

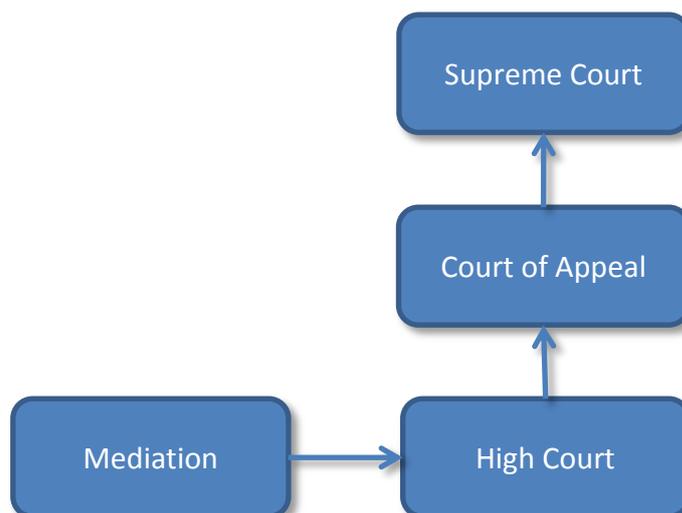
## Summary: Civil Litigation in Liechtenstein

This memorandum is a general overview of the civil courts procedure. It will allow clients to understand the key procedural aspects of their case.

### *The court system*

The Liechtenstein civil court system has three standard levels: the High Court, the Court of Appeal and the Supreme Court. The Constitutional Court can be appealed as an extraordinary remedy, but only if constitutional rights are concerned. At the High Court a single judge will sit on the case, while at the higher levels the panel is made up of five persons. Liechtenstein has a tradition of appointing Swiss or Austrian judges to the Liechtenstein bench, which enhances the independence of the judiciary and adds expertise.

Liechtenstein procedural law is based on the Austrian model, and the lawyers traditionally draw on Austrian legal literature and court practice in questions of civil procedure law. The substantive laws are often based on the Austrian or the Swiss example.



## **Mediation**

In ordinary civil cases the law requires a claimant to go through a compulsory mediation process in order to gain leave to proceed with court proceedings. However, this is largely a formality; the mediator will be a local civil servant and the procedure is not sophisticated. The defendant is not obliged to attend the proceedings. Nevertheless, a settlement or acknowledgment before the mediator is an enforceable title like a court judgment.

Certain matters are exempt from this compulsory mediation (mainly family law issues). Matters that are dealt with in “non-contentious” proceedings by the court are also exempt. Other important exemptions for the international client are cases where an injunction is granted (see below) or when a party is not properly represented, so a guardian or representative has to be appointed by the court.

If the defendant is not a Liechtenstein resident or, in the case of a company, has no legal place of business in Liechtenstein, the High Court must be petitioned to appoint one of the local mediation offices to conduct the mediation process.

The claimant has to file a request for mediation with the competent mediator and set out his claim. At this point it will be necessary to give an exact and detailed wording of the judgment sought. The claim may be reduced in scope without adverse effect until such time as the claim is lodged at court. By way of example, a claimant may request mediation in relation to a claim for EUR 2 million and later actually only file a court case for EUR 1 million. However if the claimant wants to extend his claim, even if the court proceedings are already pending, an additional mediation process will be necessary.

After receipt of the claimant's request, the mediator will notify the defendant and set a date for the hearing. From the moment of receipt of the notification from the mediator by the defendant, *the case is pending (lis pendens)*. The defendant is, however, not obliged to attend the mediation hearing.

If the mediation is unsuccessful or if the defendant does not attend, the mediator grants leave to apply to court.

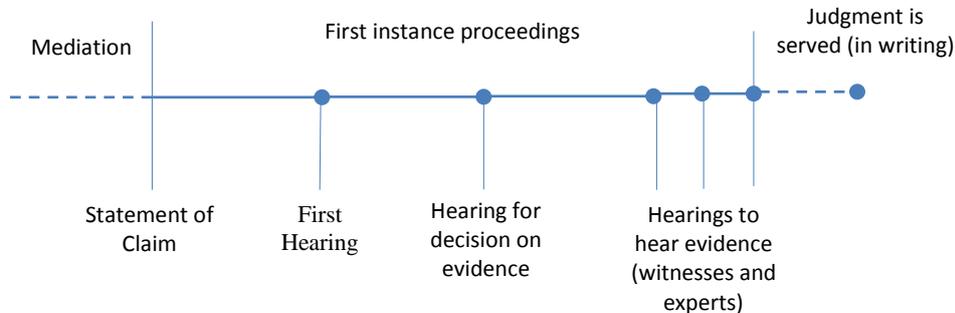
The normal timeframe for a mediation process is 2-5 weeks.

