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Liechtenstein

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SECTION A: BRIEF SURVEY OF THE LOCAL SYSTEM

1. Type of System

(a) The legal system of Liechtenstein is a civil law system. The General Civil Code (Allgemeines Bürgerliches Gesetzbuch, hereinafter ABGB), which contains the law of succession, was adopted from the Austrian legal system. **31.01**

(b) There is no federal system in Liechtenstein. Therefore, the Princely Court (Fürstliches Landgericht) in Vaduz, the capital of Liechtenstein, is the appropriate Court of First Instance for matters of succession law. **31.02**

2. Wills

(a) A last will is defined as an instruction from the person testating on who shall receive his or her estate. This instruction is unilateral, revocable at any time, does not require receipt and must meet certain formal requirements. If the last will appoints one person as heir of the whole estate or a quota thereof (appointment as an heir; *Erbeinsetzung*), it is called a testament; otherwise it is called a codicil. Only individual objects are bequeathed by a codicil. While an heir is the universal successor of the deceased, the legatee only possesses a personal claim against the heir. Testaments and codicils are essentially subject to the same rules. **31.03**

Holographic Wills

A will in writing and without witnesses, whether testament or codicil, must be written by hand and signed with the signature of the testator/trix. The addition of the day, the month, the year, and place at which the will has been drafted is not necessary, but advisable (§ 578 ABGB). **31.04**

Allographic Wills

Where the testator/trix has a will written by another person, he or she must sign it with his or her own hand. He or she must further confirm before three capable witnesses, at least two of whom must be present at the same time, that the writing contains his or her last will. Finally, the witnesses must undersign the will (below the testator/trix's signature, in any case on the document itself and not, for instance, on a cover), adding a clause **31.05**

Dr. Stefan Wenaweser and Laura Vogt, *Liechtenstein* In: *International Succession*. Edited by: Louis Garb, Richard Norridge, Oxford University Press. © Oxford University Press 2022. DOI: 10.1093/oso/9780198870463.003.0032

referring to their capacity as witnesses. It is not necessary for the witnesses to know the contents of the testament (§ 579 ABGB). The witnesses must be at least 18 years of age and must neither be relatives of the testator/trix nor mentioned as beneficiaries under the will (§ 594 ABGB).

Deeds of Inheritance

31.06 A deed of inheritance may be concluded, in which a future inheritance or a part thereof is promised and the promise accepted. The deed of inheritance is not limited to spouses or children, but may be concluded with a third party as well. To be valid, however, this deed must be made in writing and the formal requirements for a will must be observed. Deeds of inheritance may be concluded before court. As the deed of inheritance is a kind of contract, requirements for contracts have to be observed, too.

31.07 Public Wills

- *Written Public Wills*: a testator/trix may declare his or her last will before the court in writing. The written will must at least be signed in the handwriting of the testator/trix and handed over to the court personally. The court must draw the attention of the testator/trix to the fact that his or her own signature must appear thereon and must then seal the document judicially and note on the cover whose last will is contained therein. A record of the proceedings must be drawn up, the document must be deposited judicially, and a receipt issued (§ 587 ABGB).
- *Oral Public Wills*: the declaration of a testator/trix who wishes to declare his or her will orally before the court must be recorded and this record deposited in a sealed document in the same way as a written public will (§ 588 ABGB).

Emergency Wills

31.08 Last wills that are made while the testator/trix is in danger of death or losing his or her capacity to make a will may be witnessed validly by youths who are at least 14 years of age. Such emergency wills require only two witnesses, one of whom may write the testament. If there is a danger of contagion, it is not necessary that both witnesses be present at the same time. However, three months after the discontinuation of the danger the emergency will loses its validity (§ 597 ABGB).

