

Civil Proceedings in Liechtenstein

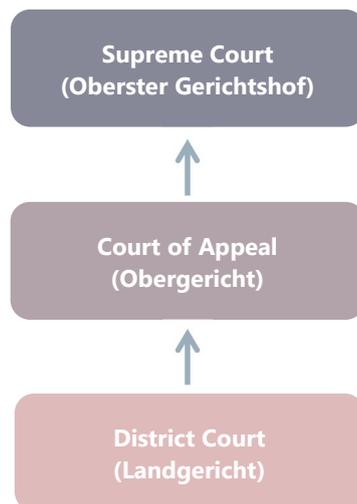
An overview

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This summary provides a general overview of civil court proceedings in Liechtenstein. Specific details and exceptions have been omitted in the interest of brevity and clarity.

The Court System

Liechtenstein's judiciary consists of three instances: the District Court ("Landgericht"), the Court of Appeal ("Obergericht"), and the Supreme Court ("Oberster Gerichtshof"). In certain cases, an extraordinary legal remedy may also be brought before the Constitutional Court ("Staatsgerichtshof"), but solely for the protection of constitutionally guaranteed rights. Decisions are rendered by a single judge at the District Court, while in all higher instances matters are decided by a panel of judges (Court of Appeal: three judges; Supreme Court: five judges).



Liechtenstein's legal system is largely modelled on Austrian and Swiss law. For instance, property law, large parts of administrative law, and social security law are derived from Swiss law, whereas general civil law and civil procedure are based on Austrian law. Consequently, the court structure and the conduct of proceedings in Liechtenstein closely resemble those in Austria.

Proceedings before the District Court (Landgericht)

Contentious Proceedings

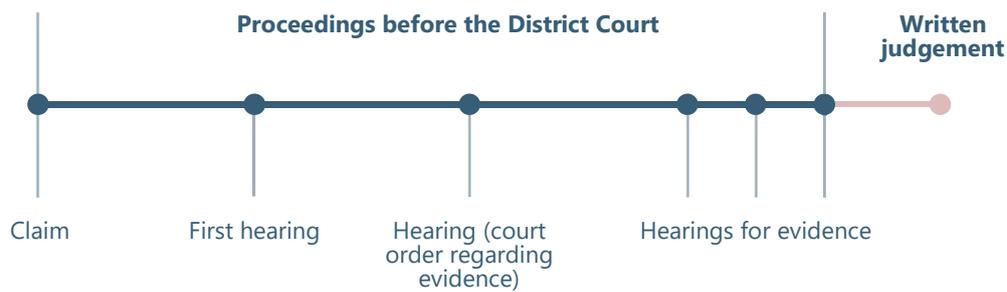
Civil proceedings are initiated by the filing of a written claim with the District Court. The claim must set out the facts establishing the right asserted and specify the evidence which the plaintiff/claimant relies on. In principle, new evidence may be introduced during the proceedings; however, each party is subject to a duty to promote the efficient conduct of proceedings. Accordingly, parties must submit their statements and evidence in a timely and complete manner. The court may reject evidence applications that were negligently delayed and would significantly delay the resolution of the case. This rule also applies in appellate proceedings: if a party should have recognized in the first instance that a particular item of evidence might be relevant, it must have been introduced at that stage. It is therefore advisable to submit all relevant evidence as early as possible, since new evidence is generally inadmissible on appeal.

After conducting a brief review of its jurisdiction, the court will serve the claim on the defendant and set a date for the first hearing.

For parties residing outside Liechtenstein, documents are normally delivered through diplomatic channels (via requests to local courts). Where translations are required, the court may order them and require an advance payment to cover the costs of a court-appointed translator.

The first oral hearing primarily provides the defendant with an opportunity to raise procedural objections and to request that the plaintiff provides security for litigation costs (the so-called "aktorische Kautiion"). Thereafter, the court will instruct the defendant to file a statement of defense. If no security is required, the court may order the defendant to file its written response without holding an initial hearing.

Further hearings will be scheduled as necessary to hear evidence and enable the court to reach a final decision. The standard means of proof are documents, witness testimony, and expert opinions.