## **Proceedings at the High Court**

### **Contentious proceedings**

Proceedings are initiated by a filing a written statement of claim with the court. The claimant must state the facts that give rise to his claim and indicate the evidence he wishes to rely on. As long as the case is at the High Court level, new evidence may be brought at any time. However, the court may refuse to consider it if it is of the opinion that it is only tendered by the party with the intention of prolonging the proceedings.

The court may review *ex parte* whether the matter falls under in its jurisdiction or not and thereafter serve the statement of claim on the defendant and set a date for a first hearing. Non-Liechtenstein residents will usually be served through diplomatic channels. If service in non-German speaking countries is required, the court will request a translation or a cost deposit for a court-appointed translator.



The first hearing is primarily a chance for the defendant to raise formal objections and to request a security deposit for costs and fees (see below). Thereafter the court will invite the defendant to file a reply to the statement of claim. Where the claimant is not obliged to file a security deposit for costs and fees (see below), the court sometimes orders the respondent to file his response without a first hearing.

The court usually holds a special hearing to hear parties' submissions concerning evidence. This will be followed by as many more hearings as necessary to actually consider the evidence. In particular, this will involve the examination of witnesses and experts. If a witness is not resident in Liechtenstein, the court will send a letter rogatory (judicial assistance request, i.e. request to a foreign authority to take deposition from the witness) to the competent court or authority at the witness' place of residence. Experts are appointed by the court; however, the parties may obtain their own expert opinions and submit them. Witnesses must be heard orally before the court. Nevertheless, affidavits are frequently essential in order to successfully apply for an injunction. When the court considers the factual situation has been adequately considered, it will terminate the evidence stage and close the proceedings. The judgment will be issued to the parties in writing.

First instance proceedings typically require 9 to 12 months, but can take much longer depending on the nature of the evidence required.

### ***Non-contentious proceedings***

The term “non-contentious” has historical roots and is rather misleading: it does not preclude the parties from holding different views and contesting their opponents’ pleadings and applications. These procedural rules are applied by the court in most family law matters,

certain matters dealing with estates and other particular areas of law. An important example that is relevant for international clients is court supervision of trustees and foundations.

The procedure *grosso modo* follows the above description, but the court has more flexibility to act *ex officio* without a party's application. If appropriate, it can decide solely based on the written submissions.

Court orders can be appealed in the same manner as procedural orders (see below), but the appeal has only suspensive effect if specifically granted.

## ***Court of Appeal***

All High Court judgments may be appealed to the Court of Appeal within a time limit of four weeks. The parties may make new factual submissions in the appeal pleadings, offer new evidence (as long as the claim remains identical) or contest procedural errors or the High Court's factual and legal findings.

After submission of the written appeal or the respondent's reply, no new evidence may be offered or new pleadings submitted. Following this, the Court of Appeal takes over proceedings. As part of this procedure, it will hold a hearing in which it may consider any new evidence put forward, but it has discretion whether it admits new evidence or not and the court is often reluctant to do so. The Court of Appeal hands down a written appeal judgement.

Most procedural decisions of the High Court, such as the order to lodge a security deposit for costs and fees or a dismissal of a claim on account of lack of jurisdiction, may be appealed to the Court of Appeal within a time limit of two weeks. Decisions of the Court of Appeal may be appealed further to the Supreme Court. Procedural decisions from the High Court confirmed by the Court of Appeal may not be appealed further. However, in a few specific cases it is possible to invoke the Constitutional Court (see below).

## ***Supreme Court***

Judgments of the Court of Appeal, or those procedural appeal decisions which do not confirm the High Court's, may be appealed to the Supreme Court. The parties may only raise points of law on material or procedural issues, but no new evidence or pleadings are allowed. There are no hearings. The appeal procedure is in writing only.

## ***Constitutional Court***

With a few exceptions, any court decision that is not subject to further appeal may be disputed before the Constitutional Court. However, only the violation of rights enshrined in the Liechtenstein constitution, the European Convention on Human Rights or the European Economic Area Treaty may be raised. The application does not have the effect of staying the judgment, unless such stay is specifically granted by the Constitutional Court. The court usually does so if the appellant can show that he would suffer a severe detriment unless suspensive effect is granted.

## ***Injunctions***

An injunction may be sought if the claimant can show a claim and an immediate and sufficient probable danger such that, without an injunction, the claimant would suffer an irreparable loss or that later enforcement of his claim would be impossible or seriously impeded. This danger is accepted in the abstract by the court (i.e. without specific evidence) if, without the injunction, the claim would have to be enforced in a country which does not have an enforcement treaty with Liechtenstein (only Austria and Switzerland do so) or against a company without active business in Liechtenstein.

In practice all facts have to be supported by documentary evidence. Affidavits are accepted. In injunction proceedings the facts do not need to be proven in a strict sense. It is enough to show reasonable probability (*prima facie* evidence). However, any such finding of facts in no way binds the subsequent ordinary civil proceedings.