31.09 (b) (§§ 695ff. ABGB)

31.10 (i) A will can be revoked by any subsequent valid will at any time (§ 695 ABGB). The revocation is a statement of the testator/trix that a certain version or all previous versions of a will should be revoked. A revocation may be made by establishing a new will (§§ 713–716 ABGB) or by revoking (or destroying) a will already made without making a new will at the same time (§ 717 ABGB). The basic requirements for wills must also be fulfilled (see Section A2(a)) for the revocation of a will, e.g. in a subsequent document. A will is repealed by a subsequently drafted will, not only as regards the appointment of the heir, but also as regards all the other dispositions therein, unless the testator/trix distinctly declares in the subsequent will that the prior testament shall remain in force entirely or in part. This is so, even if the subsequent will appoints only a part of the estate to the heir. The remaining part of

the estate does not pass to the persons appointed in the prior will but to the legal heirs (§ 713 ABGB). A subsequent codicil—several of which can exist at the same time—revokes previous legacies and codicils only as far as they are not in line with the subsequent codicil.

(ii) A marriage does not automatically revoke or affect a will made prior to marriage. **31.11**

(iii) A divorce does not have any direct effects on the will. The will is linked to a person and not to the role as a spouse. Therefore, the will remains in power as long as the testator/trix does not revoke it. In contrast, deeds of inheritance between spouses cease to exist in case of a divorce (§ 602d ABGB). Moreover, before the couple is officially divorced a unilateral revocation of the deed is possible if the couple ceases to live together. The intestate rights of a spouse are extinguished upon divorce, separation, or annulment of the marriage. As regards the succession according to the law (intestate succession), the former (divorced) spouse is no longer a legal heir (*gesetzlicher Erbe*) and is thus no longer entitled to a compulsory share in the estate of the decedent. **31.12**

(iv) A revoked will can revive, if a later will does not fulfil the legally prescribed requirements, such as the testamentary capacity or formal requirements (e.g. witnesses), or by an express declaration in a valid later testamentary disposition. **31.13**

(v) There has been the possibility of a civil partnership between same-sex couples in the legal system of Liechtenstein since 2011. Same-sex couples are treated like spouses, as regards both the law of succession and the annulment of the civil partnership, and the impacts on wills. A will remains in power as long as the testator/trix does not revoke it. In contrast, a deed of inheritance ceases to exist in case of the annulment of the civil partnership. **31.14**

(vi) Unlike deeds of inheritance, mutual (i.e. joint) wills may be revoked by the surviving spouse (§ 583a ABGB). However, a deed of inheritance does not prevent the contracting parties from disposing of their assets during their lifetime (602b ABGB). **31.15**

(c) A testator/trix must nominate the heir him- or herself and is not permitted to leave the nomination of an heir to a third party (§ 564 ABGB). However, powers of appointment may be stipulated in the framework of (discretionary) trusts or foundations according to the Law on Persons and Companies Act (PGR). **31.16**

(d) Under Liechtenstein law, a trust (Art. 899(1) and 904(1) PGR) can be created or funded by will. Likewise, a foundation may be created by way of will or deed of inheritance (Art. 552 § 15 PGR). The rights of forced heirs, however, must not be violated by the creation of a trust or a foundation. Where the estate is not sufficient to cover the compulsory portion of a forced heir, the forced heir may sue the trustee or foundation to pay any deficiency out of the funds transferred into a trust or into a foundation (§ 951 ABGB) (see also Sections A4 and A8(b)). **31.17**

(e) The official register of deposited wills is at the Princely Court in Vaduz. Officially registered testaments must not be inspected publicly. **31.18**

3. Intestacy

31.19 (a) The law is based on the principle of family succession (§§ 727ff. ABGB) and follows the system of succession *per stirpes*. Consequently, the intestate heirs are the closest relatives and the spouse in the following order:

(1) first line: the decedent's descendants (whether legitimate or illegitimate or adulterine children);
(2) second line: the decedent's parents and their descendants (the decedent's brothers and sisters);
(3) third line: the decedent's grandparents and their descendants;
(4) fourth line: the decedent's great-grandparents, but not their descendants.

31.20 The so-called limit of the right of succession (*Erbrechtsgrenze*) is drawn at the great-grandparents: their descendants and even more distant relatives are not entitled to a share in the estate of the decedent.

31.21 Within the lines of succession, distribution is made *per stirpes*. Therefore, if the testator/trix has one son and one daughter, and if the son has predeceased them, the son's children (the decedent's grandchildren) inherit the amount to which the son would have been entitled (representation). Only if in the first line no member has survived will the second line inherit, and so on. Illegitimate children have the same rights as legitimate ones.

