THE LEGAL SYSTEM OF LIECHTENSTEIN

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CHAPTER FOUR (B)

THE LEGAL SYSTEM OF LIECHTENSTEIN

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CHAPTER FOUR (B)

THE LEGAL SYSTEM OF LIECHTENSTEIN

§ 1.1. Background—History.

§ 1.1(A). Political History.

§ 1.1(A) (1). Early History.

Liechtenstein is located in the heart of Europe, at the point of intersection of Alpine north-south and east-west traffic and shows the traits and influences of colonizers from all four directions of the compass. Liechtenstein has been occupied since the New Stone Age. Celts, Rhaetians and Romans in succession later occupied it. In the 16th Century B.C., Liechtenstein became a part of the Roman Province of Rhaetia. The Romans built military and commercial roads over the Alpine passes, which also passed through Liechtenstein. Roman castles were built. Upon the collapse of the Roman Empire in about the middle of the 5th century, Liechtenstein was gradually settled by the Alemanni. The Roman language, however, remained for a long time, together with the German of the Alemanni.[1]

§ 1.1(A) (2). Its Own Sovereign Territory.

The centralization under Charlemagne elevated the old Province of Rhaetia to a county. In time, the county became hereditary and thus sovereign territories resulted from hereditary partitionings in the south-west of the German Empire, and these territories became more and more splintered. The County of Vaduz resulted from one of these divisions. In this way, the basic prerequisite was established for development towards independent statehood. In 1396, the County of Vaduz was granted immediacy status by King Wenzel. From then on, the County of Vaduz was directly under the Emperor. This is one of the roots of its present sovereignty. In 1342, the County of Vaduz (now known as "Oberland," or the Highland) and the Seigniory of Schellenberg (today known as "Unterland," or the Lowland) were combined. In this way, the boundaries of present-day Liechtenstein were established.[2]

§ 1.1(A) (3). Purchase by the Princes of Liechtenstein and Elevation to a Principality.

In 1608, Charles of Liechtenstein was elevated to the status of a Prince. Since that time, the new princely house endeavored to acquire inclusion among the status of Princes of the Empire with a seat and voice in the Diet of Princes of the Empire. One prerequisite for this, however, was possession of territory which was held immediately under the Empire. In 1699, Prince Johann Adam Andreas of Liechtenstein succeeded in acquiring the Seigniory of Schellenberg for 115,000 guilders, and, in 1712, the County of Vaduz was purchased for the price of 290,000 guilders. In 1719, the two territories were elevated to a Principality of the Empire, Liechtenstein. The name Liechtenstein comes from its

reigning family. This purchase and the elevation to a Principality are the cornerstones of Liechtenstein's sovereignty today.[3]

§ 1.1(A) (4). Sovereignty within the Confederation of the Rhine.

When Napoleon, in 1806, formed the Confederation of the Rhine, a confederation of 16 individual states of the German Empire, he assured these states national independence. Liechtenstein was included in this alliance and in this way obtained its sovereignty, which it has retained ever since. When the fortunes of the War of 1812/13 turned against Napoleon, Liechtenstein joined the "Little Alliance," which was directed against France. Its sovereignty was expressly confirmed in that Treaty and the 39 German states which combined to form the German Confederation in 1815 at the Congress of Vienna also remained sovereign. Until the Confederation was dissolved in 1866, the Principality of Liechtenstein remained a member. It is today the only state of the former Confederation of the Rhine and of the German Confederation to have retained its independence.

The admission of Liechtenstein to the German Confederation resulted in a constitution which was based on the recommendations of the Confederation's statutes. Prince Johannes I was, furthermore, one of the first sovereigns to comply with this recommendation through the National Constitution of 1818. The Estates consisted of the clergy and the peerage, which was formed of the local magistrates and the tax collectors of the individual communes.[4]

§ 1.1(A) (5). The First Parliament.

In the Year of Revolution, 1848, the Estates and Municipalities petitioned the Prince for a new constitution which provided for free election of representatives of the people. A constitutional committee was established, but for the time being no new constitution resulted. Ten years passed until the efforts to achieve a modern constitution were again resumed. In 1862, Prince Johannes II signed the Constitution. The Diet, elected by Electors, had a decisive share under this constitution in establishing the law; it was in charge of the budget and, in particular, had a right of initiative with respect to legal and administrative matters.[4a]

The period before World War I was characterized by a modest economic advance. Although Liechtenstein remained neutral during World War I, it was severely affected economically. After the collapse of the Austro-Hungarian monarchy, to which Liechtenstein had been closely bound economically, the small country had to look for a new economic partner. In 1919, its Parliament denounced the Customs Union with Austria. Negotiations were started with Switzerland, which, based on its tradition of willingness to assist, offered a helping hand to its small, neutral neighbor which had fallen onto hard times through no fault of its own. On March 29, 1923, the Customs Treaty between the Swiss Confederation and the Principality of Liechtenstein was signed, entering into effect on January 1, 1924. The main effort however was directed at a new constitution, which entered into effect on October 5, 1921. Initiative and referendum were the most important changes, but the desire of the people for a political voice was also taken into account. Thus, the constitution provided that the head of the Government

must be a native Liechtensteiner. From now on, all courts were located within the country, while previously judicial proceedings had passed through Austria. In 1921, the Postal Union with Switzerland was established and, on the basis of an exchange of notes of October 27, 1919, Switzerland also assumed the diplomatic representation of Liechtenstein abroad. In practice, the Swiss franc became the medium of payment. It was made the official currency by the Law of 1924.[5]

§ 1.1(A) (6). The World Economic Crisis and the War.

During the world-wide economic crisis, the specter of unemployment raised its head. Politically, Liechtenstein had fallen into a critical situation. By the entrance of German troops into Austria, Liechtenstein, at the end of March 1938, had become a neighbor of the "Great German Empire." A few days later, the two political parties of Liechtenstein formed a coalition in order to be able to protect the independence of the country, and the people pledged its loyalty to young Prince Franz Joseph II, who took up permanent residence within the country. And Liechtenstein also remained neutral during World War II.[6] Collaboration between the two parties, the Progressive Citizens Party and the Union of the Fatherland, still characterizes the political life of the country.

§ 1.1(A) (7). Economic Progress.

The years since World War II have been characterized by general economic advancement to an extent which can be considered unique. Within two generations, Liechtenstein has developed from a country of small farmers, small merchants and craftsmen into a highly-industrialized structure. As a result, there has been a reorganization and redetermination of the structures in Liechtenstein, the social consequences of which cannot yet fully be foreseen.[7]

§ 1.1(B). Constitutional History.

The purchase of the seigniories of Schellenberg and Vaduz by the princely house of Liechtenstein and, in particular, its elevation to a Principality were the prerequisites by which Liechtenstein acquired its sovereignty and permitted its inhabitants to take their political fate into their own hands. The establishing of national sovereignty was effected through a pledge of allegiance. The subjects pledged allegiance to their new master, and the latter, through his representative, promised the people that he would protect the old freedoms. The "ammans" were the spokesmen of the people. At first there was no direct contact between the Prince himself and the people. Officials were sent as governors into the country and reported to their masters in Vienna on all important events, frequently informing them in a very one-sided manner.

Prince Johannes I (1805-1836) was the first ruler to concern himself in detail with the administration of the country. An inspection tour throughout the country gave him a gloomy picture of its economic situation. A country of small farmers without industry or commerce, burdened by huge debts, impeded by outmoded economic methods and by the division of the land by inheritance, with an inadequately organized system of schools—that is how Liechtenstein looked in those days to the foreign observer. Efforts at reform, ordered, to be sure, by the authorities in the spirit of the Age of Enlightenment, were commenced. Compulsory schooling was introduced. As the basis for an orderly

credit system, the Real Estate Register was introduced in 1809, while in 1812 the Austrian Civil and Penal Codes were adopted. The old unwritten laws were replaced by modern codes. However, a prohibition against further fragmentation of landed estates was unsuccessful. Bondage was done away with in 1808, quite a bit later, to be sure, than had been done by Emperor Joseph II in Austria.

The officials, who received their instructions from the Chancellery of the Court of Vienna, were at this time the only persons with power within the country. There was no constitution. There was no attempt to instill new spirit into the old rights of the people, and all efforts at improving economic conditions tended to be looked at with distrust by the people. The entrance of Liechtenstein into the German Confederation resulted in the introduction of a constitution which was based on recommendations of the Confederation Statutes. Since Liechtenstein had no nobility and no urban citizenry, the so-called Estates consisted only of the heads and treasurers of the communes and representatives of the clergy. They merely had the right to establish the tax assessment and submit general proposals concerning the well-being of the country. Nevertheless, there were many suggestions made by the Diet, as the assembly of the estates was called, including, in particular, a request for a modern constitution.

The revolutionary year of 1848 did not leave Liechtenstein unaffected. The estates and the communes, in an urgently-worded petition, asked the Prince for a new constitution, for the free election of representatives of the people, elimination of the feudal burdens, the right to participate in establishing the laws, the elimination of the tithes, and a new communal law. A constitutional committee was formed and the compulsory villeinage and quitrents were done away with, without corresponding payment, but there was still no new constitution. Liechtenstein was represented in the Frankfurt Parliament, but no practical results were obtained from any of the measures for freedom.

In 1848, young Prince Johannes II succeeded his father, and, in 1862, he signed the new constitution. The Diet, which was elected by Electors, played a decisive role in the establishing of the law, enjoyed the budget right and, in particular, the right to participate in legal and administrative matters. Prince Johannes II, when he took over the reign, immediately journeyed throughout the country and then appointed a very progressive-minded Chief Official. It is surprising what was done in a single decade, not least of all due to the enthusiasm of the representatives of the people, who were now finally able to participate therein.

The 1862 Constitution was replaced after the First World War by the Constitution of October 5, 1921. Initiative and referendum were the most important new changes, but the wish of the people for a political voice was also taken into account. This constitution is still in effect today.[8]

§ 1.1(C). Economic History.

§ 1.1(C)(1). Up to the Dissolution of the Customs Union with Austria on August 2, 1919.

The economic development of the last century, as well as the upsurge in commerce, industry and trade, the importance of the customs policy, the new means of transportation, as well as the need for rapid and comprehensive legislation confronted modern states with a large number of new tasks which Liechtenstein was not up to. As a result, Liechtenstein sought rapprochement with an economically stronger partner, and this came into existence on June 5, 1852, through the "Agreement between His Majesty, the

Emperor of Austria and His Highness, the Sovereign Prince of Liechtenstein concerning the Accession of His Highness to the Austrian Customs and Tax Territory."[9] In this way, Liechtenstein was able to move out of its isolation and slowly develop economically. Small industrial and business enterprises offered new possibilities of earning, and work came into the country. It is estimated that, shortly before the First World War, 1,000 persons were employed in the expanding textile industry (including home workers), a number which was exceeded in its entirety only in 1947.[10]

With respect to its currency, Liechtenstein adhered on December 3, 1858 to the "Vienna Currency Treaty" and, in 1862, placed its own "Union Thaler" into circulation.[11] However, the fractional coins minted in Austrian currency also constituted full legal tender within our country. On June 13, 1867, Liechtenstein, together with Austria, left the German currency union. The golden currency remained in existence until 1898. In that year, Austria also abandoned silver as the standard for its currency and went over to the pure gold standard. From then on, the crown served as new unit of the gold currency. The Austrian crown currency was declared legal tender also in Liechtenstein. The minting of gold coins was unlimited, based on firmly-established principles. In order to enlarge the State treasury, Liechtenstein had a 20-crown gold coin minted by the Imperial and Royal Mint in Vienna in 1898 and the 10-crown gold coin in 1900. Aside from these national gold coins, silver coins of the crown currency were also minted, namely 5-crown, 2-crown and 1-crown pieces. The profit from the minting of coins during this period amounted to about one-half million crowns. This money found good use as exceptional revenue mostly for supplementing the defense structures on the Rhine. With the First World War, the Austrian currency collapsed. As a result of its common currency with Austria, Liechtenstein also suffered from the strong devaluation of the crown which set in. Its most important sources of revenue dried up. Tourists left the country and the alpine spas were closed; the young Liechtenstein industry experienced a decline in production, customs income dropped to zero, and the opportunities for making a living came to a halt. The Government of the Principality was forced to declare a moratorium in the fall of 1914. It was therefore no surprise that Liechtenstein wanted to detach itself from the Currency and Customs Union.[12]

§ 1.1(C) (2). The Treatyless Condition and Its Consequences for Liechtenstein.

§ 1.1(C) (2) (a). The Attempt at a Customs Policy of Its Own.

The Customs Union with Austria was terminated on August 2, 1919. Austria's first reaction was to consider the Principality of Liechtenstein in the future as a foreign state. The customs authorities considered the country a foreign country for customs purposes as from September 1, 1919, and required import licenses and the payment of duty on the importation of Liechtenstein products. Similar measures also applied to the handling of payments. Thus, all of a sudden, the country stood between two customs borders and became an independent customs territory, which then had an unfavorable effect on Liechtenstein's economic life. The backbone of Liechtenstein's budget was the annual customs payment made by Austria, which accounted for up to 75% of the Liechtenstein budget. On April 24, 1920, a new Trade Treaty was signed with Austria. On December 1, 1921, a customs law of its own, with a separate tariff, was enacted, but the organizing of its own customs system required a large amount of work. Liechtenstein's attempt to

achieve economic and commercial independence in addition to political autonomy, finally failed for economic reasons, which made economic attachment to a neighboring territory appear to be the best and most appropriate solution.[13]

§ 1.1(C) (2) (b). Attempt at a Financial and Currency Policy of Its Own.

Based on an official estimate, the complete economic collapse during and after the First World War cost the country the enormous sum of 25,000,000 Swiss francs. With the cancellation of the Customs Union with Austria, the importation of Austrian bank notes by Liechtenstein was also limited. As a result, there was a lack of small coins which made itself felt throughout the entire country. The trend of the actual policy of reorganization was directed at a financial and currency reform of its own. These attempts, however, all failed because of the smallness of the country.[14]

Subsequently, the general trend was directed more and more at the direct adoption of the Swiss franc as currency, since it, in any event, had already unofficially established itself in Liechtenstein. In view of the fact that no one in the country wanted to accept crowns any longer and all branches of business started to deal only in Swiss francs, the Government saw itself compelled to issue the following two laws governing its currency policy:

(1) the Law of August 27, 1920, concerning the "Conversion of Crown Amounts into Swiss Francs in the Laws and Regulations on Taxes and Tax Stamps, Duties and Other Fees, as well as in the Penal Regulations";[15] and
(2) the 1922 Finance law, for the first time, set forth the salaries, pensions and allowances in Swiss francs so as to make the Swiss franc available to further social levels within the Principality of Liechtenstein and officially give another occupational category the possibility of gainful employment with payment in Swiss francs. Thus, the government introduced the Swiss franc into Liechtenstein, even though the Austrian crown still formed the legal medium of payment.[16]

This action on the part of the Government also induced manufacturing plants to pay their employees more and more in Swiss francs. The farmers also would sell their agricultural produce only for good Swiss francs, so that the Swiss franc currency entered more and more into circulation in Liechtenstein. By the Law of May 26, 1924, the Swiss franc was officially introduced into Liechtenstein.

§ 1.1(C) (2) (c). Role of the Prince.

At that time, the Prince played an important role by his generosity to his country and thus had a decisive part in molding the future of Liechtenstein. In order to rehabilitate economic and financial conditions, the Prince made available to the country a total amount of about 1.5 million Swiss francs. The Prince's great interest in the economic well-being of his country was again evident upon the 65th Anniversary of his Government on November 12, 1923, when he made a gift of 550,000 Swiss francs to the country.[17]

§ 1.1(C) (3). The Customs Treaty with Switzerland and Its Importance for Liechtenstein.

In 1919, the Swiss Federal Council decided to accept Liechtenstein's request to assume its diplomatic representation abroad.[18] A further step towards closer relations with

Switzerland was taken on February 1, 1920, when the new treaty between Liechtenstein and Switzerland covering postal, telegraph and telephone service entered into effect.[19] On February 16, 1920, the Liechtenstein Government asked the Swiss Federal Council to open negotiations concerning a Customs Union. The final form of the economic unification of the Principality of Liechtenstein was established by the signing of the State Treaty of March 29, 1923.[20] The Treaty consists of eight chapters and 45 articles. A final protocol and two annexes are furthermore appended to it. In accordance therewith, the provisions in force on the effective date of the Treaty and those placed into effect during its existence are applicable in the same way.

The Swiss law which is directly applicable on basis of the Customs Union Treaty has increased greatly during the course of the last 50 years. While at the start there were 127 enactments of Swiss law which also applied in Liechtenstein, today there are far more than 500.[21]

§ 1.1(C) (4). Economic Prosperity.

§ 1.1(C) (4) (a). Background.

Political stability is the primary prerequisite for confidence in the economy of a country. This prerequisite is present in Liechtenstein; in 1719, Liechtenstein was elevated to a Principality of the Empire; in 1806, it received independence. In 1923, the Customs Treaty with Switzerland was signed, preceded by diplomatic representation by Switzerland; in 1924, the Swiss franc currency was introduced; in 1939-1945, Liechtenstein, as a neutral country, was spared the Second World War; in 1960, Liechtenstein became a member of EFTA and, since 1972, there has been a free-trade agreement with the European Common Market. There are no ideological battles in its internal politics.[22]

§ 1.1(C) (4) (b). Favorable Tax Laws.

Simultaneously with the signing of the Customs Treaty, Liechtenstein, starting from a condition of economic need, created favorable tax legislation for the opening up of new sources of financing.[23]

§ 1.1(C) (4) (c). Introduction of the New Law on Persons and Companies.[24]

In this way it was possible, in the interest of the formation of capital, to establish various legal forms for companies and property management in Liechtenstein. The result was that, over the course of the years, foreign capital flowed into Liechtenstein, benefitting the Liechtenstein banks and thus also the entire economy of Liechtenstein.