In matters of extreme urgency an injunction can be obtained orally on provisional evidence within a few hours, but normally a written request must be filed and the court will decide in writing within two to four days. In such a written application all documents must be attached and translated as far as necessary.

The proceedings are *ex parte*, although it is in the court's discretion to summon the defendant and ask for a reply. The defendant is sometimes heard if this can be done without jeopardizing the applicant's claim. If an injunction is granted, the claimant must then file a statement of claim in order to commence ordinary civil proceedings.

Both parties may appeal the High Court's decision as a procedural decision in ordinary proceedings (see *oben*). If the respondent was not heard by the High Court, he may additionally file an "objection" ("*Einspruch*") and file evidence in response. The court will set a date for an oral hearing, and both parties may present evidence available to them at that stage. Thereafter, the court will make a further decision concerning the injunction. This second decision may again be appealed as a procedural decision (see above).

### **Deposits**

When granting an injunction, the court may fix a security deposit to be paid by the party seeking the injunction for the defendant's potential demands for damages. This is especially relevant in cases where the court is not completely satisfied with the claimant's *prima facie* evidence presented in respect of his alleged claim.

The security deposit for an injunction is in principle separate from a deposit for costs and fees in the main proceedings. Thus, the court can demand the claimant make a subsequent deposit in the course of the main proceedings.

### **Liability**

The applicant for an injunction is liable for all damage incurred by the defendant following directly from a wrongful injunction. An injunction is wrongful if, for example, it is successfully appealed against, the case is not pursued by the claimant or the main proceedings are lost. Fault is not required. Even *bona fide* injunctions can trigger the liability. Damage sustained is determined by the court in special summary proceedings. The defendant is only required to bring *prima facie* evidence for his loss and the causation thereof.

### **Summary Proceedings**

Summary proceedings (*Rechtsöffnung*) are special proceedings for cases where the claimant is in the possession of a *public deed* or an original contract evidencing a claim or recognition of a claim e.g. a note of indebtedness. A foreign court's judgment is normally accepted as a public deed.

Summary proceedings start with an application for a *payment order (Zahlbefehl)*, which the High Court will then issue. The defendant may object in writing, and has two weeks to file an objection. Neither the payment order nor the objection needs to provide reasons. If no objection is filed, the order becomes enforceable and final and has the same legal effect as a final court judgment.

If an objection is filed, the claimant may request that the High Court lift the defendant's objection (*Rechtsöffnung*). The claimant has to support his claim with a detailed pleading in the same manner as a statement of claim. Following this the High Court summons the parties to a hearing. At this hearing the claimant may only present documents; however, the defendant can present any evidence as long as both parties are able to present their evidence at the hearing. For this reason no witnesses will be heard, insofar as they are not brought by the defendant directly to the hearing.

The High Court will then rule on the claimant's application to lift the objection. If the application is dismissed, the claimant may sue in ordinary proceedings (dismissal without prejudice, no *res judicata*).

If the application is granted, the defendant may sue the claimant in ordinary civil proceedings for a declaration that the claim does not exist. Thus, the parties change sides and the claimant becomes the new defendant. Such proceedings have the effect of suspending the earlier payment order. The advantage for the former claimant, now defendant, is that as defendant he is not required to lodge a security deposit for costs and fees, but his opponent (now claimant) may be. However, the burden of proof remains the same as before, i.e. the (former) claimant has to prove the existence of the claim.

Summary proceedings are advantageous if a high security deposit for costs and fees shall be avoided, placed on the opponent or the claimant expects the defendant to be unwilling or unable to maintain a long-winded defence. The disadvantage is the additional time the summary proceedings require, since they may result in nothing more than further ordinary civil proceedings, which has the effect of subjecting the whole matter to renewed litigation.

## ***Enforcement of foreign judgments or arbitration awards***

### ***State court judgments***

Liechtenstein is a member of the Hague Convention on child support and will recognise and enforce decisions of other member states in child support matters. As regards other civil claims, enforcement agreements exist with Switzerland and Austria only. Judgments and arbitration awards from countries other than Austria and Switzerland are not enforced.

### ***Arbitration awards***

Liechtenstein is a member of the New York Convention on the Recognition and Enforcement of Arbitration Awards. Within this Convention Liechtenstein will enforce a foreign award. The Court will require the applicant to file a copy of the award bearing the original signatures of all arbitrators and a certified translation into German.

## ***Costs***

As a general rule, Liechtenstein courts award costs to the winner of proceedings or interim decisions based on a fixed tariff that categorizes the various procedural steps into standardized costs depending on the value in dispute. The costs are not individually taxed, as in proceedings which follow the English model.