If a witness resides outside Liechtenstein, he or she may voluntarily travel to court to give evidence in person. Should the witness choose not to appear voluntarily, the court will request judicial assistance from the competent court at the witness's place of residence, which will subsequently conduct the examination. Subject to available technical means, hearings may also be conducted by video conference, although this remains the exception. Parties and court-appointed experts are generally expected to appear in person before the court. If there are important reasons, parties may also be heard via video or through mutual legal assistance.

In principle, witnesses must testify orally before the court. Written sworn statements may only be taken into account if the witness can also be examined orally (regarding precautionary measures, see below).

Experts are appointed by the court, although the parties are free to obtain and submit private expert opinions of their own.

Once the court considers the facts of the case to be sufficiently established and the matter ready for decision, the proceedings are closed and a written judgment is issued.

In practice, first-instance proceedings typically last between nine and twelve months, although significantly longer durations are possible, particularly where witnesses must be heard through foreign courts.

Non-Contentious Proceedings

In addition to ordinary civil proceedings, Liechtenstein law also provides for the so-called non-contentious proceedings ("Ausserstreitverfahren"). The term can be somewhat misleading, as the issues dealt with in such proceedings may, nevertheless, be highly disputed. The types of matters subject to this procedure are specifically determined by statute. They primarily include family law matters, as well as other areas, such as the judicial supervision of trustees and foundations.

In substance, the procedure resembles that of ordinary civil proceedings but includes certain notable differences. In particular, the court enjoys greater

procedural flexibility and may also initiate proceedings ex officio, i.e. without a formal statement of claim by a party.

Decisions in non-contentious proceedings are rendered in the form of a court order (“Beschluss”). Such orders may be appealed (see below), but an appeal only has suspensive effect if the court expressly grants it. Otherwise, the orders take immediate (provisional) effect.

Court of Appeal (Obergericht)

Judgments of the District Court may be appealed to the Court of Appeal (Obergericht) within a non-extendable period of four weeks. In such an appeal (“Berufung”), the parties may challenge procedural errors, the findings of fact, or the legal assessment of the court of first instance. New evidence may be introduced only in very limited circumstances and is excluded if it could and should have been submitted earlier through the exercise of reasonable care.

Once the appeal or the notice of appeal has been served on the opposing party, no further new submissions may be made.

An oral hearing before the Court of Appeal, including the taking of evidence, is held only upon express request of the parties or, in exceptional cases, ex officio. The appellate judgment is delivered in writing to the parties. In practice, appellate proceedings take approximately three to six months.

Most decisions of the Court of Appeal (“Berufungsurteile”) may be further appealed to the Supreme Court (see below).

Where the first-instance decision is issued in the form of a court order (“Beschluss”)—which is typical for procedural or interlocutory matters—an appeal (“Rekurs”) must be lodged within a non-extendable period of 14 days. Such court orders include, for example, decisions concerning security for litigation costs or dismissal of an action due to lack of jurisdiction.

Orders of the Court of Appeal (“Beschlüsse”) may in turn be challenged before the Supreme Court, unless they fully confirm the decision of the District Court. In certain cases, an extraordinary appeal may also be brought before the Constitutional Court (see below).

Supreme Court (Oberster Gerichtshof)

The highest ordinary appellate instance is the Supreme Court (OGH).

Appeal judgments of the Court of Appeal may be challenged before the Supreme Court by way of “Revision” within a non-extendable period of four weeks, except where (a) the amount in dispute is below CHF 5,000, or (b) the amount in dispute

is up to CHF 50,000 and the appeal judgment affirms the District Court's decision (subject to certain further exceptions).

Proceedings before the Supreme Court are conducted on the file only. Both legal errors and certain substantive and procedural defects may be asserted. The facts as established by the lower courts can no longer be challenged. New evidence or factual allegations are inadmissible.

No oral hearing is envisaged. The judgment is served in writing. A decision of the Supreme Court on an appeal typically takes 4 to 6 months; appeals against orders usually take somewhat less.

Decisions of the Supreme Court are generally not subject to further appeal. In some cases, however, the Constitutional Court may be seized as an extraordinary remedies instance (see below).

Constitutional Court (Staatsgerichtshof)

The Constitutional Court (Staatsgerichtshof) is not part of the ordinary judiciary but serves as the constitutional court of Liechtenstein. It has jurisdiction over alleged violations of constitutionally guaranteed rights, as well as over the review of the constitutionality of statutes and the legality of regulations. This includes provisions of the European Convention on Human Rights (ECHR), European law (EEA), or other international agreements.

