

Liechtenstein

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Service of foreign documents in Liechtenstein

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Liechtenstein is different. It has no double taxation treaties with other countries (with the exception of Austria and some Swiss cantons), and has not entered into enforcement treaties with the exception of Austria and Switzerland. This results in indirect enforcement of foreign judgements and complicated tax structures. The same goes for the service of foreign documents in Liechtenstein. Whereas many countries allow service of documents through lawyers, a foreign lawyer is not allowed to conduct service in Liechtenstein directly; neither would a Liechtenstein resident lawyer be allowed to do so.

An EU convention now regulates service within the member states. However, Liechtenstein did not implement this directive. This paper outlines how a service may be arranged in Liechtenstein without acting against the law.

Service of foreign documents

Service of foreign documents in Liechtenstein is regulated by the Liechtenstein *Zivilprozessordnung* (Code of Civil proceedings) and international treaties.

According to the law, a Liechtenstein lawyer or trustee or any other person is not entitled to undertake the function as a stakeholder or escrow agent for foreign courts or governmental bodies.

In addition, the Liechtenstein Government decided on July 16 1996 as follows:

“Acting as stakeholder or escrow agent for foreign courts or governmental bodies would be punished. The service of foreign court documents is regarded as acting for Foreign Governments.”

Acting according to international treaties is accepted. Moreover, according to Liechtenstein court decisions service must not be denied if foreign legislation foresees that the service is to be conducted only through lawyers or agents and when such service is requested according to the applicable Liechtenstein law.

Service of documents by the Liechtenstein court

Although service of foreign documents is usually conducted through governments, a private person may request that the Liechtenstein court undertakes the service. In order to have the documents serviced by the courts it is necessary to file an *Antrag auf Zustellung* (Motion of Service).

To do so the Liechtenstein lawyer requesting the service would have to prove that he is authorized to do so by presenting a power of attorney of the one who wants the documents serviced. Then it would have to be proved that service by a private person (lawyer) instructed by the plaintiff is legally valid.

Usually a legal opinion by the foreign lawyer is presented with a wording similar to the following:

“We confirm that under English law a private person, whether it is a lawyer or any other person, is entitled and authorized to serve legal proceedings.”

In practice, lawyers actually do most of the service of legal proceedings in this country.

Language

There is no general duty to translate the documents into the official language of German and there is no general provision which would forbid the service of documents in a foreign language. However, it is internationally accepted that in the case of service in a foreign country the language is that of the requested country or the language that has been mutually agreed in treaties.

The counterparty may at any time request to have the documents translated. To save time, it is in any case advisable that all docu-

ments that have to be served by a Liechtenstein court are translated into German. It is now standard procedure to translate all documents, so the Liechtenstein courts do not service documents that would be against Liechtenstein law or public order.

Procedure for document servicing

Based on the request of the applicant, the Liechtenstein court then decides to service the documents and lists all the documents which have to be served.

The documents are served by a court officer and the counterpart has to sign a statement that it has received the relevant documents. This certification is handed over to the applicant or his legal representative in Liechtenstein.

It has to be pointed out that according Liechtenstein law; no foreign judgements can be enforced directly in Liechtenstein, with the exception of Austrian and Swiss court decisions.

Service by diplomatic channels is conducted according the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, concluded on November 15 1965.

Service where the defendant no longer exists

In most cases the counterparty in Liechtenstein is a legal entity. It may be that the legal entity has been struck off the public registry and is no longer in legal existence. This would lead to the fact that the documents cannot be serviced properly.

Liechtenstein's law provides the service to a *Zustellkurator* (an appointed guardian for the legal entity). This guardian is appointed on request and the service may be conducted in a legally valid way. The applicant is obliged to pay the guardian's fees.

Financial and corporate

Recommended firms

Tier 1

Dr Dr Batliner & Dr Gasser
Marxer & Partner
Walch & Schurti

Tier 2

Batliner Wanger Batliner
Harry Gstöhl & Partner
Müller & Partner

Tier 3

Batliner & Konrad
Law firm Holzhaecker
Seeger Frick & Partner
Wanger

“Liechtenstein is a sophisticated market,” said one partner. “It has good, reliable people with professional skills and a decent success rate and has been identified by clients looking to enter into the EU market.”

The Liechtenstein industry for establishing financial products is surging, with increased volume reported from UK banks and hedge funds. With the introduction of the EU-style passporting regulations and the updating of the country’s Foundation Law, interest has come flooding in from other funds-heavy jurisdictions like Switzerland.

“Swiss Banks are looking to set up in Liechtenstein as a safe harbour to send ships into the European market,” said one partner.

The talk of the legal market in Liechtenstein this year has been the departure of three high-profile partners from Marxer & Partner. While the move has yet to affect the firm’s position in the market, many commentators are taking a wait-and-see attitude before gauging its effect.