The value of the claim in dispute (*Streitwert*) is the key factor for the Liechtenstein courts' cost awards. If the claimant is seeking payment of a certain sum, that will be the value of the claim. For non-pecuniary claims the claimant may put a value to his claim. If opposed by the defendant, the court may set a different value. However, if the claimant's set value is reasonable, the courts are reluctant to challenge the valuation.

A high value will trigger high cost awards, which will benefit the winner of the case. In addition, it will result in a high deposit for costs and fees. A low value may result in a lower costs award, one that may potentially fail to cover the party's legal fees. In such a case it is perfectly possible that the winning party might still have to make an extra payment to its own lawyer. On the other hand, in the event of losing the case a low value means lower court fees and a reduced payment obligation towards the opponent.

### **Court Charges**

Court costs are set by the court according to the Court and Register Charges Act (*Gebührengesetz*). The charges depend on the value of the claim in dispute. In ordinary civil proceedings the filing of a claim (*Eingabengebühr*) is charged and each hour in court (*Protokollgebühr*) costs up to the maximum rate of CHF 280.00 per hour. A final decision in the High Court costs between CHF 28.00 and a maximum of CHF 14,000.00, which is reached when the value of the dispute is CHF 10,000,000.00 or more. Procedural appeals are charged in the same way as High Court decisions, but appeals on judgments are charged at double the rate.

Court charges are shared between the parties but may be recovered by the winner from the losing party.

### **Lawyer's Fees**

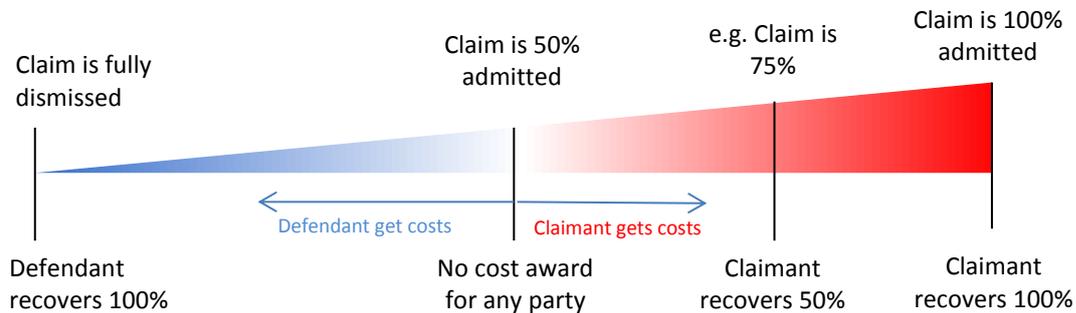
A party and its lawyer may enter into a fee agreement, which will govern any obligations between them. In the absence of a fee agreement, the lawyer's fees are calculated according to tariffs set by government regulation. The amount payable by the losing party is also determined in accordance with this regulation. As mentioned above, the lawyer's work is categorised according to the average difficulty and the amount payable under each category, as well as being dependant on the value in dispute.

Example:

	<i>Value of the claim</i>		
<i>Work of the lawyer</i>	10,000	300,000	1,600,000
Statement of claim	714	3,998	7,764
3 hours court hearing	1,428	7,996	15,528
First appeal	891	4,989	9,686
			Figures in CHF

The winner of court proceedings may normally recover his costs and fees, calculated according to this model. The reason for winning the case is rarely relevant, but the court may disregard unnecessary submissions. In the case of a partial victory the recoverable costs will be reduced accordingly.

The claimant is considered to have totally won if his claim is fully granted, the defendant if it is fully dismissed. In case of 50% success by both parties, no costs may be recovered by either side.



### ***Security Deposit for Costs and Fees***

The defendant (or respondent to an appeal) may demand that the claimant (or appellant) lodge a security deposit for costs and fees. The claimant must do so if he resides in a jurisdiction where the cost award cannot be enforced. If the claimant is a legal entity, a deposit can be demanded if it cannot show sufficient assets in such a jurisdiction.

The deposit serves as security for the cost claim of the defendant against the claimant, if the former wins. The application must be made during the first hearing, before the case is heard on the merits. If during the proceedings the amount proves insufficient, the court can order an additional deposit. In appeal proceedings, the application must be filed before or jointly with the reply to the appeal. The deposit must be made in cash or securities. With the consent of the court, a claimant may submit a bank guarantee or real estate titles.

If the deposit is not lodged in time, the court will declare the claim or appeal as withdrawn without prejudice.

The amount of the deposit will be determined according to the estimated costs and fees. As a rule of the thumb, one should expect approx. 10% of the value in dispute as deposit.

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Disclaimer: This summary is aimed at giving an initial and basic understanding. It does not constitute specific legal advice and cannot replace such. It does not deal with specific detailed situations nor exceptions to general principles. The legal position may change. No liability is accepted in respect of the contents nor consequences arising from reliance on this summary.