With a few exceptions, all final and last-instance decisions of the civil courts can be brought before the Constitutional Court within a non-extendable period of four weeks by means of a complaint ("Individualbeschwerde"). A complaint may only be lodged after all ordinary legal remedies have been exhausted. The Constitutional Court examines solely whether a constitutionally protected right has been violated by a judicial decision.

In principle, individual appeals do not have suspensive effect, although this may be granted in certain circumstances and upon request. This will be the case if the appellant can demonstrate that they would suffer serious disadvantage without suspensive effect.

Preliminary Injunctions

If the party at risk can certify (make credible) its claim as well as an immediate and foreseeable danger, and submits the corresponding application, the District Court may issue an interim injunction ("Einstweilige Verfügung" / "EV"). Such danger exists if, without the EV, irreparable harm would occur or a later enforcement of the claim would no longer be possible or would only be possible with difficulty. If no enforcement treaty exists (such treaties exist only with Austria and Switzerland) and the claim would have to be enforced outside Liechtenstein, such a risk is in almost all cases presumed. The same applies to claims against a

company without active business operations (pure holding companies or "Sitzgesellschaften").

Unlike ordinary proceedings, this procedure is characterised by speed. Accordingly, in this procedure the facts need not be proven in full, but merely certified. It is therefore sufficient if the facts are sufficiently probable (prima facie evidence). In practice, all facts should be presented with documentary evidence. Affidavits by witnesses are also permitted. The parties themselves may not give a sworn statement but may offer oral testimony in court if they are immediately available.

The EV procedure is independent of the subsequent ordinary proceedings ("Rechtfertigungsverfahren"). The factual assumptions in the EV are therefore not binding at a later date.

In very urgent situations, a temporary injunction can be requested verbally and may be granted within a few hours, based on initial evidence. As a rule, however, the application is submitted in writing. All documents must be attached to the application and translated if necessary. The decision is then usually made within two to four days.

The court will give the opposing party the opportunity to make a submission (typically within three to seven days), unless it is certified that this would take too long or that the plaintiff's rights would be jeopardised by the opponent's prior knowledge.

If the EV is granted, the applicant is obliged to file a lawsuit within a set period and thereby initiate the ordinary proceedings.

Both parties may challenge this decision, just as they may challenge a court order in the ordinary procedure (see above). Furthermore, there is a possibility of filing an objection ("Einspruch") and at the same time submitting new evidence if the opponent was not heard by the court beforehand. A hearing is then scheduled, at which the opponent may present his/her evidence. The applicant, however, is subject to a prohibition on renewal. The court then issues a further decision regarding the EV, which may in turn be challenged in the same way as a court order (see above).

Once an EV has been issued, it remains in force until it has been legally revoked, i.e. until the revocation decision can no longer be properly contested.

Security Deposit

If a preliminary injunction (EV) is granted, the court may require a security deposit to be provided. This is intended to compensate any potential damage suffered by the opposing party, should the injunction later prove unjustified. This is especially imposed if the court is not fully convinced by the applicant's submissions and the evidence submitted. This security deposit must, however, be distinguished from the security deposit for the costs of proceedings (see below). Accordingly, the applicant may be required to provide either or both of these deposits.

Liability

If a preliminary injunction (EV) proves to have been unjustified, the applicant must compensate the respondent for any damage caused. The injunction is unjustified, for example, if it is successfully contested by a legal remedy, or if the claim is not pursued further in the ordinary proceedings, or is lost in those proceedings. As fault is not a pre-condition, even a good-faith applicant may become liable for damages. The amount of the damage and causation are determined in a separate procedure in which the respondent need only certify the damage.

Enforcement by Summary Disposal ("Rechtsöffnung")

The enforcement-by-summary-disposal procedure ("Rechtsöffnungsverfahren") is a summary procedure in which the court examines solely whether a title for enforcement exists. An enforcement title is a (domestic or foreign) public document (such as a foreign judgment) or an acknowledgement of debt signed by the debtor (or an original contract which proves or acknowledges a claim).