§ 1.1(C) (5). The Present Economy.

§ 1,1(C) (5) (a). Industry.

Industrial production has reached an exceptionally high level in Liechtenstein as compared with other nations. A highly developed export industry has become the basis of the economy. The industrial production is of astonishing diversity:

(1) textiles;
(2) metal processing--machines, apparatus;

(3) ceramics;
(4) chemistry;
(5) pharmaceuticals; and
(6) foodstuffs.

The industrial production of the country is directed entirely towards export. As an export-dependent branch of the economy, Liechtenstein industry is also closely involved in international developments.[25]

§ 1.1(C) (5) (b). Business.

The main branches of commerce in Liechtenstein are trade, arts and crafts and services. In contradistinction to industry, which is directed exclusively to export, commerce satisfies the needs in Liechtenstein.[26]

§ 1.1(C) (5) (c). Banking.

Liechtenstein has its own banking law, based essentially on the Swiss example. The law and its implementary regulations are however stricter in many decisive points than the Swiss provisions. The entire economy, and with it the State, are greatly interested in a sound organization of the banks and in the continuing frictionless operation of the banks. The liberal system governing holding and other companies exerts its influence on the entire economy, not least of all also on the banks. In the same way as Switzerland, Liechtenstein also assures banking secrecy and the law provides criminal sanctions for the disclosure and violation of business secrets. Of course, in certain criminal cases, banking secrecy can be lifted by the courts, particularly as Liechtenstein and the Liechtenstein banks have no interest in protecting criminals. Since 1970, Liechtenstein has furthermore been a member of the "European Treaty on Legal Assistance in Criminal Matters" of April 20, 1959.[27]

§ 1.1(D). Companies.

§ 1.1(D) (1). Introduction.

The provisions in force in this field in Liechtenstein have their starting point in the Law on Persons and Companies (PGR) enacted on January 20, 1926. Since that time, the law has been constantly updated, in particular for instance by the Law on Trusts, which was introduced as Article 932a of the Law on Persons and Companies. After various amendments which concerned essentially changes in the minimum amounts of capital required, it was established by law in 1963 that at least one managing member who has the right to represent the management of a company must have his domicile within the Principality of Liechtenstein. The high point and, for the time being, the final point of the continuous amendment of the Company Law are the two laws and an ordinance from the year 1980 by which decisive changes were introduced. The purpose of this reform was to exclude, insofar as possible, in particular, misuses in the field of company law; the liberal practice on which the Liechtenstein law is established was retained.[28]

§ 1.1(D) (2). Liechtenstein as a Financial Market.

This description of our country brings up the question whether there is such a thing as a

Liechtenstein Financial Market which can be compared with the financial markets of Zurich, London, New York, Frankfurt and Luxemburg. One can undoubtedly say that it is not possible to speak of Liechtenstein as a financial market in the narrow sense since there is no security, currency or commodity exchange and the volume of the three Liechtenstein banks is not very substantial. It is to be borne in mind that the balance-sheet total of all Liechtenstein banks together is less than 1% of the aggregate balance-sheet total of all the Swiss banks. Nor does Liechtenstein have a bank of issue and none of the large foreign banks are represented in Liechtenstein. When one speaks of the Liechtenstein Financial Market, one must primarily think of its close relationship to the Swiss banks. After many years of preliminary negotiations and talks, the Monetary Treaty between the Swiss Confederation and the Principality of Liechtenstein was signed on June 19, 1980.[29] This is an important treaty, which was approved unanimously by both Parliaments. The treaty briefly provides as follows:

(1) all Swiss legal and administrative regulations which concern monetary, credit and currency policy in the sense of the National Bank Law and the protection of Swiss coins and bank notes apply within the Principality of Liechtenstein;
(2) if unreasonable hardship results for the Principality of Liechtenstein from the application thereof, due to the difference in their circumstances, this will be taken into account by special discussions;
(3) Liechtenstein currency sovereignty remains unaffected;
(4) the Swiss National Bank, subject to certain formal and procedural provisions, enjoys the same powers in Liechtenstein as in Switzerland, and is under the obligation to maintain secrecy;
(5) equal standing of the banks as well as the persons and companies of both countries;
(6) all measures of the Swiss monetary authorities for the protection of the Swiss franc apply by automatic reception within Liechtenstein; and
(7) the Treaty furthermore governs questions of the enforcement of administrative decisions, the prosecution of criminal acts, as well as reports to the National Bank and relations between the authorities.

The Liechtenstein banks, business, industry and trade, as well as the service sector, thus enjoy these advantages, so that the Swiss franc, as the sole legal medium for payment, is best able to assure circulation in the Liechtenstein economy.

Together with the banks, which are included within the large Swiss Banking System, and the Swiss currency, the Liechtenstein organization of companies certainly forms the heart of a so-called Liechtenstein Financial Market, if one wishes to call it so. Under the title "Companies and Trusts," there is to be understood the entire field of domiciliary and holding companies. The corresponding basic law is the Law on Persons and Companies which came into existence in the years after the First World War, between 1926 and 1928. Today, more than 50 years later, it can be noted that the creators of this idea of a special Liechtenstein type of company, as well, however, as the former national authorities, had the statesmanlike farsightedness to provide Liechtensteiners with an instrument which would assure them in part prosperity in the future. By favorable and adaptable provisions of law, foreign capital was to be attracted into, what was then, impoverished Liechtenstein in order to overcome the economic depression.

When one thus speaks of the Financial Market of Liechtenstein, there are probably primarily meant these domiciliation and holding companies to which undoubtedly

considerable amounts of capital and assets have been and are being contributed. In 1980, there was a major reform of the company law, the laws from 1926 and 1928 being adapted to the change in the times. A large number of changes concern the legal reorganization of forms of companies, the possibilities of supervision were extended, the amendment of the law resulted in more stringent provisions with respect to the obligation of submitting balance sheets and of filing declarations and the Liechtenstein directors must have certain professional qualifications. However, it should not go unmentioned that Liechtenstein was the sole continental European country to have already introduced the "Trust" based on the Anglo-American example, back in 1926 and 1928. This institute of law is very well known in the so-called common-law countries and is being ever more frequently used also in Liechtenstein to regulate the estate matters of trust administrations, etc.[30]

The "Financial Market of Liechtenstein" thus has three components:

(1) the integration of the Liechtenstein banks in the Swiss Banking System;
(2) the Swiss franc currency; and
(3) the Liechtenstein domiciliation and holding companies.

Such a financial market is thus characterized by extensive involvement with Switzerland. The entire banking and company system is undoubtedly of great economic importance for Liechtenstein. This can be noted already from the tax-revenue statistics; direct revenue from holding and finance companies today constitutes more than 20% of the national product. Indirectly, i.e., including the taxes on the earnings of employees, assessments, fees, etc., it constitutes almost 50%. However, this service industry also occupies a leading position with respect to employment. In Liechtenstein today, 3.9% of the employees are engaged in agriculture, 54.6% in industry and commerce, and 41.5% in service industries, namely banks, company organizations and insurance. The "Financial Market of Liechtenstein," in the sense mentioned, is of considerable importance for Liechtenstein, the entire field of banking, currency and company organizations having been regulated and consolidated by Treaties and laws.[31]

§ 1.2. Form of Government.

§ 1.2(A). In General.

§ 1.2(A) (1). In Summary.

"The Principality of Liechtenstein is a constitutional, hereditary monarchy on a democratic and parliamentary basis. The power of the state is held by the Prince and the people and is exercised by both of them in accordance with the provisions of the Constitution." This is what is stated in Article 2 of the 1921 Constitution, which is now in force. Its character as a state is distinguished by the combination of monarchy with sovereignty of the people. Dualism marks the form of the state; on the one hand, the Prince, whose position in the state is based on hereditary succession to the throne and is thus entirely independent of the will of the people, and, on the other hand, the people, who on their part have a right of codetermination in the state which is independent of the Prince. The two must cooperate in accordance with the constitution, either a division of power or joint participation being specified.[32]

§ 1.2(A) (2). The Monarchistic Principle.

The head of the state, vested with supreme power of decision, is the Reigning Prince. His person is sacred and inviolate. Sacredness and inviolability are the expression used in the constitution for lack of responsibility in the sense of monarchical law. The Reigning Prince cannot be held liable either in criminal or in political matters, although the monarch is under the obligation to observe the constitution and the laws.

The position of the Reigning Prince within the state is based on hereditary succession to the throne, which confers a personal right to the highest position. The sequence for succession as head of the state is determined by the Ordinance on succession to the throne.

Corresponding to the position of the Reigning Prince as head of the state, his powers are of a transcendental nature. Thus, the Reigning Prince is vested with the representation of the state in international affairs. State treaties of a given kind (for instance, transfer of national territory) require, to be sure, the consent of the Diet. In the exercise of his official position, the Reigning Prince appoints the highest officials of the state and the officers of the state. In the field of the legislature, the Prince has a right of veto. A law resolved by the Diet can only enter into effect if the Reigning Prince has given his approval. In this connection, mention should also be made of the right of the Prince to issue emergency decrees, which right he may employ when a state emergency exists. As holder of this emergency right, the Reigning Prince takes the place of the legislature when such right is claimed.

One particular prerogative of the Reigning Prince is also to convene, close, adjourn and dissolve the Diet. In the judicial field, the Prince has a right of pardon and amnesty.[33]

§ 1.2(A) (3). The Democratic Principle.

The participation of the people in the formation of the national will is assured, on the one hand by the election of representatives, namely the Delegates to the Diet, and, on the other hand, by direct participation in political decisions. The content of the political rights of the Liechtenstein people consists in the obligation to participate in national ballots, national votes and national referenda, as well as in the right to submit petitions and initiate referendums. The basis of all of these democratic rights is the right to vote. Under the constitution, it is general, equal, secret and direct.

The principle of election by the people applies within the country to the election of the Diet which, in accordance with the Constitution, is the legal body of all members of the country and its main powers lie in participation in the establishing of laws and the signing of state treaties, in the right to approve the budget and taxes, as well as in the maintaining of supervision over the administration of the state.

The Constitution of Liechtenstein has granted the broadest play to the right of initiative and referendum. One thousand citizens with a right to vote or three communes can, in the form of concordant resolutions of the commune assemblies, petition for the enactment, amendment or repeal of a law. For an initiative relating to the Constitution, there is required the signature of 1,500 citizens or the resolutions of four commune assemblies. Under the same conditions, a demand can be made for the convening of the Diet.

Every law enacted by the Diet, which is not declared by it to be urgent, as well as every financial decision which is not declared by it to be urgent, is subject, when it results in a

single new expense of Swiss Francs 50,000 or a new annual new expense of Swiss Francs 20,000, to a national vote if the Diet orders this or if 1,000 citizens with a right to vote or at least three communes submit a petition to this effect; for an amendment to the Constitution, the petition of at least 1,500 citizens with right to vote or of at least four communes is required. A national vote must also be held when the Diet rejects a bill of law which has been submitted by means of public initiative. The approval of the bill by the people in this case takes the place of the decision of the Diet necessary for the adoption of a law.

In the case of both legislative and constitutional initiatives, the petition can be submitted either in the form of a simple suggestion or of a complete draft.

Important components of the democratic order are, in addition to the political rights of the people, also the basic rights and rights to freedom. They constitute restrictions of mandatory law on all agencies of the state. The basic rights and rights of freedom stipulated in the Liechtenstein Constitution are contained, in accordance with the classical example, in a special section of the Constitution. They are:

(1) equality before the law;
(2) the right to establish oneself freely and acquire property;
(3) personal liberty;
(4) privacy of one's home;
(5) the protection of the secrecy of letters and documents;
(6) the right to proceedings before the regular courts;
(7) the inviolate nature of private property;
(8) freedom of commerce and business;
(9) freedom of religion and conscience;
(10) the right to freely express one's opinion and freedom of the press;
(11) the right to freely assemble and organize;
(12) the right to petition; and
(13) the right to appeal.

The principle of equal treatment finds a special embodiment in the principle of general and equal right to vote, as well as in the guaranteeing of political rights to each member of the country. The proportional voting right, which is stipulated in mandatory fashion in the Constitution for the election of the Diet, furthermore assures that the seats held are also distributed over the individual political parties in a manner corresponding to the principle of equality of the right to vote. Finally, the basic rights guaranteed by the Constitution, freedom of expression, freedom of the press, right to assemble and organize, provide full guarantee for the freedom of discussion of all public matters, which is peculiar to the democratic principle.

The basic rights and rights of freedom established in the Constitution find their protection in their enforceability against the State. Anyone who feels that his basic rights or rights of freedom have been violated by a decision of a court or of an administrative authority can file an appeal with the High Court of the country as Administrative Court. In this connection, it is immaterial whether the basis of the violation is the incorrect application of a law or of an order.

Not least of all, the democratic principle is also buttressed by the participation of the people in the judicial system. In all courts of the country, with the exception of the District Court acting in first instance through a sole judge, and regardless of whether

there are concerned civil or criminal courts or courts of public law, representatives of the people participate as judge. Except for the High Court, these lay judges are even in a majority in all courts over the number of legally trained judges.[34]

§ 1.2(A) (4). The Government.

The link between the two bodies vested with the power of the State, namely, the Reigning Prince and the Diet, is formed by the Government. The agreement between the Reigning Prince and the Diet which is required by the Constitution for the appointment of the government and the responsibility of the government to the Reigning Prince on the one hand and the Diet on the other hand, emphasizes this middle position. During its term of office, the government, and each individual member thereof, must enjoy the confidence of the Reigning Prince and of the Diet. If merely one of them—the Reigning Prince or the Diet—withdraws its confidence from a member of the government or from the entire government, removal from office must take place.

The Government is in charge of the entire administration of the country. An exception exists as to those matters which are transferred by law or by authorization granted by law to individual offices or committees which are subject to the Government. In these cases, the Government acts as an appeal instance. The communes also carry out administrative activities for the country in certain matters within their delegated sphere of action. One special feature is the establishing of corporations, establishments and foundations under public law, as is permissible in accordance with the Constitution, in order to take care of economic, social and cultural tasks of the national administration. Such institutions have been created, for instance, for the handling of old-age and survivors' insurance and disability insurance.

The government is organized as a collective body. It consists of the Head of the Government and four Government Councilors. The Head of the Government and the Government Councilors are appointed by the Reigning Prince in agreement with the Diet, upon the proposal of the latter. In the same way, an alternate is appointed for the Head of the Government and each of the Government Councilors, they representing the member of the Government in question at the meetings of the Government should he be prevented from being present. One of the Government Councilors is appointed, upon proposal of the Diet, as Vice-Head of the Government by the Reigning Prince. All more important matters are subject to consultation and adoption of resolutions by the Collective Government. Within the Government the matters are divided up in departments.

The Head of Government is the Chairman of the collective body; he signs the resolutions and orders which have been adopted, sees to their enforcement, and supervises the course of business. Like the other members of the Government, he has only one vote. His powers, however, are greater than those of the Government Councilors in view of the supervision assigned to him over the legality of the resolutions of the body, by his right to submit matters to the Reigning Prince, and by the requirement that he countersign the laws and other important acts of state established by the Reigning Prince.[35]

§ 1.2(A) (5). The Hierarchy of the Legal System.

The fundamental basis for the exercise of all State functions is the Constitution. On the basis of the Constitution, laws are enacted by which general regulations for all fields of

national life are established. The laws are further implemented by decrees of the Government. Laws and decrees form the basis for the individual acts of enforcement which, depending on the status of the deciding body, are either judicial acts or administrative acts. These individual acts, in their turn, can form the basis for decisions of enforcement which are then finally the legal authorization for the actual establishing of the legal status. Hand-in-hand with this pyramid-like structure of the legal system goes the organization of the separation of powers. In accord with the classical division of the powers of the state, the powers of the Liechtenstein State are divided into legislative, administrative and judicial. In practice, that is in the operation of these powers, there is an overlap, since agencies of the one power also exercise functions of the other power.

The pyramidal construction of the Liechtenstein legal system gives expression to the most important principle of the formal state of law, namely, the principle that all acts of agencies of the state must be based on the law and, indirectly, in the final analysis, on the Constitution. The fact that the court is bound by the law has been beyond doubt for a long time. The advent of an actual State founded on the rule of law, however, took place only by the subjecting of the administration to the law. This is anchored in the Liechtenstein Constitution.

Every act of the Liechtenstein administration, whether it be specifically a decree or a decision or order, must be covered by a law. In accordance with this principle of subjugation to the law, there is no administration outside the law within the Principality of Liechtenstein. The Liechtenstein administration is not only bound by the laws when it intervenes with respect to given goods, it is not only under the obligation to comply with the laws where they exist, but it is also under the obligation to conduct the entire administration of the country within the boundaries established by law.

The decrees enacted by the Government can, accordingly, only have the character of implementary decrees. They therefore may not contain any provisions contrary to the law, nor may they create new law in a field not previously covered by law. Rather, they may merely implement, in detail, the broadly worded provisions of the law and, in this sense, extend it. For the enacting of decrees which constitute law or change law, special authorization under constitutional law is necessary. Such delegations have been granted up to now only in periods of emergency.

Since, according to the Constitution, the entire administration of the country must keep within the bounds established by the laws, not only is the sovereign administration, and therefore that administration in connection with which the State acts as the holder of the power specific to it, bound by the law, but also the private sector administration. Private sector administration is that branch of administration in which the State appears as a private party, for instance, the building and management of governmental and residential buildings. The subjugation of private sector administration to the law is of particular importance for the existence of a legal state since the private sector administration, as a means of shaping the social order, expands continuously, parallel with the development of the State, from a state of order to a state of performance.[36]

§ 1.2(A) (6). Protection of the Law.