31.22 The surviving spouse is entitled to a part of the inheritance together with these lines. If the first line exists, the surviving spouse inherits one-half of the entire estate. Where the second line or the grandparents but no children of the decedent exist, the surviving spouse's portion is two-thirds, in any other case the entire estate. The entitled line inherits only the remaining part of the estate.

31.23 (b) There is no difference between moveables and immoveables in the division of the estate.

4. Freedom of Testation

31.24 (a) As a result of the principle of family succession, the testator/trix is obliged to leave to the forced heirs a compulsory share (§§ 762ff. ABGB). The forced heirs are the testator/trix's descendants and spouse, each in the amount of one-half of their statutory share. If the testator/trix dies without issue, his or her ancestors in the direct line (parents, grandparents) are entitled to one-third of their statutory share. Other persons (such as brothers and sisters) are not entitled to a compulsory share. If there has never been a close family relationship at any time, e.g. between a father and his illegitimate child, the testator/trix may order a reduction of the compulsory share to one-half (§ 773a ABGB). The latter does not apply if the decedent denies personal contact to the child without a reason (§ 773a (3) ABGB). The general rule is that—under certain circumstances—advancements and donations are taken into account in the calculation of the compulsory share. The spouse or the same-sex partner is entitled to a double statutory share, if the spouse or the same-sex partner was significantly involved in establishing the assets of the testator and these assets are the main part of the estate (§ 765 (2) ABGB).

If the testator/trix has failed to include the forced heir in his or her will, a claim to a compulsory share (a claim *in personam*) on the part of the forced heir against the heirs (or in certain circumstances against a donee, e.g. a trustee or a foundation) for payment of a sum of money corresponding to the value in question, arises. A claim to a compulsory share grants the beneficiary only the status of a creditor, not that of an heir. The claim for the compulsory portion becomes statute-barred after three years (§ 1487 ABGB). **31.25**

A person disinherited by the decedent in a lawful manner has no claim to a compulsory share. Disinheriting is only possible by testamentary disposition and within the narrow limits of the statutory grounds for disinheritance, e.g. in case of having deserted the decedent when he or she was in want or distress, of a gross violation of the matrimonial obligation of mutual assistance or of the parents' duty to provide care and education, of a conviction involving life imprisonment or imprisonment for 20 years, or of a highly immoral life (§§ 768ff. ABGB). **31.26**

(b) (i) A deed of inheritance is generally binding. A unilateral revocation is only possible in case of a statutory reason for disinheritance or gross ingratitude. By signing a deed of inheritance the parties can dispose of the entire estate. But compulsory shares remain unaffected by the deeds of inheritance. **31.27**

(ii) The concepts of partition, anticipation, and successor or family settlements do not exist as such. However, a person who is capable of disposing validly of his or her inheritance right is also entitled to waive it in advance through an agreement with his or her predecessor. To be valid, such an agreement must be certified by a judicial record. Such a waiver is—in the absence of a contrary agreement—also binding on the descendants (§ 551 ABGB). Further, anticipated succession can be seen in a legal transaction that (also) has the purpose of fulfilling the later successoral position of the recipient (inheritance right, legacy, compulsory portion), but such a legal transaction is not succession in the actual sense. However, anticipated succession is accepted in legal writing as permissible legal cause, distinct from a gift. **31.28**

(c) Disappointed heirs can institute an inheritance recovery action. The plaintiff maintains his or her better right and demands the estate. This action is only possible after the devolution of the estate (*Einantwortung*). This court order is required for the transfer of the estate to the legal possession of the heirs, enabling the latter to succeed to the decedent's legal position. Before the devolution of the estate, the estate is referred to as dormant (*hereditas iacens*) and has the status of a legal person. **31.29**

(d) Illegitimate children have the same rights as legitimate children. **31.30**

Adopted children and their descendants underage at the time of adoption have the same rights as legitimate children with regard to the adoptive parents and their descendants, but not with regard to other relatives of the adoptive parents (§ 182 ABGB). Adopted children and their descendants underage at the time of adoption preserve their right to a share in the estate of their biological parents and their relatives (§ 182b ABGB). If the adopted child is the decedent, the adoptive parents and their descendants prevail over the biological parents and their descendants. **31.31**

31.32 Half-siblings can inherit only from their parent, but have no rights of inheritance (and no compulsory share) with regard to a step-parent.