The substantive legal question of whether the claim exists or not is decided only in a preliminary manner. The plaintiff initiates this procedure by filing an application for the issuance of a payment order ("Zahlbefehl"). If the defendant does not file an objection ("Widerspruch") within the two-week period, the order becomes final, enforceable and thus has the same effect as a final judgment. If an objection is raised, it need not be justified and the payment order is set aside.

Thereafter the parties are summoned to a hearing at which the plaintiff must only present documentary evidence, whereas the defendant may present any evidence that they hold at the time of the hearing. Witnesses are heard only at the defendant's request and only if they appear voluntarily for the hearing.

If the District Court rejects the plaintiff's application to overturn the objection, that decision has no binding effect for subsequent proceedings. The plaintiff may file a regular lawsuit.

If, however, the application is granted, the defendant may continue to defend himself/herself and in ordinary civil proceedings seek a declaratory judgment that the claim does not exist ("Aberkennungsklage"). In this case the parties swap roles — the plaintiff becomes defendant. This is advantageous for the current defendant (the original plaintiff) because now it is his/her opponent (the original defendant) who must furnish any security for the costs of proceedings. The burden of proof remains, however, as before: the (new) defendant must prove the claim.

This procedure has advantages and disadvantages. The Advantages include that a potentially high security deposit for legal costs may be avoided or imposed on

the opposing party. In addition, this procedure is advantageous if the eligible party suspects that the debtor is unwilling or unable to sustain a lengthy legal process. A disadvantage may be that this procedure could in fact lengthen proceedings, since such procedure may nonetheless end in an ordinary civil lawsuit.

Enforcement of Foreign Judgements and Arbitral Awards

Enforcement of Foreign Judgements

As a member of the Hague Convention, Liechtenstein recognises decisions of other Contracting States in the field of child support and enforces such orders. Claims of other types cannot be enforced unless enforcement treaties exist. Such treaties exist only with Austria and Switzerland. Decisions of courts in other countries are not enforced domestically.

Arbitral Awards

Liechtenstein has also acceded to the New York Convention. Hence, foreign arbitral awards are recognised and may be enforced. In such a case the court will require from the plaintiff a copy of the award bearing the signatures of all arbitrators as well as a certified German translation.

Costs

Reimbursement of Costs

In Liechtenstein, the basic principle is that the party that loses the case must reimburse the winning party for its costs. During the proceedings, interim decisions on the bearing of costs may also be made by the court. These decisions follow statutory tariffs, which are determined by the type of activity and the amount in dispute ("Streitwert").

The amount in dispute is central in cost matters. If the plaintiff sues for a specific payment, that amount constitutes the value in dispute. However, if the subject matter of the dispute is a non-monetary claim, the plaintiff must estimate its value himself/herself. It is also possible for the court to have the amount estimated if the defendant challenges the claimed value. However, the court will do this only in cases where it considers the amount to be inappropriate.

A high amount in dispute therefore results in high cost awards benefiting the winning party as well as high securities for costs of proceedings. Conversely, low amounts in dispute mean lower cost decisions, which may have the consequence

that even the costs agreed to with one's own lawyer cannot fully be recovered. In that case, the winner may have to pay the remaining portion of the lawyer's fees himself. If the party loses, the advantage is that lower costs must be paid to the opponent and also lower court fees are incurred.

Court Fees

Court fees in Liechtenstein are dependent on the amount in dispute and are determined by the court in accordance with the Court Fee Act ("Gerichtsgebührengesetz"). In contentious civil proceedings, court fees range from CHF 120 (for an amount in dispute up to CHF 1,000) to CHF 19,000 (for an amount in dispute of CHF 10,000,000 or more). In non-contentious proceedings, enforcement proceedings, "Rechtssicherungsverfahren", and the above mentioned "Rechtsöffnungsverfahren", court fees are generally significantly lower.