The words of the Constitution would be empty formulas if the state did not subject itself fully to them. One can only call a state a state of law when compliance with the legal system on the part of all acts of the state agencies can be brought about by effective means of legal protection. If the legal protection is to be complete, then devices for legal

protection must be present at all stages of the enforcement of the law and therefore also at the stage of the enactment of the law. What is the story, as far as this is concerned, in the Principality of Liechtenstein?

If we, for the time being, disregard the judiciary, for whose acts the means for legal protection such as appeal proceedings and the constitutionally specified separation of the courts and the administration afford comprehensive security, we can distinguish, within the field of legislature and administration, between three types of legal protection in Liechtenstein, namely political control, financial control and legal control.

The means of political control provided in the Liechtenstein Constitution make it possible for the Parliament to examine into the general conduct of the entire administration of the State as well as into specific, concrete acts and to enforce its view as to the manner in which the State administration is being carried out. The means for handling this political control are:

(1) the right of control, which is the right to supervise the entire administration of the State through a permanent Audit Committee;
(2) the right of investigation, which is the right to appoint special investigatory committees in order to investigate acts of the State administration in given respects;
(3) the right of interpellation, the right to inquire of the Government in the Diet with regard to all matters of administration entails, on the other hand, the obligation of the Government also to answer such questions; and
(4) withdrawal of confidence, which means of control is an emanation of the system of parliamentary government which prevails in modified form in Liechtenstein.

The financial control of the State administration by the Diet is of a two-fold nature. The Diet determines each year what expenditures may be made by the Government and what revenue is to be obtained in that year. This determination is effected by approval of the bill which is submitted by the Government. The second task assigned to financial control is control of what has been done and therefore approval of the final accounts.

The concept of legal control includes:

(1) the responsibility of the administrative bodies;
(2) administrative procedure;
(3) control of the administration by administrative courts; and
(4) control of the legislature and administration by the High Court.

The responsibility of the administrative agencies is four-fold. The members of the Government and other officials are liable criminally and subject to disciplinary measures for performance of their office in a manner which is in accord with the Constitution and the laws, and they are liable under the Liability in Office Law for any damage which is illegally caused. The members of the Government furthermore also have responsibility under public law; that is, the Diet can bring a ministerial action before the High Court against them for intentional or grossly negligent violation of the Constitution or the laws.

Of utmost importance for the legal protection of the citizen from the administration is the administrative process, namely, the proceedings before the administrative authorities. Similar to proceedings before the courts, the Liechtenstein Administrative Procedural Law provides ordinary and special remedies and writs.

As an ordinary remedy there exists, against all decisions and decrees of the

Government or other officials, the remedies of remonstrance, administrative appeal and supervisory appeal. Extraordinary remedies comprise resumption and reopening. By way of writs, we find opposition based on absence of a hearing, explanation, and petition for forbearance. Nor to be forgotten are declarations of nullity of decisions and decrees on its own motion by the supervisory authority.

The most important guarantee of the lawful nature of the administration is the control of the administration by the administrative courts. The objects and purpose of the administrative courts is a determination of the legality of the administrative acts by independent courts which are bound only by the law. This task is performed in Liechtenstein by the Administrative Appeal Instance, a multi-body court. The crown, so to speak, of the Liechtenstein legal protection system is the control of the legislature and administration by the High Court. In its exercise of this control, the High Court acts **inter alia** as a court for the examination of laws and decrees, as a court for conflicts in jurisdiction, and as an election verification court.[37]

§ 1.2(B). The Party Concept.

In 1918, the right of direct vote was introduced, granted by Prince Johannes II on his own initiative to the people. Since that time, Delegates are elected directly by the people. Only in this way did it become possible to establish political parties.

The first party was the People's Party; it acquired a majority of the votes in the 1918 elections. Since 1914, the newspaper "Oberrheinische Nachrichten" (predecessor of the "Liechtenstein Fatherland") had put forth the ideas which then became the goal of the party, namely, economic union with Switzerland and a new constitution assuring greater rights to the people.

The first members of the party were primarily workers who, as seasonal workers in the construction industry, had become acquainted with democratic institutions and the work of the unions in Switzerland. Until 1928, the People's Party was the majority party and appointed the Government. In 1938, it united with the Home Service (a movement which strived for a "State of Classes," and the exclusion of political parties) and since that time it has been known as the Fatherland Union.

The Progressive Citizens' Party was also established in 1918 as a consequence of the direct vote. It originally tended to be conservative and its supporters came predominantly from agriculture and middle-class circles, but the name of the party, which was in no means adopted by accident at the meeting for the formation of the party, and the party platform show that the necessity of reform was recognized and called for. A Government responsible not only to the Prince but also to the Diet, as the body of all members of the country, more numerous sessions of the Diet, appointment of the Head of the Government from amongst the citizens, and the demand for social legislation for the well-being of the workers, were a few of the points of its program.

From the very start, the "Liechtenstein Volksblatt," in existence since 1866, was the mouthpiece of the Progressive Citizens' Party which was formed in 1918. "Liechtenstein for the Liechtensteiners" was the political call of both parties.

The Progressive Citizens' Party was the majority party in 1928 to 1970 and from 1974 to 1978, while the Fatherland Union won most of the seats in the Diet in the years 1970 to 1974 and then again from 1978 up to the present time.

Since 1938, the two parties have combined in a coalition.

In 1962, the Christian Social Party was established. However, it has never won a seat in the Diet.[38]

§ 1.2(C). The State as an Economic and Cultural Factor.

§ 1.2(C) (1). Introduction.

The State assumes important tasks in both economic and cultural respects. In the economy, the State promotes exports and imports by various international agreements. In the cultural field, numerous offerings result from financial assistance from the State, in addition to those on the plane of the communes.

By the diplomatic representation assumed by Switzerland for Liechtenstein in 1919[39] and the Customs Union entered into with Switzerland in 1932,[40] serious barriers in international trade were lifted. By the participation in the European Free Trade Association (EFTA), resolved by the Liechtenstein Diet in 1960, barriers for Liechtenstein were eliminated for the main part in the traffic in goods. The agreement is in effect for as long as Liechtenstein forms a Customs Union with Switzerland and Switzerland is a member of the Association.[41] This is due to the fact that Liechtenstein is represented in the EFTA only by Switzerland.

In 1972, Liechtenstein signed an agreement with the European Common Market, again represented by Switzerland. This agreement means for Liechtenstein an expansion of its commerce in goods, the promotion of harmonic development in economic respects, an upswing in economic life, an improvement in living conditions and conditions of employment, increases in productivity, and financial stability.[42] In addition to this agreement, the State formed an economic promotion fund in 1979, the funds of which serve to finance laudable measures for the mitigation of economic hardships.[43]

In the same way as in the economy, action in the cultural sector has also increased greatly during the last few years. The State collection of paintings contributes to the enrichment of the cultural life. The State supports and promotes the national library, a theater, and various museums and art collections.

§ 1.2(C) (2). Education.

As a result of its undreamed of economic upswing, it became apparent to the Liechtenstein authorities that, in the long run, the fruits of this development can be secured for the people of Liechtenstein only by a suitable educational system in line with modern-day requirements.

§ 1.2(C) (2) (a). Schools.

The efforts made in this field by the Government are set forth in the new School Law of 1972.[44] Voluntary attendance at kindergarten (four to six years of age) is followed by compulsory attendance at primary school for five years. Three types of continuation schools (secondary schools) are available, tailored to the educational capabilities of the children. They are the Oberschule and the Realschule (four years each) and the Gymnasium, Bund E Type (eight years each). For students who cannot follow the normal course of the primary schools, there are schools for problem children. For the education of mentally retarded children, there is the Medical-Pedagogical Center. An evening technical school provides education in the fields of mechanics, electrical engineering and

construction. Furthermore, corresponding agreements have been signed with educational establishments in Switzerland and in Austria in order to secure admissions.[45]

§ 1.2(C) (2) (b). Universities.

Liechtenstein does not have any university of its own. Since the Liechtenstein Secondary School Diploma is recognized in Switzerland and in Austria, there are, however, sufficient possibilities for obtaining further education at higher schools of learning abroad. About a fourth of all Liechtenstein students complete their studies in Austria, while most of the rest complete them in Switzerland and a few in other countries.[46] Since 1972, Liechtenstein has had a modern scholarship system.[47] State aid to education is divided into scholarships and low-interest student loans. In the 1983 fiscal year, educational grants were given in an amount of more than 850,000 francs.[48]

§ 1.2(C) (3). Radio Network.

Liechtenstein has neither a radio station nor a television station of its own, but it does hold the sky rights thereto, i.e., broadcasting licenses can be granted only by the Government.

§ 1.2(C) (4). The State Monopolies.

The State monopolies include as true monopolies the Salt Monopoly, the Alcohol Monopoly, the Hunting Monopoly and the Fishing Monopoly. The sale of salt in Liechtenstein is controlled by the Salt Monopoly. The sale of salt is reserved exclusively to the State.[49]

This is not true of the Alcohol Monopoly. In this case, the State itself does not assume the manufacture or sale but grants licenses for this.[50] The same is true of the hunting and fishing monopolies. The State exercises control, granting licenses in these cases also.[51]

If the concept of the monopoly is broadened, then fields can be noted in which the State does not exercise a true monopoly under the law but which are handled as though there were a monopoly. One can speak here of a partial monopoly. This includes, for instance, the production of electricity by the Liechtenstein Electric Power Plants, the services rendered by the postal system, as well as the entire field of banking. In these three cases, a license is required from the Government, in which connection it may be pointed out that such licenses will scarcely be granted any longer in the future and, if so, then only under very restrictive conditions.

The entire public sector, together with its administration, the judiciary, social insurance, etc., is also reserved to the State.

In the field of economics, there are very strict regulations, in part by law, concerning foreigners who wish to set themselves up independently in business. This is completely impossible for foreign doctors and lawyers. In these two fields, Liechtenstein citizenship is required in order to establish an independent practice.[52]

Furthermore, certain qualifications are required, in the form of examinations, for attorneys-at-law, accountants and the hotel industry, etc., in order to operate independently.[53]

§ 1.2(C) (5). State-Owned Corporations.

Three independent establishments under public law, the Liechtenstein National Bank,

the Liechtenstein Power Plant and the Social Insurance Establishments, and four independent foundations under public law, the Liechtenstein National Library, the Liechtenstein State Art Collection, the Liechtenstein National Museum and the Liechtenstein School of Music, are considered State-owned corporations.

Around the middle of the 19th century, the first efforts were made to establish a State bank. The affairs of the bank were handled with the assistance of the National Department of the Treasury. The tasks and organization of the Savings Bank remained substantially the same until 1923. The movement towards Switzerland, effected by the signing of the Customs Treaty, brought a new start in both economic and in organizational respects. The management of the Savings Bank was removed from the national administration and taken care of by its own bodies, with the participation and supervision of the Diet and the Government. The 1929 Savings Bank Law created a Board of Directors as the Bank's own executive body and granted the Government a general right of supervision over its entire business. The Liechtenstein National Bank is the successor of the Savings Bank, and is based on the Law of June 2, 1955.

The establishing of the Savings Bank was in accord with a true public need. This public purpose has also been retained up to the present time. The most important tasks of the National Bank are:

(1) to facilitate the making of payments within the country and abroad;
(2) to provide the inhabitants of the country with an opportunity to invest their savings and cash capital safely and at interest; and
(3) to facilitate satisfaction of the credit needs of agriculture, business, commerce and industry.

In addition to the business of a mortgage bank, the National Bank today also carries out the business of a commercial bank. In this way, due to the extension of its scope of business to that of a commercial bank, the character of its public purpose has changed, since the obtaining of a profit has become of decisive importance. From a legal standpoint, however, the public purpose must always predominate and the public establishment must fulfill its public task as part of the indirect administration.[54]

Towards the end of the 19th century, the first private electricity plants came into existence in Liechtenstein. After the First World War, the first national plant was established as a juridical person under private law. Later on, objections to the form of a company under private law won out and the legal form of an independent public establishment was thus selected.

The purpose and task of the Liechtenstein power plants are the production, purchase and sale of electricity in order to provide the Liechtenstein economy with electrical power. In addition to the supplying of electricity, electrical appliances are sold and installation work carried out. This expansion is purely of an economic nature and the Liechtenstein power plants are in competition in this field with the private economy.[55]

The social insurance establishments are the Old-Age and Survivors Insurance (AHV), the Family Equalization Fund (FAK) and the Disability Insurance (IV). In 1947, a bill of law covering the Liechtenstein Old-Age and Survivors Insurance (based very closely on the Swiss Federal Law on Old-Age and Survivors Insurance) was drawn up. The Old-Age and Survivors Insurance provides financial assistance to the elderly, widows and orphans through old-age pensions, widow's pensions and indemnifications as well as orphan's pensions. It is financed by a variable-contribution system, together with a capital

coverage system. The Family Equalization Fund was established by the Law of June 6, 1957, as an independent public establishment with executive agencies of its own, subject to overall supervision by the Government. The corresponding executive bodies of the Old-Age and Survivors Insurance were entrusted with the functions of Administrator, Board of Management and Board of Supervisors. The formation of the Family Equalization Fund is based exclusively on considerations of family policy, i.e., the income of an employee having a family should be adjusted to that of a worker without a family by social welfare payments. The Family Equalization Fund is financed purely by a contribution system.

The drawing up of a Disability Law was postponed until the Swiss bill of law was on hand. In 1959, an independent institution under public law was established, the organization of which corresponds to that of the Old-Age and Survivors Insurance. The same persons were appointed to the corresponding bodies of the Disability Insurance as in the Old-Age and Survivors Insurance. Disability Insurance provides two services:

(1) measures of rehabilitation with the goal of establishing, reestablishing or improving or maintaining earning ability when its loss is definitely directly threatened; and
(2) pensions in cases in which rehabilitation cannot be effected, or not effected to a sufficient extent.[56]

Regardless of the administrative organization of the individual establishments, four functions are generally noted:

(1) decision-making;
(2) management;
(3) supervision such as direct monitoring of the suitability and reasonableness of the management; and
(4) control, by way of a periodic audit.

The Prince and the people together form the supreme body for the making of decisions. They decide on the creation of an establishment and, in the law forming it, on the principles governing its organization. The most important decision-making body, however, is the Diet. It discusses the laws forming the establishments and approves important decrees. The Diet, in part, also elects the bodies of the establishments such as, for instance, the Board of Administration and the Supervisory Board. The Government assists the Diet in the formation of its decision by enacting decrees. It also enjoys the power to appoint the individual bodies of the establishments.

The Board of Administration is the highest executive body of the establishment. It fulfills several functions at the same time. It participates in the decision-making as the body which appoints the management; it supervises the management carried out; and, in many cases, intervenes directly in the management. The members of the Board of Administration are appointed by the Diet for a term of four years.

The executive bodies serve exclusively the function of management, including the actual responsible conducting of the business and the representation of the establishment in its external transactions. Depending on the specific establishment, there may be one body or two bodies which divide these tasks between them. The executive body of the National Bank is known as the Board, while, in the Liechtenstein Power Plants the two bodies are known as Board and Plant Management; in the Old-Age and Survivors

Insurance, the chief executive is known as the Director; while, in the case of the Disability Insurance and the Family Equalization Fund, he is known as Administrator. All of these positions are full-time.

The Board of Supervision supervises the legality of the management of the business as well as the suitability thereof. It is responsible for the control of the establishment in the sense of a periodic financial audit. It fulfills this function by employing accountants or granting a continuing order to a firm of accountants. The Supervisory Board consists, in each case, of three ordinary members, appointed by the Diet for four years, or three years in the case of Social Insurance. Furthermore, except in the case of the National Bank, two alternate members each are also appointed.[57]

The four foundations under public law—except for the National Museum—have been created in the last 30 years. The National Museum had already been started at the turn of the century, but it took a decade before its legal basis as a foundation was created. The foundations are supported by contributions from the State. Their purpose is to satisfy the educational and cultural needs of the people.[58]

As in the case of the establishments, here also the same four executive functions are present. Furthermore, Prince and people and Diet and Government have approximately the same powers as in the case of the establishments. Instead of the Administrative Board, there is a Foundation Board whose members are appointed by the Government. The executive bodies are known in the case of the foundations as Librarian, Curator and Music School Head. In addition, there are the special Commissions whose purpose it is to continuously develop and expand the collections. These Commissions are known as the Library Commission, the Purchasing Commission for the State Art Collection, and the Museum Commission.[59]

§ 1.3. Law-Making Process.

§ 1.3(A). Legislative Law Making.

§ 1.3(A) (1). The Legal Structure.

Although in Liechtenstein law one can speak of its legislation being borrowed or even taken over from Austrian and Swiss laws, this is not true of its Constitution. Liechtenstein has its own independent constitution. This is because Liechtenstein has the form of a monarchy, one of the last in Europe. Constitutional law is ascribed the purpose of functioning as the supreme basis and condition of generation for all other forms of law within the legal system.[60] This is true also in the case of Liechtenstein.

Without any special measure being necessary, the generally recognized rules of international law have become the direct source of national law. The most important sources of law in international law, both quantitatively and in practical importance, are the treaties under public law, also known as State Treaties. Only the Prince has authority, with the approval of the Diet, to enter into State Treaties.

Probably the largest source of law consists of the statutes. The following two sections (§ 1.3(A) (2) and (3)) will give the necessary information concerning the creation of the laws under the Liechtenstein legal system. One step lower than the laws are the decrees. They are so-called implementary decrees which may neither amend, expand, nor repeal the law.

As further source of law, Internal Instructions should also be mentioned (administrative decrees).

§ 1.3(A) (2). The Legislative Bodies.