5. Maintenance

31.33 The surviving spouse can claim the statutory advance bequest (*gesetzliches Vorausvermächtnis*) that is not included in the intestate share. This comprises the right to continue residing in the matrimonial home and using the household effects (§ 758 ABGB). Finally, under certain circumstances, the surviving spouse may have a maintenance claim against the heirs corresponding to what he or she was entitled to while married to the deceased, limited, however, to the value of the estate (§§ 795f. ABGB). If the spouse marries again, the heirs' obligation to pay maintenance terminates. Everything that the spouse has received out of a compulsory share, out of intestate succession, or any other bequest is taken into account when calculating a possible maintenance claim against the heirs (§ 796 ABGB). Besides, the parents' obligation to pay maintenance for their children is passed to the heirs. The obligation is restricted to the value of the estate. In general, the right but also the liability to maintain is not inheritable.

6. Community Property between Husband and Wife

31.34 (a) The statutory regime is separation of property. The decedent's spouse inherits half the inheritance if there are children or two-thirds of the entire estate with parents or grandparents of the decedent.

31.35 If the spouses agreed upon communal property in a valid marriage agreement, one-half of the entire communal property becomes part of the estate of the decedent. In this case, the succession is governed by a possible testamentary contract.

31.36 (b) There are no further effects of the matrimonial regime.

7. Joint Property

31.37 The decedent's jointly owned property is part of the estate and the heirs inherit it according to their share. Death is a reason for the cancellation (and therefore liquidation) of joint property.

8. Gifts (*Inter Vivos*)

31.38 (a) The general rule is that gifts that were given to an heir prior to death are set off against the heir's inheritance where a compulsory portion needs to be computed (§§ 787ff. ABGB).

31.39 (b) The rule is that every forced heir must at least get his or her compulsory portion. An advancement is set off in cases of succession of children out of a last will only where the testator/trix has expressly ordered a set-off (§ 790 ABGB).

Gifts given to persons who are not entitled to a compulsory portion earlier than two years prior to the death of the decedent must not be set off (§ 785 (3) ABGB). **31.40**

9. Capacity

(a) According to Liechtenstein law any person who is at least 18 years old and who is of sound judgement has testamentary capacity (§§ 566ff. ABGB). Minors between 14 and 18 years of age can only make a will orally before the court. Persons who are mentally sick or heavily impaired in their rationality or recognition are not able to testate. **31.41**

(b) The capacity of witnesses follows the capacity of the testator/trix. Persons who are under 18 years of age, have lost their mental capacity, are blind, deaf, or dumb, or do not understand the language of the testator/trix cannot be witnesses for last wills (§ 591 ABGB). Furthermore, neither are relatives such as the spouse, the testator/trix's parents, children, brothers, and sisters, nor people related by marriage in the same degree, able to act as witnesses. The same applies to an heir or a legatee in relation to the succession bequeathed to him or her (§ 594 ABGB). **31.42**

(c) In principle, whoever is legally capable of acquiring property can also inherit property (§§ 538ff. ABGB). Persons who are unworthy to be heirs, i.e. those who have committed a criminal offence against the decedent (one that is committed intentionally and that carries a sentence of more than one year of imprisonment), or who have exercised undue influence on the testator/trix and his or her last will (e.g. by the falsification or suppression of the will or by the use of force or coercion) are excluded from inheriting (§§ 540ff. ABGB). Such unworthiness to inherit is effective by operation of law and thus does not require an act of disinheritance. It may be asserted by anyone. However, a pardon is possible and cancels the unworthiness to inherit. If this unworthy person has descendants, the latter will become heirs in that person's place in case of intestate succession. An unborn child is able to be an heir, provided it is born alive. For an unborn child a curator must be appointed to safeguard its interests until it is born (§ 278 ABGB). **31.43**

