

# HIGH-VALUE CROSS-BORDER ASSET RECOVERY - LIECHTENSTEIN

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## Typical Situation

- Main proceedings abroad
- Assets of foreign defendant held by Liechtenstein (FL) structure
- Defendant is beneficial owner (BO) of FL structure
- Freezing of assets of FL structures to secure claims

## Issues

- Freezing of assets through civil preliminary injunction and/or criminal seizure order
- Enforcement of foreign judgements
- Necessity to file FL civil lawsuit, stay of proceedings
- Liability of FL structure for claims against BO – „reverse piercing the corporate veil”

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## **Freezing of assets I - Preliminary injunction in civil courts against foreign BO**

- Jurisdiction of FL courts against foreign BO – jurisdiction where assets are located (= structure, if BO has a claim against / control over the structure)
- Requirements:
  - claim needs to be substantiated and established with preponderance of evidence
  - risk that enforcement of claim is thwarted
- FL structure is liable third party, might join injunction proceedings – potential increase of litigation costs

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## **Freezing of assets II - Seizure order of criminal court to secure later forfeiture**

- Mostly caused by criminal action of foreign civil plaintiff or request for legal assistance in foreign criminal investigations
- Foreign criminal investigations often lead to FL investigations for money laundering
- Prosecution decides on necessary steps in the criminal investigations, e.g. application for seizure order
- Requirements for seizure order:
  - probable cause for criminal act
  - risk that forfeiture might be thwarted
- Foreign tax fraud now grounds for money laundering charges in FL, can lead to seizure and later forfeiture

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## **Enforcement of foreign civil judgements**

- Foreign judgements are not directly enforceable!
- Special enforcement procedure, foreign judgement can be turned into FL judgement
- However: full follow on proceedings to void prior judgement, court has to redo the whole case on facts and legal issues

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## **Necessity to file FL civil lawsuit, stay of FL proceedings**

- More likely that FL proceedings on merits necessary to maintain preliminary injunction of civil court, foreign proceedings not sufficient
  - Literature clearly states that only proceedings in jurisdictions with recognition and enforcement treaty is sufficient; FL District Court deemed foreign proceeding sufficient regardless of enforceability
  - Security deposit for adverse costs, can be significant (e.g. value in dispute CHF 70mn. -> CHF 1.5mn. deposit)
- FL courts tend to not stay FL proceedings pending the outcome of foreign proceedings
  - Main argument – foreign judgement cannot be enforced in FL (FL Court of Appeals, 29 Sept 2019)
  - Dispute about stay of FL proceedings is an interim dispute at the full value in dispute – cost risks of interim proceedings
- Both issues currently highly disputed

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## **„Reverse piercing the corporate veil“**

- Foreign BO misuses FL structure in bad faith (intent) to safeguard assets from foreign proceedings, tries to make assets judgement proof
- FL structure is liable for claims against foreign BO

## **Separate claims against FL structure**

- money laundering
- damages claims based on collusion
- creditor protection claims
- unjust enrichment claims
- limitation periods for claims against FL structure need to be observed carefully!

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**THANK YOU!**

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