In accordance with the Constitution, a right of initiative with respect to the establishing of laws is held by:

(1) the Reigning Prince;
(2) the Diet; and
(3) citizens with the right to vote.[61]

The Prince submits his proposal for a law in the form of a Government bill. Government bills come into existence on the basis of a decision of the government and can have the form of a general suggestion or of a fully drafted bill. The proposed laws and the proposals of the Prince of Government bills pass through the Government to the Diet.[62] Up to the present time, there has only been one initiative on the part of the Prince.[63] In the opinion of Raton, they occur very rarely, since the Prince would lose prestige in the event of a rejection.[64]

The Diet, in addition to the Reigning Prince, also has a right of initiative. Thus it not only has the right to approve or reject bills of law which are submitted to it by the Government, but it also constitutionally has the right to itself draw up such bills of law.

The right of initiative vested in the Diet can be exercised only by it as such, i.e., it requires a legally constituted session.[65] The suggestion for the action of the Diet can come from the outside, in the form of proposals by the Prince, government bills or petitions (the right of petition is enjoyed not only by those individuals who are affected in their rights or interests but also by municipalities and corporations). The suggestion can also come from the people's representation itself by motion and interpellation.[66] Interpellation is the right of a Diet Deputy to obtain an answer to a question asked the Government. The form of motion is however more frequent. A motion is a written proposal by a Deputy that a matter which has not already been under discussion be looked into.[67]

The Diet is the necessary body for legislation both on the statutory plane and on the constitutional plane.[68]

Citizens with the right to vote enjoy a right of initiative as to legislation in accordance with the following provisions. For a petition for the enactment, amendment or repeal of a law, there is required either the signature of at least 1,000 citizens with the right to vote or identical resolutions of the municipal assemblies of three municipalities. A request for an initiative concerning the constitution can be submitted only by at least 1,500 citizens with the right to vote or by at least four municipalities.[69]

§ 1.3(A) (3). Process of Enacting.

The bills of law submitted to the Diet are first subjected to general discussion with regard to the question of their admissibility. In this discussion, motions can be submitted calling for admission, non-admission, submission to a commission or to the Government, postponement or return to the Government. If the bill of law has passed the hurdles of general discussion by the Diet, it is subject to three readings. Until the start of the third reading, each bill of law can be submitted to a committee. In addition, every member of the Diet has the right to submit motions for amendment, supplementation and cancellation.[70]

After the third reading, the bill is up for the adoption of a decision. For adoption in the

Diet, there is required the absolute majority of the members present. For the creation, cancellation or amendment of a constitutional law, a special majority is required, i.e., the unanimous vote of the members present or a three-fourths majority at each of two successive sessions of the Diet.[71] After the bill of law has been approved by the Diet, it now also requires the approval of the Reigning Prince, the signature of the Head of Government or his alternative, and publication in the National Law Gazette. If the law has become final as a result of the abovementioned conditions, it enters into force—unless otherwise stipulated in the law itself—one week after its publication in the National Law Gazette.[72]

Every law declared non-urgent by the Diet is subject to popular vote if the Diet so decides or if, within 30 days after official publication of the decision of the Diet, at least 1,000 citizens with the right to vote or three municipalities so petition.[73]

§ 1.3(B). Delegated Law Making.

§ 1.3(B) (1). Executive Law Making.

The most important exception to the principle of the separation of powers in practically all countries resides in the fact that the government or the administration is granted the right, restricted to a greater or lesser extent, to establish law whereby its powers, which are already strong, are considerably further expanded.[74] This is probably due to the fact that it appears all but impossible to set forth the law in full detail in statutes and make them suitable for enforcement in practice. It is furthermore also impractical to establish detailed provisions at law which are determined by changing conditions and needs, by the cumbersome and time-consuming "path of legislation." It appears, rather, to be a practical necessity that, in addition to the difficult and lengthy path required for the adoption of a law, a simple and brief law implementation procedure be employed.

In the 1862 Constitution, the full executive power was vested; without limitation, in the Prince on basis of his right to enact decrees. The corresponding article was included in the new constitution but with the addition "the Reigning Prince through the Government."[75] From a formal standpoint, the Prince is the person vested with the right to enact decrees, but this is today only a matter of tradition. The true situation is established by another article, namely that only the Government issues all decrees.[76]

The division of decrees into administrative and legal decrees applies also in Liechtenstein. The difference is that administrative decrees (administrative instructions) apply only internally, that is, with respect to personnel of the State, while law decrees also confer rights and obligations on the citizens. Administrative decrees are, accordingly, also not rules of law on which the State and the citizens can rely in order to establish their rights before the courts. The general guidelines for behavior and instructions to officials do not require official publication but may be contained informally in a circular.[77]

Differing from Austria where, in part, law-replacing and law-amending decrees can be found, there exist in Liechtenstein, in the opinion of the High Court, only implementary decrees which may not amend, expand or repeal the law itself and which must observe the purpose, meaning and spirit of the law.[78] No so-called "independent" decrees, i.e., ones which are not intended for the implementing of a law and thus stand on the same level as a law exist in the Liechtenstein legal system, unless they are expressly contemplated in the Constitution, such as an emergency decree by the Reigning Prince.[79]

§ 1.3(B) (2). Autonomous Bodies.

§ 1.3(B) (2) (a). The Municipalities.

The principle of municipal autonomy applies in Liechtenstein also, i.e., the municipalities have the right, under their own responsibility, to govern all matters of the local community within the framework of the laws.[80] Their sphere of action includes everything which affects the interest of the municipality and can be handled by them themselves within its borders. In Liechtenstein, municipal autonomy is not expressly stipulated in the Constitution as it is in certain other countries, but rather, it results from Article 110 of the Constitution, read in conjunction with the Municipality Law. In order to assure uniformity of the law, the municipalities are subject to supervision by the state.[81] The sphere of action of the municipalities covers:

(1) the free election or appointment of the Municipal Mayor, the Municipal Council, the other municipal bodies as well as the employees of the municipality;
(2) the independent management of the property of the municipality;
(3) the handling of the Municipal Police for the maintaining of quiet, safety and order;
(4) the handling of benefices, insofar as the municipality has a right of presentment;
(5) the exerting of influence on the school system, the management of church property, and the property of the special local funds;
(6) the imposing of fines pursuant to the provisions of the law;
(7) the assessment of contributions to cover the needs of the municipality on property, households and individual persons; and
(8) the ordering of urgent measures in case of national emergency, the granting of citizenship in accordance with the provisions of the Municipality Law.[82]

In order to be able to handle these tasks by themselves within their own spheres of action, the obligations of the municipalities are defined as follows in the Municipality Law:

(1) the municipality must see to the unreduced preservation of the municipal property and, to the greatest extent possible, the income-earning capabilities of the property of the municipality;
(2) it must see to it that the assets of the foundations (Poor Fund, School Fund, etc.) are used in accordance with their intended purposes;
(3) it must make available the funds necessary to promote the school system;
(4) it must take care of the needy residents of the municipality, in accordance with the provisions of the law on Social Assistance;
(5) it must set up the necessary protective structures and drainage systems, see to water supply, establish roads, and maintain these objects;
(6) it must carry out measures in the general interest or for the well-being of specific parties upon its own motion or upon request, without prejudice to the right to charge for the same;
(7) it must bear the expenses for the maintaining of the church and the benefice buildings within the obligations contractually assumed by it or incumbent on it in accordance with the law; and
(8) it must promote cultural life within the municipality.[83]

The municipality is under the obligation to carry out the tasks of public administration and administration of justice which are assigned to it by the State.

It must comply with the instructions given by the competent state authorities and offices and shall be responsible in all cases to them.[84]

The State can comply with its obligation of supervision in various ways. In order to keep itself generally informed, it can carry out inspections of the administration and demand reports from the municipal authorities. Another form of control is the necessity for approval, i.e., certain resolutions of the municipalities must be approved by the State. Furthermore, the State can refuse subsidies to municipalities in order to restrain them from a given decision which does not appear to the State to be worthy of support. The support from the State resides both in the administrative branch and in the financial branch.[85]

The town meeting, which is formed of the citizens of the municipality residing within it, decides on the admission of new citizens. The same applies with regard to the adoption of resolutions concerning readmission as citizen of the municipality, the granting of honorary citizenship, and other matters expressly falling within the competence of the town meeting.

The highest body of the municipality is the municipal assembly. It consists of those having the right to vote, of the citizens of the municipality residing within it and of the citizens of Liechtenstein municipalities who are residing there as well as the honorary citizens of the municipality domiciled in the municipalities. Everyone is entitled to vote in municipal elections and matters concerning municipal affairs who enjoy such right also in national affairs. A municipal assembly is called when the following matters are concerned:

(1) the election of the Municipal Mayor and of the other members of the Municipal Council;
(2) the election of the Municipal Tax Commission;
(3) the election of the Auditors;
(4) the election of the Mediator;
(5) the building of large structures (schools, town hall, water works, roads, etc.);
(6) election or voting on national matters;
(7) petitions resulting from municipality initiatives or municipality referendum; and
(8) the forming of a Specific-Purpose Association between two or more municipalities.[86]

The municipality is represented by the Municipal Mayor and the Municipal Council. The term of office is four years for both. The responsibilities of the Municipal Council and of the Municipal Mayor are defined in the Municipality Law.

Both municipality initiatives and municipality referenda are provided for in the Liechtenstein Municipality Law; one-sixth of the eligible voters of a municipality can convene a municipal assembly for the adoption of a resolution on an initiative or for voting on a municipal bill.[87]

§ 1.3(B) (2) (b). Professional Representation.

There are more than 100 societies, associations and chambers in Liechtenstein. Membership in all associations is voluntary, except in the case of the Chamber of Trade

and Economics. Here compulsory membership applies. The only exception is if the branch of business or industry in question is already a member of the Chamber of Industry.[88] Since it is frequently difficult to determine whether the operation is a business or industry, problems frequently arise with regard to the decision on membership in the Chamber of Industry or Chamber of Business. However, it is necessary that each branch of industry or branch of trade be a member of one of the two chambers.

In the case of the other associations, it is immaterial if one does not join the association or if an association member departs from the association during the course of his membership.

None of the associations has a right to give instructions or ordinances aside from their by-laws. In part, the individual associations exert an influence on the laws of the country in that they are included in the corresponding hearing held by the Diet.

§ 1.3(C). Treaty Law Making.

International treaties can, by and large, be divided into three main groups:

(1) Bilateral Treaties;
(2) Multilateral Agreements; and
(3) International Organizations.

Bilateral treaties: Liechtenstein has numerous bilateral treaties with various countries. Probably the most numerous and important treaties have been with Austria and Switzerland. Thus, there have been treaties with Austria concerning social security, taxes, regulation of borders, legal assistance, enforcement of court decisions, etc. The treaties signed with Switzerland can be divided into three subgroups:

(1) international, nonpolitical relations based on equality;
(2) associations having a basis of partial inequality; and
(3) the treaty concerning diplomatic representation and the regulating of diplomatic relations.[89]

With respect to (1) above, these treaties do not differ in principle from any other international treaty based on equality between any states, aside perhaps from provisions which are at times based on unilateral interests. These treaties based on equality also include the abovementioned treaties with Austria. The most important treaties with Switzerland concern residence, correction of the Rhine, motor-vehicle registration, national boundaries, Old-Age and Survivors Insurance, the enforcement of court decisions, and many others.

With respect to (2) above, these treaties are concerned with international functional relations between states, based on partial inequality. This means that the exercise of certain sovereign rights has been transferred thereby to Switzerland in commercial and customs matters as well as in postal matters for the duration of the treaties, which are subject to cancellation. By the ratification of the Customs Treaty with Switzerland, the entire Swiss customs legislation as well as the other legislation of the Confederation, insofar as the Customs Union requires the application thereof, apply to Liechtenstein. Furthermore, on the basis of this Customs Treaty, all commercial and customs treaties entered into by Switzerland with other countries are applicable to Liechtenstein. Switzerland is at the same time authorized to represent our country in such negotiations

and to sign the treaties also on behalf of Liechtenstein. Due to the newly established status resulting from the Customs Treaty, there also resulted the necessity of regulating relationships concerning aliens and modifying the provisions thereof. Liechtenstein has, for all practical purposes, taken over the provisions as to aliens which are in effect in Switzerland, as a result of which the formalities between Switzerland and Liechtenstein are considerably simplified in these days of increased tourist travel.

As early as 1920, Liechtenstein signed a treaty with Switzerland concerning the handling of postal, telegraph and telephone service. On the basis of this treaty, the Swiss Post Office Department and the Swiss Telegraph and Telephone Administration take care of postal and telegraph and telephone service in Liechtenstein for the account of the Principality. Here, also, the corresponding Swiss laws and regulations concerning the mails, telegraph and telephone apply, as well as the pertinent treaties and agreements of Switzerland with third countries. Liechtenstein, however, issues its own postage stamps.[90]

With respect to (3) above, in 1919, Switzerland assumed the representation of the diplomatic and consular interests of Liechtenstein in other countries. Switzerland acts only on the basis of general and special instructions, but it is not under the obligation to accept individual instructions.[91] On the other hand, Liechtenstein need not necessarily request the assistance of Switzerland. Liechtenstein reserves the right to enter into relations directly with foreign countries by the sending of envoys or by the exchange of notes.[92]

At the present time, Liechtenstein has two diplomatic representations abroad, namely, an embassy in Switzerland and one in Austria. However, more than 25 countries are represented by consuls in Liechtenstein.[93]

As for Multilateral Agreements, Liechtenstein foreign policy has, in recent times, turned with particular attention to the field of multilateral international relationships and it has been possible, by selective participation, considerably to expand the foreign standing of Liechtenstein. Twenty-five years ago, Liechtenstein was a party only to some dozen multilateral agreements, primarily of a technical nature. Today, it is a party to more than 50 multilateral international agreements, concerning questions of international law, communications, sanitation, industrial property protection, culture, copyright, telecommunications, etc. The foreign-policy activities of Liechtenstein also include participation and co-operation in important international conferences on matters such as international contract law, international maritime law, humanitarian international law, diplomatic and consular representation, control of narcotics, cultural collaboration, telecommunications, educational matters, protection of intellectual property, environmental projection, traffic and many others. Liechtenstein is also a member of the Conference on Security and Collaboration in Europe (KSZE).[94]

As for International Organizations, Liechtenstein is a member of various international organizations. Thus, Liechtenstein is a member of the economic bodies of the UN, UNCTAD, UNIDO and the Common Market. Although Liechtenstein is not a member of the United Nations, it is nevertheless a member of important, special organizations thereof, such as the Universal Postal Union and the International Atomic Energy Organization. As already mentioned above, Liechtenstein participates in the European Free Trade Association (EFTA) and, through treaties of its own, directly participates in the Free Trade Agreements made between Switzerland and the European Communities.

Furthermore, since 1978, Liechtenstein has been a full member of the European

Council in Strassburg, after having participated as observer in various activities of that organization for several years. In the meantime, Liechtenstein has become a party to 29 European agreements, some of great importance, entered into under the umbrella of the European Council.

Its participation in international organizations and bodies permits Liechtenstein to protect its interests in specific fields of international life and to give proof of the willingness to co-operate and establish solidarity which is necessary for harmonious life together within the Community of Nations. Considerations of this kind will undoubtedly continue to play an essential role in the development of its foreign relations.

§ 1.3(D). The Body of Adopted Norms.

§ 1.3(D) (1). Transformation of Preceding Law.

A new law which results in the repeal or amendment of an old law cannot limit itself to merely setting forth the provisions which are to apply under it. It must also set up norms which precisely delimit its scope from that of the laws previously in effect; in other words a transitory law, or a provisional law must be created. It would be improper if from the day of the entering into effect of the new law recourse could no longer be had under any circumstances to the earlier law; this might result in inequities with respect to persons who had acquired rights or regulated their legal relations under the system previously in effect and in accordance with the provisions thereof.[95]

Therefore also, for instance, in the transitory provisions of the Liechtenstein Personal Property Law, it is stated that the legal effect of events which occurred prior to the effective date of the law are to continue to be judged in accordance with the provisions of the previous law which were in effect at the time of the occurrence of the events. Events which have taken place since the effective date will be judged in accordance with the new law. The law provides for an exception in cases of public order and morality. In such cases, even rights which were acquired before the effective date are placed under the provisions of the new law, unless the law provides otherwise.[96]

§ 1.3(D) (2). Transformation of International Law.

As in other countries, international customary law also applies in Liechtenstein. Various theories as to its origin are known. The most plausible probably is that states can produce international customary law by mere custom, supported by a consciousness of the law; in other words, international customary law can be considered to be an implied contract.[97]

To be sure, an international treaty is of more importance than international customary law. By an international treaty there is understood to be an express meeting of the minds, or a meeting of the minds which has come into existence by conclusive acts, between two or more (bilateral or multilateral) states or other subjects of international law, by which they agree to certain unilateral or corresponding, identical or different, single or repeated performances, omissions or tolerations.[98]

Among the individual sources of international law, the principle of equality prevails. If conflicts result between contractual obligations of a later rule applying to the same group of persons or a broader one, then the rule "lex posterior derogat legi priori" (the later law repeals earlier laws) and "lex specialis derogat legi generali" (a special law repeals a

general law) are applied. If, in the carrying out of international provisions, conflicts arise in the national field, then the decisive factor is what rank international law enjoys in the gradation established by the national legal system. This gradation is fundamentally left by international law to national law.[99]

Thus, there are three possible rankings: First, the granting of priority over national law; second, the placing on an equal footing with national law; and, third, placing on a lower footing than national law. Liechtenstein basically places international law on the same footing as national law. How then are obligations under international law carried out on the national level?