10. Authority (Court, Notarial, or Other)

(a) The appropriate authority is the Princely Court in Vaduz. **31.44**

(b) After the decedent's death, a notification is made to the Liechtenstein court. The court takes proceedings by obtaining information on the estate and on the heirs. The court summons to appear all possible heirs (under a will or intestate) to make a declaration of inheritance (*Erbserklärung*). Under Liechtenstein law, the acquisition of the estate does not take place automatically upon the death of the person leaving the estate, but only upon the termination of the probate proceedings. A court order on the devolution of the estate (*Einantwortung*) is required for the transfer of the estate into the full legal possession of the heir(s), enabling the latter to succeed to the decedent's legal position. Before the devolution, the estate is referred to as dormant estate (*ruhender Nachlass* or *hereditas iacens*) and has the status of a legal person. **31.45**

31.46 The prerequisite for the declaration of inheritance of the heir is a proof before the court of an adequate hereditary title and the declaration on the part of the designated heirs who have legal capacity to inherit that they accept the inheritance (§ 799 ABGB). By an unconditional declaration of inheritance, the heirs assume liability for all the debts of the estate, while a conditional declaration of inheritance limits the heirs' liability to the value of the assets of the estate. In the latter case, an inventory must be drawn up. A refusal of an inheritance is called a disclaimer (*Ausschlagung*). Each party has to bear all his or her own costs. The costs are calculated according to a legal tariff and vary according to the value of the estate.

31.47 (c) The appropriate authority for opposing a succession order is the Princely Court in Vaduz. Disappointed heirs can institute an inheritance recovery action (*Erbschaftsklage*; § 823 ABGB). The plaintiff maintains his or her better right and demands from the defendant the surrender of the entire estate or of a part of it. This action is possible only after the devolution of the estate. Prior to the devolution of the estate an action on a claim to succession (*Erbrechtsklage*) may be initiated if contradicting declarations of heirs have been submitted. In this case, the judge determines the heir with the weaker title and assigns the role of plaintiff to him or her. The action aims at a declaration that the title of the defendant is invalid.

11. Invalidity of Will

31.48 (a) Formal defects, which render wills invalid because they were not drafted in the required form, and defects regarding the contents of wills, can be distinguished. The possible grounds of invalidity of wills are lack of capacity (see Section A9), lack of knowledge (i.e. the testator/trix is not aware that he or she is making a will), defects in formalities (see Section A2), unclear or faulty dispositions by the testator/trix, and defects influencing the testator/trix's intention (e.g. dispositions under fraud, duress, or mistake). A draft of a will is not valid as a will. If the will was made under fraud, duress or error, the will is voidable.

31.49 Defective or unclear dispositions are to be interpreted so as to give effect to the provable intention of the testator/trix. In doing so, circumstances beyond the will may be taken into account. However, the testator/trix's intention can be taken into account only if it is at least indicated in the wording of the will. If it is impossible to interpret the will in such a way that it meets the provable intention of the testator/trix, the dispositions concerned cannot take effect.

31.50 Gaps in the will should be filled according to the assumed intention of the testator/trix at the time of drafting of the will. If the testator/trix uses words with several meanings, the meaning intended by the testator/trix is relevant for the interpretation.

31.51 (b) Apart from formal invalidity the will is only voidable. The parts of the will that are not affected by invalidity remain valid.

31.52 (c) There is no possibility to rectify a will. However, in case of doubt wills should be construed in such a way that they keep their validity (the rule of *favor testamenti*). If several dispositions in a will are invalid or ineffective, the other dispositions of the will remain valid in case of doubt.

(d) The onus of proof is on the claimant who maintains the better right and demands (part of) the estate. **31.53**

12. Simultaneous Death

(a) If there is no external evidence on the time of death of two or more persons, then it is presumed that they died simultaneously (Art. 51 PGR; *Kommorientenvermutung*). There is no legal presumption that the older person died first, as exists in Anglo-American legal systems. The legal presumption (Art. 51 PGR) is that the concerned persons died simultaneously and, therefore, neither person may inherit from the other. **31.54**

The legal result of this presumption of law is that from the death of one of the commorients no rights can be derived from the estate of the other commorient, where either both commorients are reciprocally entitled to inherit or where one commorient is entitled to inherit from the other. In case of commorients who are spouses, their reciprocal right of inheritance lapses and each spouse is succeeded by his or her other legal heirs, in particular, his or her children. **31.55**

