein and abroad. Culpability of the offender and a conviction abroad are therefore not required.

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

Bank assets that have been seized remain in the account of the legal owner. The active management of assets is restricted. Any act of management generally requires the consent of the court. Therefore, the management

or change in investment requires an application and the courts are rather restrictive in allowing the management. The question of management of assets, however, is dealt with on a case-by-case basis by the courts and it may also be applied for the consent to a certain category of management actions.

In the case of seizure the entity owning the assets is still entitled to use a portion of the assets to cover the running costs of necessary administration as well as the costs of legal defence. The entity, however, has to apply to the court for the release of the respective amounts.

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

The basic legal framework for requests for international legal assistance in general (including measures in relation to the recovery of assets) consists of the European Convention on Mutual Legal Assistance in Criminal Matters 1959 (ECMLA). This treaty provides a mutual basis for legal assistance between Liechtenstein and the member states of the European Council that have ratified this treaty. Furthermore, regarding national law the basis for legal assistance in criminal matters is the Criminal Legal Assistance Act (CLAA).

Also in matters of criminal legal assistance the provisions of the CrPC apply as far as the CLAA does not provide any other regulation. Any measure such as seizure of documents or freezing of assets is then conducted according to the provisions of article 97a CrPC et seq, as stated above.

Generally, foreign prosecution authorities send a letter rogatory to the Liechtenstein Ministry of Justice requesting the Liechtenstein authorities to take certain measures. Such request is usually for seizure and handover of documents because the documents are of importance for foreign investigations and the assets shall be confiscated abroad or a foreign confiscation decision shall be enforced in Liechtenstein.

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

A key piece of the legal framework regarding legal assistance in Liechtenstein is the ECMLA. This convention has been signed by all member states of the Council of Europe. Also there are further bilateral or multilateral agreements on legal assistance in criminal matters such as a treaty with the United States on criminal legal assistance.

In terms of national law the CLAA is relevant. In matters of criminal legal assistance the District Court is competent to decide on the measures applied for (article 55 paragraph 1 CLAA). In criminal legal assistance the foreign prosecution authorities have the same role as the Liechtenstein prosecution office in domestic proceedings.

As in domestic proceedings the court decides on the applications in the letter rogatory based on the respective provisions of the Liechtenstein CrPC. Measures taken by the District Court in legal assistance proceedings

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may be appealed against by the directly affected entity or person. However, the provisions are more restrictive than in domestic proceedings.

Furthermore, under article 64 CLAA foreign countries may apply for the enforcement of a foreign confiscation decision in Liechtenstein if the respective conditions are fulfilled. Such proceeding may follow the provisional freezing of assets. The District Court is also competent for enforcement proceedings.

### 37 Treaties

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

Liechtenstein is a signatory to several international conventions with provisions on asset recovery. They include in particular:

- European Convention on Mutual Legal Assistance in Criminal Matters 1959 (ECMLA);
- Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990;
- UN Convention for the Suppression of the Financing of Terrorism 1999;
- UN Convention against Transnational Organized Crime 2000; and
- UN Convention against Corruption 2003.

### Update and trends

As outlined in question 3, the Act on Mediation will most probably be annulled by the middle of 2015 and therefore the requirement for a compulsory mediation hearing will also cease to exist.

### 38 Private prosecutions

#### Can criminal asset recovery powers be used by private prosecutors?

In Liechtenstein there are no private prosecutors. Private persons are only able to initiate criminal investigations and seizures by reporting criminal offences to a prosecutor who then takes the measures he or she deems appropriate and necessary. Furthermore, they may assist the prosecutor and the court by providing documents and information that is material to an investigation.

## Getting the Deal Through

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Anti-Money Laundering	Electricity Regulation	Mergers & Acquisitions	Right of Publicity
Arbitration	Enforcement of Foreign Judgments	Mining	Securities Finance
Asset Recovery	Environment	Oil Regulation	Ship Finance
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Cartel Regulation	Gas Regulation	Pensions & Retirement Plans	State Aid
Climate Regulation	Government Investigations	Pharmaceutical Antitrust	Tax Controversy
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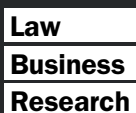
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