Three theories as to this have been developed. The transformation theory proceeds from the basis that provisions of international law as such cannot, as a rule, be applied nationally but require, first of all, transformation into national law. In the event of the elimination of the rule of international law, the corresponding rule of national law also terminates. The execution theory also requires an Act of State, but this act does not have the function of transformation but constitutes merely an order for enforcement which permits the application of the international rule on the national level. The adoption theory considers the state treaty as such to be a rule of national law from the very start.[100]

From the standpoint of the applicability of international law on the national level, one distinguishes between "self-executing" and "non-self-executing" provisions. Self-executing means that rules of international law are directly applicable, without being transformed into national law, as the basis for the decisions of the judicial and administrative authorities even with respect to the legal circumstances of private persons. A large number of international treaties, on the other hand, leave the implementation of the rules to the national law; i.e., the content of the treaty can be taken into account by courts and administrative authorities only after corresponding national laws have been enacted. The international treaty is therefore not self-executing.[101] The same treaty may contain both provisions which are self-executing and provisions which are non-self-executing. Whether a treaty provision can be applied directly under national law as self-executing is a pure matter of interpretation.[101]

On the basis of a decision of the High Court on the Customs Union Treaty with Switzerland, it can be noted that international treaties are not entirely self-executing in Liechtenstein.[102] Liechtenstein, therefore, reserves the right to adapt international norms to national law. In order now to get back to the rank that Swiss enactments enjoy in Liechtenstein, it is necessary to proceed from the basis that the measures enacted with regard to the sovereign rights of Liechtenstein have limited the Liechtenstein's sovereignty only to the extent absolutely necessary. Even if the content of the Swiss law to be taken over in Liechtenstein is determined unilaterally by Switzerland, it cannot be concluded from this that Liechtenstein is thereby prohibited from ranking such provisions in accordance with its own legal system. This means that laws and decrees which are taken over are valid also as Liechtenstein laws and decrees. Decrees which are taken over can, however, not be measured on basis of the Constitution, i.e., examined as to constitutionality.[103]

§ 1.3(E). Judicial Review.

§ 1.3(E) (1). Jurisdiction of the Court of Constitution.

According to the Constitution, the examination of the constitutionality of laws and the

legality of government decrees falls within the jurisdiction of the High Court. In this case, the High Court is competent as the first and sole instance.[104] It decides these matters as a Court of Cassation without rendering a decision on the matter itself. Reversal applies in all cases **ex tunc.**[105]

The Government or a municipal representation can at any time submit a petition for the review of the constitutionality of a law, in whole or in part, the decision being binding on everyone. The petition must contain a prayer that the law be set aside as unconstitutional in its entirety or in specified parts, and it must furthermore set forth the grounds for this. The High Court at all times exercises jurisdiction with regard to the constitutionality of laws on its own motion or on the petition of a party when it has to apply such provisions directly in a given case or indirectly in the event of preliminary or interlocutory questions, i.e., any court can, if the unconstitutionality of the law is alleged in a pending action, suspend the proceedings and submit the question for examination to the High Court. The individual courts themselves cannot review the legality of laws which have been duly promulgated. The decision of the High Court, after examination of the law, must indicate whether the entire content of the law or only given parts thereof are unconstitutional and therefore voided.[106]

The High Court takes cognizance at all times of the constitutionality and legality of the provision of a decree, either on its own motion or on the petition of a party if it must apply these provisions indirectly in a given case or directly in the case of preliminary or interlocutory questions. But in other cases it acts only upon the petition of a party entitled so to petition. Courts other than the High Court can look into the constitutionality and legality of decrees in connection with the application thereof and if a provision of a decree appears to them to be unconstitutional or illegal, they may stay the proceedings and submit the matter for examination to the High Court. A petition to set aside a decree or an individual provision as unconstitutional or illegal can be submitted by a court or a municipal authority if they have to apply the provision in a given case directly or indirectly.[107]

In addition, in Liechtenstein one hundred eligible voters can, within one month from the publication of a decree in the Law Gazette, without having to show a special interest, challenge a decree or the individual provisions thereof as unconstitutional or illegal, or request the setting aside thereof. The petition must contain a prayer, with an indication of the grounds, that the decree be repealed in its entirety or with respect to certain of its provisions. If the decree is already no longer in effect, only the constitutionality or legality is to be determined since the effect of the cancellation, as stated above, is in any event **ex tunc.**[108]

§ 1.3(E) (2). The Review Process.

The parties to proceedings before the High Court are those agencies or private parties (Government, Municipalities, Courts, private individuals) who submit the contest as well as the authorities against whose decision or order petition is filed with the High Court. The procedural records will in each case be served on the authorities by the High Court in order to give them the opportunity for comment.[109]

All documents submitted to the High Court must be submitted in at least two copies or, if several parties are present, in a sufficient number of copies so that there is one for the High Court and one for each party. The papers must contain the petition, indicating the

grounds for the same, that the law or decree in question be set aside in its entirety or in specified parts thereof as being unconstitutional or illegal. The papers submitted to the High Court can be filed with the Government for forwarding to the Presiding Justice of the High Court or be submitted directly to the latter. The conditions under which petitions can be filed have already been discussed above.[110]

When the High Court renders a decision as a constitutional court, the provisions concerning simple administrative proceedings, including compulsory administrative proceedings, apply to the proceedings before it. Hearings before the High Court are, in principle, public, insofar as they are not limited by other laws or decrees.[111] Decisions of the High Court acting as constitutional court are final.

If the decision of the High Court is that a law or a decree is repealed, then the decision is to be published immediately by the Government in the Law Gazette, referring to the decision of the High Court, whereby the repeal then becomes effective. Furthermore, the decisions of the High Court are to be printed in their entirety or in extract form each year by the Government.[111a] With regard to the necessity for an attorney-at-law before the High Court, reference is had to Section 1.7(C) (1) (b).

§ 1.3(E) (3). The Organization of the Court.

The High Court consists of the Presiding Justice, his alternate, four other members and their alternates. All members of the High Court serve on a part-time basis. The Presiding Justice, the Vice-Presiding Justice and two other members, as well as their alternates, must be Liechtensteiners by birth. At least two members and their alternates must be trained in law. The High Court decides as a five-member court. The members of the High Court and their alternates are appointed by the Diet for a term of five years. The appointment of the Presiding Justice and his alternate require confirmation by the Reigning Prince. Refusal of confirmation would result in the invalidity of the appointment. The prerequisites for eligibility as Presiding Justice and his alternate are personal qualification, male sex, and at least 21 years of age. If the Presiding Justice and his alternate are prevented for any reason from exercising their functions, the Court will designate one of its members, if necessary an alternate, to preside. However, such person must be a Liechtensteiner. If the Court cannot be established even with the inclusion of the alternates, then the Diet shall effect supplementary appointments for the case in question.[112]

Under the law, two members of the High Court must be trained in law. Since in a small country such as Liechtenstein it is difficult to fill all positions as judge with persons versed in the law, it was stipulated in the Constitution that at least two members must be versed in law. Furthermore, however, the question arises who is "versed in the law"; are these only jurists who have concluded their studies or also persons who are fully acquainted with the laws? The High Court, in an opinion written in 1953, expressed the view that persons who are fully acquainted with the laws but have not concluded their legal studies are also "versed in the law."[113]

The situation of the appointment of persons "versed in the law" is made complicated in Liechtenstein by the fact that Swiss, Austrian and Liechtenstein law are mixed together. Since Liechtenstein does not have a university of its own, a lawyer must have completed his training abroad. There, however, the special features of Liechtenstein law are not taught at all. Thus, the Liechtenstein lawyer must first develop himself in actual practice. Probably also for this reason, professors of Austrian and Swiss Legal Schools are

appointed to the High Court. Their appointment makes it, in particular, easier to have recourse to similar cases in Austria or Switzerland since the development of the law by court practice is not so easily accomplished in Liechtenstein as a result of the relatively few number of cases.[114]

All members of the High Court are independent in the exercise of their office and subject only to the Constitution and the laws, i.e., they may not accept orders or suggestions from the Prince, from the Government or from any other authority.[115]

In view of the smallness of the country, incompatibility cannot be handled in the same manner as it is, for instance, in Austria. Thus, the office of the Presiding Justice or of a Justice and their alternates is not compatible with the office of Member of the Government, including the Government Secretary and District Court Judge. If a case of conflict arises, the person elected must decide in favor of one portion or the other within 14 days. If he fails to do so despite being called upon to do so by the Government, this is considered a rejection.

Deputies to the Diet who are members of the High Court have to stand down only in the event that a matter is to be taken up with respect to which the authority to which they belong has rendered a decision. Otherwise, they are excluded from the provision as to incompatibility.

A distinction must be made between grounds for exclusion and grounds for rejection. When there are grounds of exclusion, the member of the High Court in question cannot participate at all in the proceedings. The representatives of public law, the private interested parties, the private complainant and the defendants can allege the rejection. Proceedings are void if they have been carried out despite knowledge of a ground for exclusion but not, for instance, in the case of a rejection since then the proceedings are merely open to challenge. Furthermore, the prohibition against giving information, i.e., the prohibition against receiving private visits from parties or seeking them out oneself or inviting them to one in order to report to them on the status of the matter or its prospects or give advice or information, also applies.[116]

Members of the High Court can, without prejudice to their right to step down, be removed from office or have their office terminated only by the Court itself. Removal from or termination of office is effected because of disqualification for physical or mental deficiencies which result in unsuitability to hold the office for a long time; for conviction for a criminal act or crime which removes civil rights, for which purpose a conditional conviction is sufficient; or for inability to vote for the Diet as a result of other criminal conviction. After removal from office as well as when the Court is no longer fully occupied as a result of provisional termination, a substitute appointment must be effected, in accordance with the Constitution.

The duties of the clerk, insofar as they are not taken care of by the Presiding Justice or a person appointed by him or the High Court, are taken care of by the Chancellery of the Government.[117]

§ 1.3(E) (4). Reporting.

The decisions of the High Court were formerly published each year in the Annual Report of the Government, either in their entirety or in part, insofar as they did not fall within the interest of public order and morals or some other interest of the State or the protection of constitutional or statutory rights of a party, so that their publication was

improper. The Annual Reports of the Government to the Diet, however, have not included decisions for a long time but have merely given an enumeration thereof. The decisions are available for examination at the Chancellery of the Government and are regularly published in the LES (Collection of Decisions of Liechtenstein).[118]

§ 1.4. Judicial System.

§ 1.4(A). History.[119]

Even after the collapse of the Roman Empire in the 5th century, the Rhaetian-Roman administrative and legal system continued in existence for 300 years. With the introduction of the Franconia County Constitution, the influence of the people was again suppressed and the King was considered the source of all law. The officials appointed by the King assembled the municipalities of their district in order to settle general matters. As judges, jurors (decision renderers) were assigned to them. With the passage of time, the King was, to a far-reaching extent, excluded as central power of the Empire and the nobility, with their increasing strength, allowed the organization of the courts to become a territorial matter. A second instance was created in the "Hofgericht."

The court constitution of the 15th century contains, as its most important feature, definite political collaboration by the people. The court communes were not only territories with a court and holders of state tasks, they were living political communities with a budget and right of taxation of their own.

The Head of the Court or provincial community in a Province was the Landamman. He was elected by the assembled provincial communes in an open election from a slate of three candidates proposed by the sovereign. Immediately after his election, the Landamman was sworn in and given the right to adjudicate major crimes and hold other courts. The Provincial Rules, a kind of police ordinance and criminal code, are read aloud and sworn to by those present. The court consisted of 12 judges selected for life. The judges were selected by the sovereign from a slate of three candidates submitted by the court communes.

In the case of civil disputes, the complaints were made of record, the answers heard, appearance ordered if necessary, and the decision rendered. The entire proceedings were oral. Appeal lay to the "Hofgericht" of the sovereign. The judges here were officials of the sovereign, as were the Landammans. Court proceedings differed depending on the object of the complaint. In the case of claims for money, the provisions of the debt and bankruptcy court were controlling. In the case of minor violations of police ordinances, the court acted as a trespass or fine court. The jurors appeared and indicated the offences known to them. The criminal court, at that time known as the "Malefiz" (Maleficence) or "Blut" (Life and Death) court, had a particularly ceremonious procedure.

With the elevation of the two provinces acquired by the House of Liechtenstein to an immediate Principality of the Empire, demands and rights on the part of the new masters arose, such as were previously unknown. The new masters, as a result of their position as Princes of the Empire, had full power over their territories. The new system was met by energetic resistance on the part of the people. Upon insistent request, the Prince finally, and solely as a matter of grace, granted a reduced type of Landamman Constitution, which replaced the old order in part but more from a formal standpoint than in substance. In accordance therewith, the two provinces could continue to appoint their Landammans in the old manner.

The wartime confusion resulting from the French Revolution gave the death blow to the old Landamman Constitution. With a completely centralized administration, having full jurisdiction, an extensive reform which was adapted to the needs of the new circumstances was effected. Thus, the entire power of the State was now combined in the hands of the Prince as absolute ruler and the people were robbed of all their traditional rights and excluded from the administration of the State. The Superior Bailiwick formed a Government which was responsible solely to the Prince and it was, at the same time, the judicial authority of First Instance. There was no separation of powers. Appeal could be submitted only to the Prince in Vienna. Before the Reform, the most important provisions of law had been merely the customs of the land, the police ordinance and a criminal court system. As a result of the reform, a new Civil Law, a Criminal and Police Law, Court Rules of Procedure, a Real Estate Register Law, an Estate and Inheritance Law and a Law on Servants were to be drawn up. All old laws and regulations were set aside. Instead of the creation of a civil code and court rules of procedure of its own, the Austrian laws were taken over. The criminal code as well as all annotations and supplements to the received Austrian laws were also taken over.

For years there were still only two courts for Liechtenstein, namely, the Superior Bailiwick in Vaduz and the Court Chancellory in Vienna. Upon petition of the Prince to the Austrian Government, Innsbruck was introduced as a third and final court instance for Liechtenstein. Liechtenstein was therefore closely related to Austria with respect to its courts.

By the 1862 Constitution, the 1848 Revolution was overcome and the transition from absolutism to constitutionalism was completed by free agreement between Prince and the people. The judicial system was placed in order by the Official Instruction, issued at the same time as the Constitution. Of the three court instances, the first, the Landgericht District Court, was now located within the country itself. It concerned itself with matters of civil law whether contentions or not, with the Real Estate Register and with criminal jurisdiction in first instance, and participated in the judging of customs violations. During the course of the years the previious secrecy of proceedings was done away with. Now in open, oral, final proceedings in the case of crimes three judges versed in the law and two sworn lay judges (jurors) rendered the decision.

In 1884, a Treaty on the Administration of Justice was signed with Austria. In it, the Austrian Government provided Austrian judges, as required, for Liechtenstein justice. On basis of this treaty, the Liechtenstein Code of Criminal Procedure was established in agreement with the Austrian Code. In 1912, there was a Reform of the Law on Civil Procedure. At the same time, there was a separation of powers between the Government and the District Court, and the court of second instance, the Appellate Court in Vienna, was moved to Vaduz.

Upon the entrance into effect of the new Constitution in 1921, substantial changes were made. Thus, the rights of the people and the basic rights and rights of freedom were further expanded, the administration was made subject to the law and the High Court took jurisdiction over constitutional and administrative matters. Liechtenstein was one of the first countries to realize the importance of this instrument. Furthermore, the court of third instance was also transferred to Vaduz. Thus, Liechtenstein became independent in the field of public law and administrative law. The organization of the courts which has existed since 1921 will be discussed in further detail below.

§ 1.4(B). The High Court (Staatsgerichtshof).

§ 1.4(B) (1). In Summary.

The High Court sits primarily as court on public law. It carries out various functions within its jurisdiction. Thus, the High Court renders decisions as a constitutional court; as a court on conflicts of interest; as an administrative court and ministerial-impeachment court; and as a disciplinary court. In all of these functions, it renders its decision as first and final instance.

Proceedings before the High Court and its organization will not be gone into below since this has already been discussed in detail (see Section 1.3(E) (2) and (3). The Review Process and The Organization of the Court). Accordingly, the High Court will be described further only with respect to its various functions.

§ 1.4(B) (2). The High Court as a Constitutional Court.

The High Court as constitutional court is competent to decide appeals:

(1) for the protection of the constitutionally guaranteed rights of the citizens;
(2) for review of the constitutionality of the laws and the legality of Government decrees; and
(3) for interpretation of the Constitution on petition of the Government or of the Diet.[120]

Appeals based on a violation of constitutionally guaranteed rights can be submitted to the High Court. This is one of the main tasks of the High Court. Constitutional appeals may be filed in part only by Liechtensteiners but in part also by foreigners.

The following constitutional rights may be mentioned:

(1) Equality before the law: All members of the country are equal before the law. The rights of foreigners are determined in first place by State Treaties and in the absence thereof by reciprocity. The prohibition against unequal treatment of Liechtensteiners refers, however, only to arbitrary distinctions which are objectively unjustified. Arbitrariness exists, in particular, when an authority does not take into account the substantive law which is to be applied but renders a decision on basis of its own evaluation. A formal violation of law is present in the case of refusal of a right. The principle of equality finds special development in the political rights based on the principle of a general and equal voting right.
(2) The right to free determination of one's residence: The legislature, however, has the authority to issue laws which limit this right such as, for instance, in criminal law, welfare law, etc. The Alien Police legislation applies to aliens; they cannot allege the right to freely select their residence. The acquisition and sale of real property is subject to substantial limitations for reasons of land speculation.
(3) Personal freedom: Every person is recognized as a free and legally competent individual. Personal freedom means protection from arbitrary arrest and continued detention and therefore refers solely to physical freedom.
(4) The right to the sanctity of one's home: House searches may be carried out only in those cases stipulated by law and in the manner determined by the law. The right to the sanctity of one's home therefore grants protection against arbitrary and illegal house searches.

(5) Protection of secrecy of mail and documents: This constitutes protection against arbitrary search and confiscation of letters and papers.

(6) The right to proceedings before the ordinary court of law: According to this principle, everyone is entitled to a hearing before an ordinary court of law, that is, no one may be deprived of his natural judge, and special courts may not be established. There applies here also the principle of criminal law "Nulla poena sine lege" (No punishment without a law).