The right of succession itself is also a part of the estate. If a designated heir dies between the death of the testator/trix and the devolution of the estate, the right of succession is part of the estate (transmission). This also applies to forced heirships and legacies. **31.56**

(b) See Section A12(a). The presumption that two or more persons died simultaneously can be disproved if someone can provide evidence that one person died earlier than another. The burden of proof lies on the person who claims to be heir as a result of this allegation. The presumption of simultaneous death is a general presumption of law that is not limited to the relationship between spouses and/or the relationship between children and their parents. It is not necessary that the involved persons died in the same danger or natural disaster. The presumption is even applicable where it is clear that two persons cannot have died simultaneously but where it is impossible to prove which of the two persons had survived the other. **31.57**

13. Presumption of Death

If strict evidence of the death of a person cannot be provided, a declaration of the presumption of death (*Verschollenheitserklärung*) can be issued under certain circumstances (disappearance in high danger of death or for at least five years without any news) and upon motion by those who derive rights from someone's death. For the preservation of the rights of the person presumed to be dead a curator has to be appointed during the proceedings (Art. 54ff. PGR). There are certain delays for the initiation of such proceedings that must be respected. If during the period prescribed by the judge (at least one year) no notice of the person presumed to be dead or of third persons regarding the person presumed to be dead are submitted to the court, the declaration of a presumption of death regarding the missing person will be issued. From this time those who derive rights from the death of the missing person may assert these rights, as if the person had died (Art. 56 (1) PGR). The declaration **31.58**

has retrospective effect starting from the moment of danger of death or of the last notice from the missing person (Art. 56 (2) PGR).

14. Estate Taxes

31.59 (a)–(d) In Liechtenstein, there have not been any estate taxes since 2011, when the estate tax (*Nachlasssteuer*) and the inheritance tax (*Erbanfallsteuer*) were abolished. The inheritance is now only taxed within the scope of the tax on assets, as soon as the heir is in legal possession of the inheritance.

15. Administration of Estates

31.60 (a) Under Liechtenstein law, the main administrator of the estate is the court. But prior to the devolution of the estate an heir may request that the court entrust him or her with the administration of the estate. If the heir is able to prove sufficiently his or her right to the inheritance, the court has to comply with this request. If the administration of the estate cannot be entrusted to an heir (or several heirs) due to a lack of confidence or because opposing declarations of inheritance are deposited, a curator must be appointed by the court. Likewise, if no heir exercises his or her right to administer the estate, the court has to appoint a curator for this task, but only if an administration of the estate is necessary. In cases of inheritance by testamentary instrument, it is possible to appoint a testamentary executor who supervises the implementation of the last will.

31.61 (b) The court supervises the administration of the estate. If necessary, the court can demand a report by the administering heir or heirs. Either the probate court or a responsible person (public officer) of each Liechtenstein municipality has to draw up an inventory and value the estate.

31.62 (c) See Section A15(a) and (b).

31.63 (d) At this stage—i.e. before the devolution of the estate—only an action on a claim to succession (*Erbrechtsklage*; see Section A10(c)) can be initiated. In such a case, the parties will be referred to civil proceedings by the court. Where problems are suspected in the administration of the estate any heir or a possible testamentary executor may adhere to the court and engage its supervisory authority.

31.64 (e) See Section A10(b).

31.65 (f) If there are heirs, they have to pay the decedent's debts and the costs of the estate proceedings (up to the value of the estate—depending on whether they have made an unconditional or a conditional declaration of inheritance). See also Section A10(b).

31.66 (g) See Section A10(b).

31.67 (h) The heirs are entitled to enter into an agreement allowing for a division of assets other than that stated in the will or provided for by the laws of intestacy as long as the division of assets stated in the will is not a binding instruction according to § 709 ABGB.

The heirs can enter into a such agreement during the administration or after the devolution of the assets. The reallocation of assets in an agreement does not have tax consequences as there are no inheritance taxes and no gift taxes in Liechtenstein.