Dr Dr Batliner & Dr Gasser

One of the largest firms in Liechtenstein, Batliner & Gasser is praised by peers for its wide-ranging practice. Established in 1954, the firm has a partnership with Simma, an Austrian law firm, which provides it with cross-border capabilities.

“They’re very active,” said one rival partner about Batliner & Gasser. “They have a huge clientele from their trust business and a focus on international and commercial law.”

Batliner & Gasser is active on the commercial side, developing agreements for shareholders and administrative boards in merger transactions and also carrying out liquidation and bankruptcy proceedings.

Following a restructuring at the firm, its fiduciary side is handled by the First Advisory Group. The group advises on asset planning

and management, and the establishment of foundations and trusts.

Leading lawyers

Johannes Gasser
Peter Monauni

Marxer & Partner

Marxer & Partner has run into difficulties this year, with the departure of partners Oliver Nesensohn, Wolfgang Rabanser and Bernhard Lorenz. But despite the turmoil, rival lawyers still see the firm as “a big and very grand law firm”.

Now consisting of nine partners, Marxer & Partner focuses on the establishment and management of trusts and benefits from a close relationship with the Centrum Bank and Confida trust company.

The market singled out Herbert Oberhuber as one of the firm’s standout lawyers, noting his years of experience and his position on the boards of directors of Centrum Bank and Confida Trust and Auditing Company. Johannes Burger was also noted by peers as “unquestionably” one of the leading lawyers in the market.

Leading lawyers

Johannes Burger
Herbert Oberhuber

Walch & Schurti

Walch & Schurti rounds out the top tier after peers noted the firm’s solid financial and corporate work. The firm was formed in 1991 and is seen by rival partners as containing “experienced lawyers which advise clients abroad”.

Name partners Ernst Walch and Andreas Schurti are noted by the market as amongst the best lawyers in Liechtenstein. The firm represents UK and Liechtenstein banks as well as local insurance companies and funds. The firm also has strong links with large Swiss banks and benefits from a close relationship with the WalPart trust, which it has advised on the setup and management of trust vehicles.

Leading lawyers

Andreas Schurti
Ernst Walch

Batliner Wanger Batliner

The product of a merger in 2002, Batliner Wanger Batliner has climbed up the rankings on the back of overwhelming recommendations from the market. The firm advises on a wide range of financial and corporate work and is well regarded by peers and clients alike.

“They’re a very good law firm,” said one rival partner. “When they decide to do something, they do it right.”

Partner Ralph Wanger has acted as a substitute judge at the Constitutional Court of Liechtenstein since 2005 and is singled out by rival partners for his significant experience.

Leading lawyers

Ralph Wanger

Harry Gstöhl & Partner

Law Office of Harry Gstöhl & Partner is seen by the market as a boutique firm focusing on financial and litigation work. “They have a very old clientele on the trust side and are a very highly regarded firm,” said one peer. “They’re very active but not so much on the corporate side.”

The firm is headed by name partner Harry Gstöhl, who was recently appointed to the Princely Council of Justice. Consisting of only two partners, the firm may be small but the market notes that the quality of work it produces is outstanding.

Leading lawyers

Harry Gstöhl

Müller & Partner

Müller & Partner retains its spot in the second tier after positive comments from a number of peers and clients. The firm is seen by the market as having a focus on litigation, but it also does a range of financial and corporate work for companies and financial institutions.

“They’re very good, reliable and have excellent partners,” said one rival partner.

The market noted that name partner Wolfgang Müller has nurtured talent effectively within the firm, as younger counterparts Roland Müller and Robert Neudorfer are seen by peers to be his natural successors.

Leading lawyers

Robert Müller
Wolfgang Müller
Robert Neudorfer

Wanger

Wanger suffered a blow as its leading partner Markus Wille departed the firm in June 2007. The firm appointed Hermann Ludescher in Wille’s place, but the long-term effects of the move, if any, are yet to be seen.

The firm has offices in Austria, Belgium, Brazil and Israel, which allow the firm to provide crucial cross-border support to clients. But some commentators said that this can mean the firm’s resources are stretched in busy times.

The firm had a strong transactional year despite Wille's move. Respected name partner Markus Wanger led a team which recently gave merger-related advice to Carcoutics and Bayerische Hypo- und Vereinsbank, and also provided legal advice to the Bank of Scotland and Lenovo.

Other notable firms

Seeger Frick & Partner has jumped up the rankings this year after strong support from the market. The firm has a long history in Liechtenstein and is described by one peer as possessing "a huge commercial clientele".

One notable partner at the firm is former Liechtenstein prime minister Mario Frick, which adds a certain gravitas to the practice's reputation. Seeger Frick has a close relationship with Frick Bank and often advises trust companies and foreign banks.

Wolff Gstöhl & Partner is again recognized for its work in the market. Commentators mentioned that name partner Peter Wolff has a strong litigation focus, but is seen to be active in numerous bankruptcy cases, among other financial and corporate work.