(7) The inviolate nature of private property: The guarantee of private property is one of the main bases of a free economy. The object of the guarantee of property is private rights of all kinds and, in particular, however, the right to realty. The limited nature of the guarantee is due to the fact that the right of property itself does not constitute an absolute right. In accordance with Article 20 of the Law on Property, an owner can make disposition of his property as he wishes, within the limits established by the laws. This includes, for instance, limitations based on the Building Law and the Forest Law. The Constitution itself limits the guarantee of property in that, in the public interest, the encumbering or transfer of any type of property can be ordered against reasonable indemnification.

(8) The freedom of commerce and business: Commerce and business are free within the statutory limitations, i.e., anyone can engage in business without intervention by the State. Limits are established, for instance, by the Trade Ordinance.

(9) Freedom of religion and conscience: This covers the right to have or not to have a certain religious conviction, and to mold one's moral behavior in accordance therewith, and furthermore to freely select one's religion and belong to a religious community.

(10) The right to freely express one's opinion: This right represents the freedom of the individual to make his ideas resultant from the human intellect known. This fundamental right covers freedom of expression and freedom of written or graphic depiction. This right, however, must be exercised only within the framework of the laws and, in particular, of morality.

(11) The right to freely associate and assemble: Within the limitations established by statute, associations may be formed and assemblies held which serve a political, religious, scientific, artistic, charitable, social or economic purpose.

(12) The right to petition: By "petition" there is to be understood wishes and requests to the Diet with respect to certain legal conditions. The right to petition is vested in individual persons as well as in juridical persons.

(13) The right to appeal: This right is intended to protect against unjustified denial of an appeal which is admissible in accordance with the provisions of the law. By the right to appeal there is also established the principle that recourse may be had to at least one second instance from all official findings.[121]

The High Court as a constitutional court decides not only constitutionally guaranteed rights but also appeals from decisions based on violations of rights under the Convention for the Protection of Human Rights and Basic Freedoms (European Convention on Human Rights).[122]

As already discussed in Section 1.3(E)(1), the High Court as a constitutional court is competent to review the constitutionality of the laws and the legality of the decrees of the Government.

Its last task as a constitutional court consists in the interpretation of provisions of the Constitution. If doubts arise as to the interpretation of individual provisions of the Constitution and they cannot be done away with by agreement between the Government and the Diet, the High Court decides thereon. This petition for the interpretation of individual provisions of the Constitution can be submitted both by the Government and by the Diet. The petition must contain an exact description of that for which an interpretation is requested and set forth detailed reasons for this. In its decision, the High Court determines how the provision will be interpreted in the future.[123]

§ 1.4(B) (3). The High Court as a Court for Conflicts of Jurisdiction.

Here one must distinguish between affirmative conflicts and negative conflicts. In the case of affirmative conflicts, which exist when a court and an administrative authority claim the power of decision in one and the same matter, the petition for the decision of a conflict of jurisdiction can be submitted by the administrative appellate instance or, insofar as the latter is not concerned with the matter, by the Government. If such a conflict exists between a judicial or administrative authority and the Diet or one of its Committees, the judicial or administrative authorities concerned may submit the petition.

The petition is to be submitted within a non-extendable period of 30 days from the end of the day on which the authority officially received notice of the conflict of jurisdiction. However, it can be submitted only as long as a final decision has not been rendered by the judicial or administrative appellate instance on the merits. The petitioning authority must immediately advise the court or other authority in question of the submission of the petition. After receipt of this notice by the court, the proceedings pending before the court will be discontinued by operation of law until the final decision of the High Court. If this period of time expires without having been utilized and if jurisdiction is claimed by the Diet or one of its Committees, this will result in its jurisdiction while in the other cases it will result in the jurisdiction of the court.

In cases of negative conflicts, which arise in the manner that, in one and the same case, a court and an administrative authority have refused jurisdiction, the petition for a decision can be submitted to the High Court by the party concerned. Disputes as to jurisdiction among the judicial authorities or among the administrative authorities will be decided through the various instances of the court and administrative systems respectively.[124]

§ 1.4(B) (4). The High Court as an Administrative Court.

The High Court decides as an administrative court in first and sole instance on the administrative disputes assigned to it for decision in the laws. It decides as an appellate court on appeals from decisions or orders handed down by an administrative authority. Actions for a declaration of the existence or non-existence of a right or legal relationship can also be submitted to the administrative court if the plaintiff has a legal interest in whether the right or legal relationship exists or not. Actions for the modifying of rights or legal relationships may also be submitted.[125]

§ 1.4(B) (5). The High Court as an Election Court.

Elections are a vital element of democracy. The results thereof determine the course of

the democratic process. In order that elections can fulfill their purpose, their legality must be beyond doubt. The High Court as an election court assumes the task of seeing to it that elections are properly held.[126]

§ 1.4(B) (6). The High Court as an Impeachment and Disciplinary Court.

Impeachment, together with the protection of basic rights, is the oldest institution of constitutional court jurisdiction in the modern state. Impeachment of and disciplinary measures against members of the Government are based, in contradistinction to political responsibility, on legal responsibility as a form of responsibility for illegal acts in the performance of their office. These institutions were created by the authors of the Constitution not the least of all for the purpose of making clear in impressive fashion that even the highest bodies of the State are subject to the law and to point out their heavy responsibility and thus strengthen the assurance against violations of rights. In Liechtenstein, impeachment proceedings have been brought only once, namely, against the Head of Government in connection with the collapse of the Savings Bank during the period of the world-wide economic crisis. However, he was not impeached.

Impeachment proceedings can be brought only against members of the Government, and then only if they, by intent or gross negligence, violate the Constitution or laws in the exercise of their official activities. Impeachment proceedings may be brought by the Diet by a two-thirds majority decision.

The Diet has the right, on basis of a majority decision, to apply to the High Court for the carrying out of disciplinary proceedings in the case of improper behavior on the part of the Government as a body or of individual members of the Government.[127]

§ 1.4(B) (7). The High Court as an Appellate Instance.

The overall jurisdiction of the administrative courts is divided, by the distinction between original and subsequent administrative jurisdiction, into two groups having different requirements. Depending on the presence of an original or subsequent administrative dispute, the administrative court decides in the first and sole instance (the functions exercised up to now by the High Court) and as an appellate instance. By subsequent administrative jurisdiction, there is to be understood limitation to reviewing an already potentially binding decision of the administrative authority by the administrative court. Therefore, one can only speak of a subsequent administrative dispute if an administrative authority has already handed down a decision.[128]

The High Court as an administrative court has jurisdiction, in particular, as an appellate instance over decisions of the Government in disputes concerning the Municipal or National Citizenship Law, in boundary disputes between the municipalities, or claims under public law of the municipalities against each other, and in decisions of the Government in election matters, insofar as the Diet itself is not competent. Appeals to the administrative court are furthermore possible from decisions of the National Tax Commission if the matter at issue concerns a single tax amount of at least 1,000 Swiss francs or a recurrent tax amount of at least 200 Swiss francs. The findings of fact made by the National Tax Commission are binding in this connection on the High Court.[129]

The "enumeration principle" is controlling with regard to the jurisdiction of the administrative court. The law governing the High Court indicates the subjects of appeal only by way of example. Other matters of appeal result from other laws. Thus, decisions

by the Government in its function as a supervisory authority over the foundations can be brought before the administrative court.[130]

§ 1.4(C). Court Structure.

§ 1.4(C) (1). In Summary.

With the entrance into effect of the new Constitution in 1921, all court instances were transferred in final manner to Liechtenstein. Since that time, Vaduz is the location of all three instances.

Jurisdiction in civil matters is exercised in the first instance by the Landgericht (District Court) of the Principality of Liechtenstein. In criminal matters, the Landgericht adjudges as a Criminal Court, Jurors' Court, or Juvenile Court and renders its decisions through a Sole Justice. As the next instance, it is followed by the Obergericht (Superior Court) in civil as well as in criminal matters. The final and highest instance is the Supreme Court.

All jurisdiction is exercised on behalf of the Reigning Prince by sworn judges. All three court instances are, within the legal limitations on their activity, independent in court proceedings from all influence by the Government. They must, in all cases, indicate their grounds in their decisions and judgments.

§ 1.4(C) (2). Civil Litigation.

§ 1.4(C) (2) (a). Civil Court Structure.

In the Landgericht, decision in civil matters subject to a single judge is exercised by one or more single judges appointed by the Reigning Prince upon proposal of the Diet. At the present time, there are eight single justices at the District Court. One of the Judges is appointed by the Government as Presiding Justice of the District Court. He is the bearer of the administration of justice, represents the Court towards outsiders and takes care of the obligations assigned to him in the laws and/or decrees. Furthermore, he exercises supervision over the Office of the Clerk of the District Court, which, under the supervision of the Chief Clerk, is divided into three sections, namely civil, criminal and execution. The Presiding Justice of the District Court exercises in first instance disciplinary power over the entire non-judicial personnel. All individual judges of the District Court sit as professional judges.

While in first instance only individual judges sit, the Superior Court (Obergericht) is divided into two sections of five judges each, consisting of a Presiding Justice of each section and four Superior Court Judges. For the Superior Court, two Section Presiding Justices and their alternates as well as four Superior Court Justices each, in addition to an equal number of alternate judges, are appointed for a term of four years by the Reigning Prince in agreement with the Diet, on proposal of the latter. In the same way, one of the two Section Presiding Justices is appointed President Justice of the Superior Court and the other as his alternate. At least one of the Superior Court Justices and of the alternate justices must be versed in the law. When selecting the Superior Court Justices and the alternate justices, it is to be seen to it, wherever possible, that the two Provinces, Oberland (Highland) and Unterland (Lowland), and at the same time the class of farmers, businessmen, workers, tradesmen and educators are represented.

Regardless of whether they serve as individual justices or as members of a section of the court, all judges are free of any influence from the administration. The Superior Court exercises supervision over the administration of justice as well as disciplinary power over the judges of the District Court. In disciplinary matters concerning non-judicial officials of the District Court, it acts as second instance.[131]

§ 1.4(C) (2) (b). Principle of Civil Litigation.[131a]

The organization, procedure and court fees are substantially copies of the Austrian ones (for instance, Code of Civil Procedure, Execution Code).[132]

Whoever wishes to bring an action must get in touch with the competent Mediator and request the carrying out of mediation proceedings.

Each municipality appoints a Mediator and an alternate mediator for a term of three years. The Mediator has the job of holding the mediation proceedings and drawing up a record of them. Mediation proceedings are held in all civil disputes (complaints and cross-complaints) and as conciliation proceedings in all matters of affront to honor. A legal action terminated by settlement between the parties has the legal effect of a court settlement. If settlement of the action is not reached, then the matter must be filed by means of a complaint with the District Court.

At the start of an action before the Court of First Instance, the judge advises the parties as to the procedural acts, legal consequences and remedies. Before bringing the action, an attempt at a settlement can be requested from the judge. If it is unsuccessful, the written complaint is filed with the District Court. Thereupon, the first hearing is scheduled. If the case is not completed at the first hearing, the court must schedule a hearing for oral argument. In it evidence is taken and proof secured. A distinction is made between evidence by documents, by witnesses, by experts, by personal examination and by deposition of the parties. If the legal action is then ripe for decision after the results of the hearing which has been held and the proof taken, the court must render this decision by judgment.[133]

Recourse from decisions of the District Court is by appeal in the second instance to the Superior Court. The provisions concerning appeal proceedings are the same, with a few exceptions, as those governing the proceedings before the court of first instance. The notice of appeal is filed with the lower court and, provided that the required information is given and formalities complied with therein, it is then forwarded to the Superior Court. The appeal records are first of all subjected by the Presiding Justice of the Appellate Section to examination before a date is set for oral argument on the appeal. Within the boundaries of the prayers on appeal, new claims and defenses can be submitted. The appellate court can, at the end of arguments on appeal, either return the matter to the lower court for handling and judgment, or render a decision on the matter itself.

Appeal lies from decisions (orders) of the Court of First Instance.[134]

§ 1.4(C) (2) (c). Special Proceedings.

In certain fields of civil law, the Code of Civil Procedure permits special proceedings. Thus, there are special proceedings in marital matters; special proceedings for petty matters; proceedings for disturbance in possession; mandate proceedings; special proceedings in connection with disputes concerning bills and notes and stocks on hand; dunning proceedings; and arbitration proceedings.[135]

§ 1.4(C) (2) (d). Execution of Civil Judgments.

If the debtor does not voluntarily pay his debt, the creditor may compel performance only with the aid of the court. Execution proceedings are the procedure established and defined by law before the civil courts of the country for effecting execution on established claims.[136]

If it is to be assumed that the debtor is attempting to evade performance of his obligations, then, in order to secure the claim, provisional remedies may be ordered upon petition both before the bringing of an action and during it as well as in execution proceedings. In order to secure claims for money, orders for security are issued and, to secure other claims, official orders are issued.[137]

Although the procedural laws to be applied by the courts are based substantially on Austrian law, in the same way as the abovementioned compulsory execution and securing of rights, another procedure, namely, proceedings for the validating of a claim, has been taken over from Switzerland. The procedure for the validating of the right is an accelerated procedure made available to the creditor if, upon his attempt at collection, opposition has been filed against the writ of payment, to have this opposition set aside by the District Court. The creditor can apply for the validating of his right if the claim alleged is based on a public document or on an acknowledgement of indebtedness signed by the debtor.[138]

§ 1.4(C) (3). Criminal Litigation.

§ 1.4(C) (3) (a). Courts and Appeal Structure.

In criminal cases, violations and those misdemeanors and crimes which are not punishable by more than deprivation of freedom for at most six months or a fine are handled in the first instance by a sole judge of the District Court.

Misdemeanors are decided by the Jurors' Court. It consists of the District Court Judge as Presiding Justice, two jurors, and three alternate jurors. Crimes are judged by the Criminal Court. The Criminal Court consists of a Presiding Justice, his alternate, the District Court Judge, three further criminal judges and two alternate judges. The Criminal Court therefore consists of a five-member section, in contradistinction to the Jurors' Court which is a three-member section. In the same way as the Jurors and alternate Jurors, the Presiding Justice of the Criminal Court and his alternate are also selected by the District Court. The three other criminal judges and their alternates are taken from the Jurors and Alternate Jurors.

In juvenile criminal matters, the Juvenile Court decides as a three-member section. The Juvenile Court consists of the District Court Judge as Presiding Justice and two members of the Youth Council. The two oldest are regular judges and the others are alternate judges.

In the second instance, jurisdiction in criminal matters is exercised by the Superior Court, which decides on appeals from decisions and orders of the first instance.

Appeal can be filed from criminal decisions of the first instance to the Superior Court. The proceedings are, as a rule, public, in accordance with the same provisions as govern proceedings before the lower court. The Superior Court can set aside the decision and, depending on the circumstances, remand the criminal action for new proceedings and decision to the District Court or else decide the matter itself. All court decisions,

resolutions and orders, can be challenged by appeal to the Superior Court on the ground of illegality or unreasonableness.[139] In Section 1.4(D), the final instance, i.e., the Supreme Court, will be taken up.

§ 1.4(C) (3) (b). The Prosecuting Attorney.

In criminal matters, the accusation principle applies. The Prosecuting Attorney is the agency which the State requires to represent the prosecution if it considers the prosecution of criminal acts to be a matter of the State, without it wishing to assume the position of both accuser and judge. The Office of the Prosecuting Attorney is thus not a court authority but rather an administrative authority.

At the District Court, a Prosecuting Attorney is appointed as well as a deputy who takes his place should he be prevented from acting. Both of them are under the national government and are appointed by the Prince. The Prosecuting Attorney must prosecute **ex officio** all criminal acts which come to his knowledge and which are not to be investigated and punished solely upon request of a participant, and therefore must have the necessary steps taken for the investigation and punishment thereof by the court.[140]

§ 1.4(C) (3) (c). Principles of Criminal Procedure.

As a result of the accusation principle, every criminal action requires the action of an accuser. This request for prosecution, however, must always be suggested by knowledge of the criminal act committed. Those accusations may be brought as private accusations, in which a private complainant files a report with the Prosecuting Attorney. This is not true when the Office of the Prosecuting Attorney must, on his own motion, prosecute the crime due to reports or rumors of crimes committed, direct perception by himself or instructions from his superiors. The accusation principle applies to crimes, misdemeanors and violations.

In the case of crimes, the Prosecuting Attorney files an accusation and submits the matter for investigation to the District Court. The Examining Magistrate commences the investigation proceedings, the purpose of which is to establish the facts, the perpetrator, the accomplices and other participants, the grounds for suspicion and proof of the guilt on the one hand and the grounds for exculpation of the accused on the other hand.

In order to be able to comply with requests for investigation from the Prosecuting Attorney, experts can be called in and there is the possibility of effecting an inspection of the place of the crime and of hearing witnesses. As soon as the Examining Magistrate has concluded his investigation, he must turn the records over to the Prosecuting Attorney for the drawing up of a petition. In his written accusation, the Prosecuting Attorney must precisely describe the act of which he requests that the accused be found guilty. The District Court acts on the accusation of crimes as a multi-judge criminal court with a final oral hearing.[141]

The provisions concerning the prosecution of crimes also apply with respect to misdemeanors. In the case of misdemeanors, the District Court is formed as a Jurors' Court. If the Jurors' Court is of the opinion that a case submitted to it for decision constitutes a crime, it must interrupt the further course of the proceedings so that the proceedings required for the handling of crimes are introduced.[142]

In proceedings against violations and in simplified proceedings in cases of crimes and misdemeanors, an individual judge renders the decision in the first instance in all cases.