(i) See Section A10(c). **31.68**

16. Domicile/Nationality

(a) The relevant articles are Arts. 29 and 30 of the Liechtenstein Private International Law (IPRG). **31.69**

Choice of law: as a basic principle, any legal succession *mortis causa* is determined by the decedent's personal statute at the time of death. The personal statute is the law of the country of which the person concerned is a national, and if a person has no nationality, the law of the country of his or her habitual residence (*Gewöhnlicher Aufenthalt*; actual place of living) (Art. 10 IPRG). A person holding several nationalities may choose one of the several home laws or the law of the country in which he or she had his or her last habitual residence (Art. 29 IPRG). However, a Liechtenstein national may not exercise a choice of law in respect of his or her succession unless his or her habitual residence was abroad at the time of death. A foreign national has the choices cited here regardless of his or her domicile (*Wohnsitz*; not only the habitual residence but the country where the person is registered). Therefore, a foreigner may choose the law of any country whose nationality he or she holds or in which he or she had his or her last habitual residence. The choice of law may be made in a deed of inheritance or in a will. Formally, it must meet the requirements of at least one of the following legal systems according to which also the legal capacity to make a will, a deed of inheritance, or an agreement by which an inheritance is renounced is determined: **31.70**

- one of the home laws (*Heimatrechte*) in relation of the testator/trix at the time of the legal act or of death.
- the right of the state in which the testator/trix had his or her habitual residence at the time of the legal act or of death.
- the law of Liechtenstein if the probate proceedings are conducted before a Liechtenstein court.

The same rules apply to the revocation or annulment of a last will or other legal act (Art. 30 IPRG).

Deceased having no Liechtenstein domicile (or habitual residence): if the deceased was not domiciled in Liechtenstein prior to his or her death, Liechtenstein probate jurisdiction will not necessarily be given and, therefore, the Liechtenstein probate jurisdiction regime will not be applied to the estate (see also Section A16(b)). Lacking such regime, the general rules will apply deferring matters of statutory forced shares to the deceased's status law unless a valid choice of law points to another law. Where the deceased's assets include Liechtenstein real estate, such real estate necessarily falls within the jurisdiction of the Liechtenstein probate court, with the effect of Liechtenstein succession law being applied, again unless the deceased has validly chosen some other law, for example his or her home law. In the case of moveable assets located in Liechtenstein forming part of the estate, Liechtenstein probate jurisdiction may also be established (see also Section A16(b)), subject to the same **31.71**

consequences and exceptions. The nationality of the deceased makes a difference not in terms of the rules, but to the extent that Liechtenstein courts are more likely to exercise probate jurisdiction in the case of a deceased Liechtenstein national than in the case of a foreigner, due to the higher degree of recognition of such proceedings by foreign countries.

31.72 If the deceased was a foreign national with various nationalities and did not make any choice of law as to the relevant law, the decision of which law of nationality is applicable must be made by weighing up to which legal system the deceased has the closest link.

31.73 (b) The jurisdiction of Liechtenstein courts to handle estates primarily depends on the domicile and location of the assets. Liechtenstein courts will establish jurisdiction over an estate and institute probate proceedings if the deceased, whether a Liechtenstein or foreign national, was domiciled in Liechtenstein prior to death. If not so domiciled, Liechtenstein jurisdiction depends on whether the deceased, again regardless of his or her nationality, has left behind assets located in Liechtenstein. But even then Liechtenstein jurisdiction will not take priority and the probate proceedings and the administration of the assets will be deferred to a competent court of jurisdiction outside Liechtenstein. Only if no other authority assumes responsibility will Liechtenstein courts institute probate proceedings.

31.74 Liechtenstein courts are exclusively competent in probate matters as regards real estate located in Liechtenstein, but never as regards foreign real estate.

31.75 In any case, the scope of Liechtenstein probate proceedings is confined to those parts of the estate over which the courts can exercise control. In so far as such parts are located outside Liechtenstein, this rule refers to whether the outcome of Liechtenstein probate proceedings will be recognized by a foreign court as a matter of law or practice. It is fair to say that such recognition will more often be granted in a case where the deceased was a Liechtenstein national than otherwise.