Legal Fees

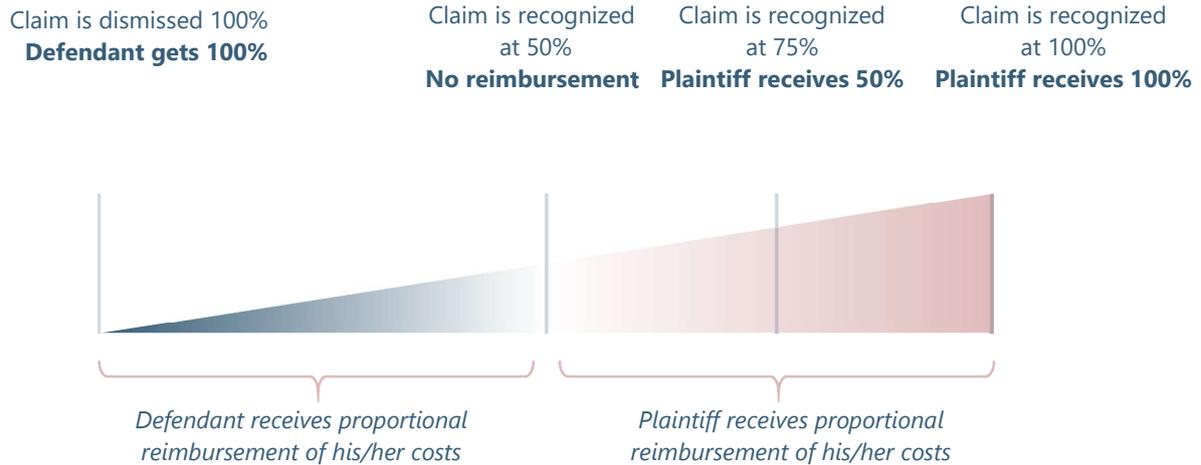
In Liechtenstein, a party and their lawyer are free to enter into a fee agreement. If no such agreement is made, the statutory attorney fees ("Rechtsanwaltstarife") apply. The amount to be paid by the losing party in a lawsuit is also calculated based on these fee scales. The fee scales are determined by the amount in dispute, as the following example illustrates:

Example of the calculation of attorney's fees	Amount in Dispute 10'000	Amount in Dispute 300'000	Amount in Dispute 1'600'000
Claim	714	3'998	7'764
3 hours court hearing	1'428	7'996	15'528
Appeal	891	4'989	9'686

(Figures in CHF excluding VAT)

The costs calculated according to this model can usually be reclaimed by the winning party from the losing party. The reason for the success is generally irrelevant, although the court may ignore unnecessary submissions (e.g., written submissions without new arguments). If a party has only won in part, the reimbursement of costs is also reduced proportionally.

If the court has awarded the claim in full, the prevailing party shall be reimbursed for all costs in accordance with the above-mentioned statutory attorney fees. If the plaintiff was only 50% successful, each party shall bear its own costs.



Security for Legal Costs (“Aktorische Kauti0n”)

The defendant or respondent in the appeal may require the plaintiff or appellant to provide security for legal costs (aktorische Kauti0n) if the plaintiff is not domiciled in a country where the anticipated procedural costs can be enforced. If the plaintiff is a legal entity, security may be demanded if it does not possess sufficient assets subject to enforcement within the jurisdiction.

The security serves as a guarantee for any potential cost reimbursement claim that the defendant may have against the plaintiff if the defendant prevails in the proceedings. The request for security must be made no later than at the first hearing, and in any case before the case is admitted for trial. In appellate proceedings, it must be submitted before or together with the response to the appeal. The amount of the security is determined based on the expected costs (according to the above-mentioned statutory fees) and is assessed at the court’s discretion. If it becomes apparent during the proceedings that the existing security is insufficient, the court may, upon request, order an increase of the security. The security must be deposited in cash or by securities (This refers to tradable financial assets.) within a court-set deadline. A bank guarantee or real estate may also be accepted as security; the latter only if a court decision can be enforced in the country where the property is located.

Appeals against the security order are finally decided by the Court of Appeal (Obergericht). Under certain circumstances, the proceedings may continue despite interim disputes over the amount of security.

If the security is not deposited in due time, the court shall declare the claim or appeal withdrawn upon request.

No mandatory security is required for cases involving matrimonial dispute and special types of procedures such as “Besitzst0rungs-” (trespass), “Mandats-”, or “Wechselverfahren”, as well as for counterclaims and claims initiated following a public judicial summons.

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Legal disclaimer: This summary is intended only to provide an introductory and general understanding of Liechtenstein civil procedure. It is not intended to constitute legal advice and is not a substitute for such advice. Neither details nor exceptions are discussed in detail. The legal situation may have changed in the meantime. No liability is assumed for the content or consequences of relying on this overview. The overview is dated as above and we do not undertake to keep it up to date.