Whether simplified proceedings are concerned in certain cases is decided by the Prosecuting Attorney and he proceeds further with the cases in accordance therewith. In such cases, there is no investigation by the Examining Magistrate. The cases are turned over directly by the Prosecuting Attorney to the judge for the rendering of a decision. If, in the course of proceedings introduced for a violation, the judge finds that the act constitutes a crime or misdemeanor, then he must immediately interrupt the proceedings on the offense or the simplified proceedings and remand the matter to the Prosecuting Attorney for the bringing of the other proceedings in accordance with the law.[143] The court permits appeal from decisions of the first instance.

§ 1.4(C) (4). The Principle of Fixed Distribution.

The Liechtenstein District Court is, at present, divided into eight court sections, each having a judge and his alternate. At the end of each year, the District Court judges decide by simple majority vote on the distribution of the business for the coming year. Certain fields of law are then assigned to each judge. In practice, only slight changes in the assignments take place from year to year. The largest expense is required for complaints of all kinds; other contentious proceedings; injunctions; and indemnification proceedings in condemnation cases. Five judges are competent for these fields. The cases are distributed in sequence to the judges in the order in which they are received by the District Court.

The Superior Court is divided into two senates, appeals in civil matters being reserved in particular for the first senate and appeals in criminal matters for the second senate. The Superior Court maintains supervision over the administration of justice and enjoys disciplinary powers over the judges of the District Court. In disciplinary matters concerning non-judicial officers of the District Court, it acts as the second instance. The exercise of the disciplinary power is vested in the first senate.[144]

The Supreme Court consists of only a single senate, i.e., it divides and decides both in civil matters and in criminal matters.

§ 1.4(D). The Supreme Court.

The jurisdiction in civil as well as criminal actions is exercised in the third instance by the Supreme Court of the Principality on behalf of the Prince. The Supreme Court consists of one Presiding Justice and four justices. Like the Superior Court, the Supreme Court is a multi-member court whose members are appointed by the Reigning Prince in agreement with the Diet, upon proposal of the latter. Alternate judges of the Superior Court can, at the same time, serve as alternate judges of the Supreme Court.[145]

It should be noted that all multi-member courts are formed by a majority of laymen. In the Criminal Court, in the Superior Court and in the Supreme Court, Austrian and Swiss jurists are also represented, so that one can speak of an international composition of the multi-member courts of Liechtenstein.[146]

The Supreme Court exercises disciplinary power over the members of the Superior Court and is, at the same time, the Appellate instance in disciplinary matters concerning the judicial officials of the District Court.

In civil matters, appeal is permitted from decisions, orders and judgments to the third instance in accordance with the same procedure as in the second instance. In criminal

matters, appeal from decisions of the second instance to the third instance is permissible.[147]

Procedural appeal lies from decisions of the Superior Court in civil matters. It can be filed, for instance, when the proceedings before the Superior Court appear to contain errors. The appellate court, as a rule, must decide the matter itself but has the possibility of remanding the matter to the Superior Court if that appears necessary. If the appellate court decides to set aside the decision or proceedings because of an error of which judicial notice was to be taken and which occurred already in the first instance, then the action must be remanded to the first instance.[148]

In criminal cases, there is also the possibility of appeal, based on error, to the third instance. The appellate court may, in this case also, decide the matter itself or else remand the matter to the Superior Court or even to the District Court for action and decision.[149]

In criminal cases, the Reigning Prince, based on his right of pardon, amnesty, commutation of sentence and reversal, can intervene directly. The establishing of special courts is prohibited by the Constitution.[150]

§ 1.4(E). The Administrative Appeal Instance.

The Administrative Appeal Instance consists of a Presiding Justice versed in law, appointed by the Reigning Prince upon proposal of the Diet, and of his alternate (both of them must be native Liechtensteiners) as well as four appeal judges selected by the Diet, with an equal number of alternates. The members of the Administrative Appeal Instance may, at the same time, be members of the Superior Court. As to cases in which a member of the Administrative Appeal Instance must disqualify himself, the law provides special grounds for exclusion and rejection. These grounds are to be immediately reported by the member of the court concerned to the Head of Government as soon as he obtains knowledge thereof so that the Head of Government can appoint an alternate. If the Head of Government knows of a ground of exclusion or rejection, he must immediately appoint an alternate. The term of office of the Administrative Appeal Instance coincides with that of the Diet and terminates upon its reappointment. The term of office terminates not only when the normal four-year term of office of the Diet expires but also if the Diet is dissolved by the Prince or on the basis of a national vote during its normal period of office. At its first meeting, the Diet must submit proposals for the Office of Presiding Justice and his alternate, and select the appellate judges and their alternates.[151]

All decisions and orders of the Government are subject to appeal to the Administrative Appeal Instance. In this way, a separate administrative court has been entrusted with acting on Government decisions and orders. Appeal to the Administrative Appeal Instance is, however, only permissible if no other special means of challenge are provided for (for instance, action before the Administrative Court).

The grounds of appeal and the bringing of an appeal are set forth in the law on the administrative system of the country. The grounds of appeal include illegal procedure and action in administrative matters; direct violation or impairment of legally recognized interests or interests to be protected by the authority; and the entirely unsuitable or inequitable handling of the interests of the appellant.

A legal interest is the general requirement for the right to appeal. Whoever believes that he has been directly impaired in his legal interests has the right to appeal. In accordance with the annotation to the law, there is to be understood by appeal a violation or

impairment. For the content of an appeal, the following are necessary: The decision or order contested must be specified; it must be clear whether the administrative act is contested in its entirety or with respect to a precisely designated part thereof; the appeal must contain the grounds of appeal and prayers; and the facts and evidence are to be set forth. Furthermore, the period of appeal of 14 days must be complied with. The appeal is to be submitted to the Government.[152]

§ 1.4(F). The Role of Precedent.

In the case law system of Anglo-American law, every court decision creates law. A judge who is called upon to decide a matter is bound by previous decisions which concerned similar cases. He must render a decision which is in conformity with the existing case law.[153]

However, the General Civil Code states that orders rendered in individual cases and decisions rendered by courts in specific legal actions never have the force of law. They can thus not be extended to other cases or to other persons.[154]

§ 1.4(G). The Career of a Judge.

§ 1.4(G) (1). Professional Education.

The basic education for a legal career consists in the study of law. After completion of the study, there is a two-year period of clerkship, at least one-half year of which must be served with the Liechtenstein District Court or an administrative authority. Ordinarily, after this period of clerkship, one opts for the career of a judge or of an attorney-at-law. If the career of a judge is decided upon, an application to this effect must be submitted to the Government. If the applicant is appointed as judge by the Reigning Prince upon proposal by the Diet, he must serve first for a half year to one year as a clerk in an Austrian court. This clerkship is the actual preparation for the career of a judge in Liechtenstein.

Part-time judges and alternate judges need not have studied law or served a clerkship. They are appointed by the Diet, and any citizen who has the right to vote is under the obligation to accept an appointment as judge for one office and a term of office of four years.

§ 1.4(G) (2). The Judge's Appointment.

All judges and alternate judges are sworn in at the start of their term of office by the Government. In this connection, each judge must swear, among other things, allegiance to the Reigning Prince, compliance with the laws and the Constitution, and secrecy concerning all matters.[155]

§ 1.4(H). Arbitration.

The State makes state courts available to the individual for the enforcement of his personal rights. These personal rights are of enormous importance for the individual. Therefore, it is by no means surprising that after defects in the organization of the courts became apparent, groups interested in a smoothly functioning court system established private courts created by themselves. These courts, to be sure, in order to be able to hand down binding arbitration awards, require a statutory basis. Arbitration courts are

therefore private courts established by private parties with authorization by the law.[156]

It is agreed by an arbitration agreement that disputes which arise in the future out of a given legal relationship shall be decided by one or more arbitrators. The proceedings before the arbitrator are carried out without any means of compulsion with respect to the parties or witnesses. Judicial acts which the arbitrators are not authorized to carry out are performed upon request by the District Court. Higher arbitration instances for the contesting of an arbitration award must be agreed upon in the arbitration agreement. It is an inalienable right to bring an action before the District Court for the setting aside of an arbitration award which has been handed down if, for instance, there is no arbitration agreement, the right to a legal hearing has been refused in the arbitration proceedings, or the arbitration court has exceeded its powers.[157]

How are arbitration awards enforced? In the case of an arbitration award handed down by a national arbitration court, the parties to which are Liechtensteiners, execution proceedings apply (compulsory execution).[158] Agreements exist with Switzerland and Austria concerning the recognition and enforcement of arbitration awards in civil matters. If both parties are not registered in the public register then public recording of the arbitration clause is required; otherwise, if both are registered this is not necessary.[159] Arbitration agreements between Liechtensteiners and foreigners or between Liechtensteiners within the country in accordance with which a foreign court is attributed competence are only valid if they have been publicly recorded.[160] How Liechtenstein arbitration awards are enforced abroad depends on the specific laws of the foreign country.

Liechtenstein is not a party either to the New York or the Geneva Convention on the recognition and enforcement of foreign arbitration awards.

§ 1.5. Law Reporting.

§ 1.5(A). Legislation.

§ 1.5(A) (1). Official Reporting.

The Landesgesetzblatt (National Law Gazette) is the official organ for the publication of laws. All laws, decrees, agreements, etc., must be published in the Landesgesetzblatt in order to acquire validity.[161] The Landesgesetzblatt can be obtained in loose-leaf form from the Chancellery of the Government. At the end of each year, the individual sheets are bound chronologically. However, no official, systematic collection is obtainable.

§ 1.5(A) (2). Legislative Materials.

In the Diet, public and non-public hearings are held, minutes being drawn up of both. While the non-public minutes cannot be inspected, the minutes of the public sessions can be inspected both at the Chancellery of the Government and at the National Library. The individual minutes can be obtained from the Government Chancellery.

The most important and interesting matters taken up at the open sessions are published in the national press and documented in part.

§ 1.5(A) (3). Unofficial Compilations.

Since Liechtenstein law is modelled predominantly after Swiss and Austrian law, it is

understandable that it has no commentary editions of laws of its own. Up to now, there is a single annotated edition, covering bankruptcy and estate contract law.[161a]

§ 1.5(B). Court Decisions.

§ 1.5(B) (1). Ordinary Courts.

Decisions in the first instance of the District Court are not published. The most interesting and important decisions of the Superior Court and of the Supreme Court are published in the Liechtensteinische Entscheidungssammlung (Collection of Liechtenstein Decisions—LES), which is published by the Association of Liechtenstein Judges. Decisions of the ordinary courts which are not published in the Liechtensteinische Entscheidungssammlung, i.e., in particular disciplinary and criminal decisions, cannot be examined by the public.

§ 1.5(B) (2). Other Courts.

By law, decisions of the High Court concerning the repeal and amendment of laws must be made known in the Landesgesetzblatt. The decisions themselves are published in the Liechtensteinische Entscheidungssammlung. In the same way, the most important and interesting decisions of the Administrative Appeal Instance are published. Decisions not published in the Liechtensteinische Entscheidungssammlung are not available for examination.

§ 1.5(B) (3). General Index.

An index is kept and published of the decisions of the ordinary courts, of the High Court, of the Administrative Appeal Instance and of the National Realty Transactions Commission, which have been published in the Liechtensteinische Entscheidungssammlung.

§ 1.5(C). Legal Science.

As already mentioned, Liechtenstein law is based substantially on Swiss and Austrian law. For this reason, the legal literature of those countries is also used by us. Since there is no university in Liechtenstein, no specifically Liechtenstein textbooks are obtainable either. Thus, it is necessary to base oneself, also in this field, entirely on Switzerland and Austria. Scientific legal papers on Liechtenstein are relatively popular subjects for dissertations. There are already several dozens of them. In 1980, the Liechtenstein Jurists Journal was published for the first time (Liechtensteinische Juristenzeitung). Legal articles and book reviews with reference to Liechtenstein are in particular published in it.

§ 1.6. Legal Education.

If someone decides in Liechtenstein on a legal career, he must realize that his education cannot be obtained in Liechtenstein itself but that foreign schools must be attended for this purpose. This has always been the case. However, this does not result in any difficulties for Liechtenstein students since Liechtenstein has signed bilateral agreements with Switzerland and Austria which assure Liechtenstein students a place in the universities there. Whether law is studied in Switzerland or in Austria is not of any great importance for the further legal career in Liechtenstein, since the two studies bring with

them different advantages. As already stated, this is due to the fact that Liechtenstein law has been substantially taken over or in part derived from Austrian and Swiss law.

Furthermore, with respect to the old and the new educational curricula and the academic career, reference may be had to the Austrian and Swiss reports contained in this Series (Modern Legal Systems) in Volume Four, herein.

§ 1.7. The Bar.

§ 1.7(A). Admission to the Bar.

§ 1.7(A) (1). Formal Requirements.

In order to practice the profession of an attorney-at-law, proof of the following requirements is needed. Only a person who is in possession of the right to enter into contracts, enjoys civil honor and rights, has Liechtenstein citizenship, and is domiciled within the country can become an attorney-at-law. Furthermore, the completion of the study of law at a university recognized by the Government is necessary, the degree of Doctor or Master of Law being required. Then there exist two different paths which may be taken. If a candidate has completed six years of work in the State administration, in which he enjoyed an independent sphere of action, or has served as sole justice or as Presiding Judge of a multi-member court within the country, he may exercise the profession of attorney-at-law. The second path is via a clerkship and a bar examination.[162]

§ 1.7(A) (2). Practical Training.

In order to be admitted to the bar examination, practical work in the field of law for at least two years is required. Of these two years of practical work, at least one-half year must be completed with a Liechtenstein court or administrative authority. The two years of clerkship required are therefore of the same nature as those required for a judge.

§ 1.7(A) (3). The Bar Exam.

When the required clerking has been completed, the Bar Examination must then be successfully passed. If it is not passed, it can be repeated only once, at the earliest after a period of one year. The Board of Examiners, which is appointed by the Government for a term of four years, consists of one member each from the High Court, the Superior Court, the Supreme Court and the Administrative Appeal Instance, as well as an attorney-at-law.[163]

The Bar Examination comprises one written paper in the fields of civil, criminal, administrative and public law and an oral examination in these four fields of law. The written examinations are taken within a time span of two weeks, at most eight hours being available for each field. The papers consist, on the whole, in drafting a decision of a court of first instance or an appeal. The oral examination is held at the earliest one month and at the latest two months after the taking of the last written examination. It is limited to the fields of law which are most important in practice.

The Board of Examiners decides on the result of the examination by a simple majority vote. If an unsatisfactory mark is obtained in two fields of examination or in the oral examination, the examination is considered to have been failed.[164]

§ 1.7(A) (4). The Registration.

If the examination has been passed, the candidate is issued a certificate signed by all members of the Board of Examiners. The new attorney-at-law must submit an application to the Government to be included in the list of attorneys-at-law. A certificate is issued certifying to registration in the list.

§ 1.7(B). Organization of the Bar.

There is an Association of Liechtenstein Attorneys-at-Law in Liechtenstein. Any one who has the right to practice the profession of an attorney-at-law and who is registered in the list of attorneys-at-law kept by the Government can become a member of this association. The purpose of the association is to promote the sound development of the law and legislation, and to protect the image, honor and independence of the profession of attorney-at-law.[164a]

The attorney's right of representation extends to all courts and authorities and includes the right to represent clients as a profession. In exceptional cases, foreign attorneys-at-law may also be permitted to represent clients before Liechtenstein courts and administrative authorities. It is a basic principle of the work of the attorney-at-law that he may not serve or give advice to both parties in the same case. However, an attorney-at-law has the right to substitute, under his legal responsibility, another attorney-at-law for himself when he is prevented from acting.[165]

§ 1.7(C). Nature and Size of Practice.

§ 1.7(C) (1). Scope of Practice.

§ 1.7(C) (1) (a). In Summary.

The representation of clients by an attorney-at-law extends to all courts and administrative authorities in all fields of law. In addition to this, he has the right to carry out trust activities, i.e., he can take over trust companies, property managements, formations, financial consultation, economic advice, tax consulting and accounting. Furthermore, he is authorized to serve as representative in patent matters.

§ 1.7(C) (1) (b). Compulsory Representation.

There is no need to be represented by an attorney-at-law in Liechtenstein law. This means that, both in proceedings before civil and criminal courts and in proceedings before the High Court, the representative of the accused need not necessarily be an attorney-at-law but any other competent person may be appointed as such. In principle, everyone is also free to defend themselves before the courts.[166] However, it should be mentioned that at the final hearing before the Criminal or Jurors' Court a defender is required under the law. Once again however the question is open whether an attorney-at-law or a private party be appointed as such. However, if the accused fails to appoint a defender, one will be appointed for him by the court. This defender will be selected by the court from the List of Liechtenstein Attorneys-at-Law.[167]

§ 1.7(C) (1) (c). Counselling Outside the Bar.

According to the law, only an attorney-at-law has the right to demand payment in accordance with the tariff for his services of a client. This is not true in the case of private persons. They may claim only costs such as stamp taxes and other state fees as well as the cash expenditures necessarily caused by the conduct of the action. Otherwise, other authorized representatives have the same rights of representation as attorneys-at-law, insofar as they can show a document signed by their principal.[168]

§ 1.7(C) (2). The Law Firm.

In order to exercise the profession of an attorney-at-law, approval by the Government is required. Approval to maintain a law office is granted only to Liechtenstein citizens who are domiciled within the country, have completed their legal studies, and have passed the Bar Examination.

Since in Liechtenstein all court instances and administrative authorities are located in Vaduz, most law offices are established there also. Most of them are small offices with a small staff. Larger offices employ more than 30 employees with four to five attorneys-at-law.

§ 1.7(D). Rules of Practice.

§ 1.7(D) (1). Ethical Code.