31.76 If there are no assets in Liechtenstein, the court will not grant an order of probate or succession.

17. Charitable Giving

31.77 (a) A gift to charity can be made by legacy or a binding instruction to an heir. In case of a binding instruction to an heir the charitable organization has no legal option to enforce the instruction. Giving to charity on death is only restricted to the extent that the gifts must not violate the compulsory portion of legal heirs. If so, the person entitled to a compulsory portion has a legal claim against the charitable organization.

31.78 (b) Gifts do not have to be outright to a charity. If a will specifies particular charitable objects, then a testamentary executor should be provided for so that the gifts can be effected in line with the charitable objects set out. Alternatively, the formation of a trust or foundation with charitable objects may be provided for in a will.

31.79 (c) Gifts to foreign charities are possible.

31.80 (d) The Liechtenstein tax law no longer has a gift tax. The gift tax was abolished in 2011.

SECTION B: APPLICABLE LAW/PROCEDURE WHERE FOREIGN ELEMENTS ARE INVOLVED

1. Jurisdiction

(a) See Section A16. **31.81**

(b) See Section A16. **31.82**

(c) As Liechtenstein has no federal system and there is only one court in Liechtenstein, the Princely Court in Vaduz is always the appropriate authority for inheritance matters. **31.83**

2. Applicable Law

See Section A16. In relation to immoveable property situated in Liechtenstein, the Liechtenstein court would apply Liechtenstein law unless a valid choice of law points to another law. **31.84**

3. Foreign Succession/Inheritance Orders

(a) Foreign decisions regarding succession and other rights in the estate except for immoveable assets will be recognized as far as they do not violate Liechtenstein law and as far as the Liechtenstein Court of Justice has not assumed probate jurisdiction in relation to the same assets. **31.85**

(b)–(c) It is not necessary to obtain a local succession/inheritance order. However, a holder of a foreign succession/inheritance order giving him or her the right to moveable assets might be asked to provide an order authorizing the handing over of the moveable assets according to Art. 150 of the Non-Contentious Proceedings Act (Ausserstreitgesetz, AussStrG). **31.86**

(d) Liechtenstein, as the first continental-European jurisdiction, has codified the Trust in 1926 in Arts. 897–832 PGR. Furthermore, Liechtenstein knows the *Anstalt* or Establishment, Arts. 534–551 PGR—as well as the *Stiftung* or Foundation, Art. 552, §§ 1–41 PGR—which are all provided for in the PGR since 1926. Regarding the forced heirship rules see Sections A2(d), A4, and A8(b). **31.87**

4. Two or More Succession or Probate Orders

See Section A16. **31.88**

5. Assets

See Section A16. **31.89**

6. Expert Evidence

31.90 (a)–(b) There is no necessity for a foreign lawyer (or other) to give evidence regarding a foreign will.

7. Unity of Succession

31.91 The principle of the unity of succession is accepted. If possible, one court is supposed to carry out the entire court proceedings of succession. This means that in case of more than one involved jurisdiction (e.g. nationality, residence, assets, etc.) a single court should handle the succession. It is not expedient that different courts carry out different aspects of a decedent's estate (see also Section A16).

8. Formalities

31.92 Formally, a will must meet the requirements of at least one of these legal systems:

- the home laws (*Heimatrechte*; laws of nationality) in relation of the testator/trix at the time of the legal act or of death;
- the right of the state in which the testator/trix had his or her habitual residence at the time of the legal act or of death;
- the law of Liechtenstein if the probate proceedings are conducted before a Liechtenstein court. The same rules apply to the revocation or annulment of a last will or other legal act (Art. 30 IPRG).

9. The Hague Convention

31.93 The Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions is not applicable (see also Section B8).

10. Wills

31.94 (a)–(i) See Sections A16 and B8.

11. Domicile/Nationality

31.95 (a) See Section A16. The relevant time may be either the date of execution or the date of death (Art. 30 IPRG). The requirements of at least one of the legal systems mentioned in Section A16 and B8 (Art. 30 IPRG) must be fulfilled, so that the will or deed of inheritance is valid.

(b) The domicile of the beneficiary is not relevant for any of the answers in Section B. **31.96**

(c) The jurisdiction the decedent had the closest relations with is relevant. **31.97**

12. Taxation

In this respect, the statements given at Section A14 generally apply. There are no estate taxes in Liechtenstein. **31.98**