An attorney-at-law is under the obligation to conduct the representations assumed by him in accordance with the law and to represent the rights of his client faithfully and conscientiously with respect to everyone. He is not only bound to secrecy with regard to the matters entrusted to him but is also under the obligation to enhance by his behavior the honor and dignity of the profession by his honesty and honorable demeanor.[168a]

In addition to these rules of conduct established by law, the Association of Liechtenstein Attorneys-at-Law has issued its own rules, which are, in general, based on the Law on Attorneys-at-Law and implement it. Thus, an attorney-at-law must refrain from all advertising and all soliciting of clients through agents. He is bound to behave properly with respect to his adversary, the courts and the administrative authorities. He is not permitted to give the witnesses instructions or rules of behavior. An attorney-at-law is under the obligation to conduct himself honestly with respect to his colleagues.[169]

§ 1.7(D) (2). Fees.

In accordance with the Rules of the Association of Liechtenstein Attorneys-at-Law, an attorney-at-law is bound by the fees set forth in the tariff. Attorneys-at-law are entitled to these fees in civil and arbitration proceedings as well as in criminal proceedings based on private accusations and for the representation of private participants. The Austrian fee schedule served as basis for that of Liechtenstein, it being adopted substantially in its entirety. In addition, a fee also had to be introduced for the "validation of claim" proceedings, since these proceedings were taken over from Switzerland. The fee schedule is divided into nine fee items. The first three items set forth the fees in civil actions; in execution proceedings; in bankruptcy and estate proceedings; and in legal-aid proceedings. The basis for the application of a given fee is the value of the matter at issue in civil

proceedings; the value of the claim as well as of ancillary fees in execution proceedings; the amount of the claim filed as well as ancillary fees in bankruptcy and estate proceedings; and the value of the matter at issue in legal-aid proceedings. Tariff Item IV sets forth the fees in criminal proceedings. For the drawing up of letters and briefs, the fees indicated in Items V and VI apply. Tariff Item VII governs transactions carried out outside the office of the attorney. The last two items are intended for telephone calls, conferences and travel expenses. If, in the individual case, the service of the attorney-at-law considerably exceeds the average in extent or nature then the compensation for this is to be set in reasonable amount, regardless of the fee contained in the schedule, and in particular with due consideration of the time and effort expended.[170]

§ 1.7(E). Legal Aid.

Whoever is unable to pay the cost of an action without impairing the minimum support necessary for himself and his family can obtain the right to sue **in forma pauperis.** In this way, the party is exempted for the intended civil action from the stamp tax and the state fees; from giving security for procedural costs, and from those fees which are caused by the bringing of the action. The request for permission to sue **in forma pauperis** must be submitted to the District Court, which will decide on the granting or refusal thereof.[171]

If the accused in a criminal proceeding is unable to bear the cost of his defense without impairing the support necessary for himself and his family, the court must, on request of the accused, order that a lawyer be appointed for him, the expense of whom the accused need not bear.[172]

In both cases, however, the inability to pay the costs must be proven. Otherwise, the request for the right to bring an action **in forma pauperis** or for the appointment of an attorney will not be granted.

§ 1.7(F). The Notary Public.

Notaries are unknown in Liechtenstein. Services which are performed by a Notary in Austria are, in principle, performed by the court in Liechtenstein. Thus, in general, the court is competent for public recordings. Certifications can be effected by Mediators. In certain cases, however, certification by the court is required.[173]

§ 1.8. Recent Developments.*

§ 1.8(A). United Nations Membership.

On September 18, 1990, the principality of Liechtenstein became the 160th and the smallest member of the United Nations. Previously, Liechtenstein and Europe's other mini-states, Monaco, The Vatican, Andorra, and San Marino were denied admission to the League of Nations. For that reason, when the United Nations was formed, the mini-states did not seek admission. However, following the dissolution of Europe's colonial empires, a waive of independence brought Asian, African and West Indian mini-states into the United Nations ranks. Prior to the admission of Liechtenstein, St. Kitts and Nevis were ranked as the smallest members of the United Nations with 36,000 inhabitants. As of February 1992, Liechtenstein had a population of approximately 29,000 of which more than one-third were foreigners.

* The editors wish to thank Liz Higginbotham, J.D. candidate, for her work on this update.

Abbreviations

ABGB	Austrian Civil Code	1811
Abs.	Paragraph	
Art.	Article	
CH	Switzerland	
EFTA	European Free Trade Association	
EO	Execution Order	LGBl 1972/32
f.	Following (Page)	
ff.	Following (Pages)	
FinG.	Finance Law	
FL	Principality of Liechtenstein	
FL-Dok.	FL - Documentation	
FL-Wirt.	Municipality Law	LGBl 1960/2
GOG	Court Organization Law	LGBl 1922/16
LES	Liechtenstein Collection of Decisions	
LGBl	Liechtenstein National Law Gazette	
LJZ	Liechtenstein Jurists Journal	
LPS	Liechtenstein Political Writings	
LVG	National Administration	LGBl 1922/24
PGR	Law on Persons and Companies	LGBl 1926/4
RAG	Law on Attorneys-at-Law	LGBl 1968/33
RSO	Ordinance on the Securing of Rights	LGBl 1923/8
SchulG.	School Law	LGBl 1972/2
SJZ	Swiss Jurists Journal	
SR	Property Law	LGBl 1923/4
StG	Tax Law	LGBl 1961/7
StGH	State Court	LGBl 1925/8
StPO	Code of Criminal Procedure	LGBl 1914/3
VAG	Mediator Office Law	LGBl 1916/3
Verf.	Constitution	LGBl 1921/15
VLR	Association of Liechtenstein Attorneys-at-Law	
ZollV.	Customs Treaty	LGBl 1923/24
ZPO	Code of Civil Procedure	LGBl 1912/9

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1912/9	Code of Civil Procedure	ZPO
1914/3	Code of Criminal Procedure	StPO
1916/3	Law on the Mediator Offices	VAG
1920/8	Law concerning Conversion of Crown Amounts into Swiss Francs	
1920	Convention of November 10, 1920 concerning the Handling of the Post, Telegraph and Telephone Service by Switzerland	
1921/15	Constitution of the Principality of Liechtenstein	Verf.
1922/15	Finance Law for the year 1922	
1922/16	Law on the Organization of the Courts	GOG
1922/24	Law on State Administration	LVG
1923/2	Tax Law, Repealed by 1961/7	
1923/4	Property Law	SR
1923/8	Ordinance for the Securing of Rights	RSO
1923/24	Treaty between Switzerland and Liechtenstein on the Inclusion of the Principality of Liechtenstein in the Swiss Customs Territory	ZollV.
1924/5	Law of May 10, 1924 on the Salt Monopoly	
1924/8	Law on the Introduction of Franc currency	
1924/11	Introductory Law of May 13, 1924 to the Customs Treaty with Switzerland	
1925/8	Law covering the State Court	StGH
1926/4	Law on Persons and Companies	PGR
1960/2	Municipality Law	GemG.
1960/13	Participation of the Principality of Liechtenstein in EFTA	
1961/7	Law on National and Municipal Taxes (Tax Law)	
1962/4	Hunting Law of January 30, 1962	
1968/33	Law on Attorneys-at-Law	RAG
1969/28	Rules of Order of the Diet	
1970/3	Rules of Order for the Supreme Court of the Principality in Vaduz	
1970/14	Agreement between Liechtenstein and Switzerland concerning the Recognition and Enforcement of Court Decisions in Arbitration Awards in Civil Matters	
1970/30	Rules of Order for the Supreme Court of the Principality of Liechtenstein	
1971/37	Examination Regulations for Attorneys-at-Law and Legal Agents	
1972/7	School Law of December 15, 1977	SchulG

1977/32	Execution Ordinance	EO
1972/33	Law of May 9, 1972 on State Educational Aids	
1973/10	Supplementary Agreement on the Application of the Agreement between the European Community and the Swiss Confederation of July 22, 1972 for Liechtenstein	
1975/20	Agreement between Liechtenstein and Austria on the Recognition and Enforcement of Court Decisions, Arbitration Awards, Settlements and Public Instruments	
1976/34	Ordinance implementing the Sanitation Law	
1978/37	Treaty between Liechtenstein and Switzerland on the Handling of the Post and Telecommunication Services in Liechtenstein by the Swiss Post, Telephone and Telegraph Enterprises	
1979/55	Law of September 26, 1979 on the Formation of an Economic Development Fund	
1980/71	Ordinance on the Fee Schedule for Attorneys-at-Law and Legal Agents	
1982/57	Law on the Amendment of the Law on the State Court	
1983/1	Finance Law for the year 1983	
1984/8	Law on the Liechtenstein Chamber of Industry and Commerce	

FOOTNOTES

1. Seger, Otto in FL-Dok., page 11.
2. Pappermann, page 17 f.
3. Seger, Otto in FL-Dok., page 14 f.
4. Quaderer, Rupert in LPS 1, page 63 ff.
4a. Geiger, Peter in LPS 8, page 32 ff.
5. Batliner, H.E., page 10 ff. and Constitution, page 51 f.
6. Seger, Otto in FL-Dok., page 24 f.
7. Kranz, Walter in FL-Wirt., page 13 f.
8. Quaderer, Rupert in LPS 8, page 9 ff. and Geiger, Peter in LPS 8, page 29 ff.
9. Batliner, H.E., page 7.
10. Batliner, H.E., page 7.
11. Leutwiler, F., page 5.
12. Batliner, H.E., page 8 f.
13. Batliner, H.E., page 10 f.
14. Batliner, H.E., page 11 f.
15. LGBl 1920/8 (Repealed by LGBl. 1924/8).
16. LGBl 1922/15 (Now moot).
17. Batliner, H.E., page 18 f.
18. Batliner, Gerard in LPS 2, page 37 f.
19. Agreement of November 10, 1920 (Repealed by LGBl. 1978/37).
20. Customs Treaty.
21. Niedermann, Dieter J. in LPS 5, page 88 ff.
22. Batliner, H.E., page 39.
23. LGBl 1923/2 (Repealed by LGBl 1961/7).
24. LGBl 1926/4 PGR.
25. Kindle, Herbert in FL-Dok., page 18 ff.
26. Marxer, Beat in FL-Dok., page 212 ff.
27. Batliner, H.E. in FL-Dok., page 235 ff.
28. Batliner, Herbert, page 7 ff.
29. Batliner, H.E. in "Vaduz als Finanzplatz." (Vaduz as Financial Market), page 5 ff.
30. Strub, Werner, page 2 ff.
31. Batliner, Gerard in LPS 6, page 161 ff.
32. Pappermann, page 48 ff.
33. Wille, Herbert in LPS 6, page 73 ff.
34. LGBl 1921/15, Constitution.
35. Kieber, Walter in FL-Dok., page 55 ff.
36. Kieber, Walter in FL-Dok., page 57 ff.
37. Kieber, Walter in FL-Dok., page 59 ff.
38. Seger, Otto in FL-Dok., page 75 f.
39. Graf, Anton in FL-Dok., page 77 f.
40. LGBl 1923/23 ZollV.
41. LGBl 1960/13.
42. LGBl 1973/10.
43. LGBl 1979/55.
44. LGBl 1972/7 SchulG.
45. Wolf, Josef in FL-Dok., page 110 ff.
46. Wolf, Josef in FL-Dok., page 114 f.
47. LGBl 1972/33.
48. LGBl 1983/1 FinG.
49. LGBl 1924/5.
50. LGBl 1924/11, Art. 19-30.
51. LGBl 1962/4 and 1869/9.
52. LGBl 1976/34 and 1968/33 RAG.
53. LGBl 1968/33 RAG.
54. Voigt, page 33 ff.

55. Voigt, page 36 f.
56. Voigt, page 37 ff.
57. Voigt, page 48 ff.
58. Voigt, page 42 ff.
59. Voigt, page 76 ff.
60. Adamovich/Funk, page 227.
61. Constitution, Article 64, Paragraph 1.
62. Steger, page 74.
63. Batliner, Gerard in LPS 9, page 21.
64. Raton, page 161.
65. Steger, page 115.
66. LGBl 1969/23, Art. 28 ff.
67. Steger, page 116.
68. Steger, page 116.
69. Constitution, Article 64, Paragraph 2.
70. LGBl 1969/23, Art. 27.
71. Steger, page 119.
72. Constitution, Art. 65 and 67.
73. Constitution, Art. 66.
74. Pappermann, page 75.
75. Constitution, Article 10.
76. Constitution, Art. 92, Paragraph 1.
77. Pappermann, page 77 f.
78. LES, 1982 Issue No. 1, page 1.
79. Constitution, Article 10, Second Sentence.
80. Pappermann in SJZ, page 56.
81. Kranz, Walter in FL-Dok., page 70.
82. LGBl 1960/2, Art. 4, GemG.
83. LGBl 1960/2, Art. 5, GemG.
84. Kranz, Walter in FL-Dok., page 71.
85. LGBl 1960/2, Art. 6, GemG.
86. Kranz, Walter in FL-Dok., page 73.
87. LGBl 1960/2, Art. 28 and 29, GemG.
88. LGBl 1984/8.
89. Batliner, Gerard in LPS 2, page 26 ff.
90. Kranz, Walter in FL-Dok., page 103 f.
91. Zurlinden, page 35 ff.
92. Batliner, Gerard in LPS 2, page 37 f.
93. Kranz, Walter in FL-Dok., page 83 f.
94. Graf, Anton in FL-Dok., page 79 ff.
95. Tuor/Schnyder, page 749 ff.
96. LGBl 1923/4 SR.
97. Verdross/Simma, page 276 f.
98. **Ibid,** page 270.
99. **Ibid,** page 334 ff.
100. **Ibid,** page 436 f.
101. **Ibid,** page 440 f.
102. Wildhaber, page 140.
103. LES, 1983 Issue No. 2, page 39 ff.
104. Constitution, Art. 104, Paragraph 2.
105. Ermacora, page 344.
106. LGBl 1925/8, Art. 24, StGH.
107. LGBl 1925/8, Art. 25, StGH.
108. LGBl 1925/8, Art. 26 and 27, StGH.
109. LGBl 1925/8, Art. 18, StGH.
110. LGBl 1925/8, Art. 20, StGH.
111. LGBl 1925/8, Art. 17 and 21, StGH.

111a. LGBl 1925/8, Art. 43, StGH.
112. Brandstätter, page 62 ff.
113. LES, 1947-1954, page 274 f.
114. Brandstätter, page 65 ff.
115. **Ibid,** page 66 ff.
116. LGBl 1925/8, Art. 6, StGH.
117. Brandstätter, page 71 f.
118. **Ibid,** page 112.
119. Ospelt in LPS 8, page 217-245.
120. LGBl 1925/8, Art. 11, StGH.
121. Brandstätter, page 74 ff.
122. LGBl 1982/57.
123. LGBl 1925/8, Art. 29, StGH.
124. LGBl 1925/8, Art. 29-33, StGH and Brandstätter, page 104 f.
125. LGBl 1925/8, Art. 34, StGH.
126. Brandstätter, page 112-114.
127. Brandstätter, page 115 ff. and LGBl 1925/8, Art. 44 ff., StGH.
128. Ritter, page 82.
129. LGBl 1925/8, Art. 55.
130. Ritter, page 86 ff.
131. LGBl 1922/16, Art. 1-3, GOG and LGBl 1970/3, Art. 1-5.
131a. Jehle, Hanspeter in FL-Dok., page 65.
132. LGBl 1916/3, VAG.
133. LGBl 1912/9, ZPO [Code of Civil Procedure].
134. LGBl 1912, Art. 431-496, ZPO [Code of Civil Procedure].
135. LGBl 1912/9, Art. 516-616, ZPO [Code of Civil Procedure].
136. LGBl 1972/32, Art. 1-269, EO and Holzhammer, page 1 ff.
137. LGBl 1972/32, Art. 270-298, EO.
138. LGBl 1923/8, Art. 49-53, RSO.
139. LGBl 1922/16, Art. 4-7, GOG.
140. LGBl 1914/3, Art. 12-15, StPO.
141. LGBl 1914/3, Art. 32 ff., StPO.
142. LGBl 1914/3, Art. 291-296, StPO.
143. LGBl 1914/3, Art. 297-318, StPO.
144. LJZ, 1984 Issue No. 1, page 44.
145. LGBl 1922/16, Art. 2-7, GOG.
146. Jehle, Hanspeter in FL-Dok., page 65 f.
147. LGBl 1912/9, Art. 483-496, ZPO.
148. LGBl 1912/9, Art. 471-482, ZPO.
149. LGBl 1914/3, Art. 223 f-i, StPO.
150. Jehle, Hanspeter in FL-Dok., page 65 f.
151. Ritter, page 61 ff., and Constitution, Art. 97.
152. LGBl 1922/24, Art. 1 ff., LVG and Ritter, page 117 ff.
153. ABGB, Art. 12.
154. Farnsworth, page 45 ff.
155. LGBl 1922/16, Art. 20 ff., GOG.
156. Bertheau, page 1.
157. LGBl 1912/9, Art. 594 ff., ZPO.
158. LGBl 1972/32, Art. 1, EO.
159. LGBl 1975/20 and 1970/14.
160. LGBl 1912/9, Art. 53a, Jurisdiction Rule.
161. Constitution, Art. 65.
162. LGBl 1968/33, Art. 1, RAG.
163. LGBl 1968/33, Art. 3, RAG.
164. LGBl 1971/37.
164a. By-Laws VLR.

165. LGBl 1968/33, Art. 4 ff., RAG.
166. LGBl 1912/9, Art. 25 ff., ZPO and LGBl 1914/3, Art. 16a) ff., StPO.
167. LGBl 1914/3, Art. 16, letter c) and d), StPO.
168. LGBl 1912/9, Art. 40 ff., ZPO.
168a. LGBl 1968/33, Art. 4 ff., RAG.
169. Rules, VLR.
170. LGBl 1980/71.
171. LGBl 1912/9, Art. 63 ff., ZPO.
172. LGBl 1914/3, Art. 16c, StPO.
173. LGBl 1923/8, Art. 81 ff., RSO.