

## Translation of Liechtenstein Law

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**Law**  
of 15 September 2000  
**on International Mutual Legal Assistance in  
Criminal Matters (Mutual Legal Assistance Act,  
RHG)**

I hereby grant My consent to the following Resolution adopted by Parliament:

**I. General provisions**

## Article 1

*Priority of international agreements*

The provisions of this Act shall apply unless otherwise provided for in international agreements.

## Article 2

*General reservation*

A foreign request for legal assistance may only be complied with provided that it does not violate public order or other essential interests of the Principality of Liechtenstein.

### Article 3

#### *Mutuality*

1) A foreign request for legal assistance may only be complied with if it can be guaranteed that the State making the request would comply with an identical request made by Liechtenstein.

2) A Liechtenstein authority may not make a request in accordance with this Act if it could not comply with an identical request made by another State, unless the request is urgently required for particular reasons. In this case, the requested State must be informed of the absence of mutuality.

3) If compliance with the principle of mutuality is doubtful, the Minister of Justice must be asked for advice.<sup>1</sup>

4) Another State may be assured of mutuality in connection with a request made in accordance with this Act provided that there is no international agreement and that it would be permissible in accordance with this Act to comply with an identical request made by that State.

### Article 4

#### *Conditions*

Conditions established by another State with regard to the authorisation of extradition, transit or handing over, provision of legal assistance or in connection with the assumption of prosecution, monitoring or enforcement, which were not rejected, must be complied with.

### Article 5

#### *Costs*

Costs incurred due to the authorisation of extradition or handing over, provision of legal assistance or in connection with the assumption of prosecution, monitoring or domestic enforcement shall be borne by the Principality of Liechtenstein, provided that the principle of mutuality is complied with. For the fees of experts as well as the costs of transit incurred due to the provision of legal assistance, reimbursement must always be demanded from the State making the request.

<sup>1</sup>Article 3(3) amended by LGBl. 2012 No. 348.

## Article 6

*Provisions on import, export, and transit*

The restrictions or prohibition of the import, export and transit of objects including goods and values set out in the provisions relating to customs, foreign currencies and monopolies or in the provisions relating to the movement of goods are no obstacle to the handing over, transit or delivery of objects which are permissible in accordance with the provisions of this Act.

## Article 7

*Travel documents*

Persons who are surrendered to or taken over by another State in accordance with the provisions of this Act do not need a travel document (passport or laissez-passer) or a visa in order to cross the border.

## Article 8

*Preventive measures*

A preventive measure within the meaning of this Act is a measure linked with imprisonment which is pronounced in addition to or instead of a sentence based on a judgment as provided for in the criminal laws. If the duration of a measure yet to be enforced is indefinite, the legally permissible maximum sentence must be assumed.

Article 8a<sup>2</sup>*Pecuniary order*

Pecuniary order means qualified confiscation (§ 19a of the Criminal Code, StGB), forfeiture (§§ 20, 20b StGB), confiscation (§ 26 StGB) and any other penalty, preventive measure, or legal consequence imposed after conducting criminal proceedings in Liechtenstein or abroad, with the exception of monetary penalties, fines, awards to private parties, and procedural costs.

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<sup>2</sup> Article 8a inserted by LGBL 2016 No. 165.

## Article 9

*Application of the Code of Criminal Procedure*

1) Unless otherwise provided for in this Act, the Code of Criminal Procedure (StPO) must be applied *mutatis mutandis*.

2) §§ 31 to 34 and 301 to 308 of the Code of Criminal Procedure shall not be applied to extradition proceedings, and § 30(2) to (4) shall only be applied to extradition proceedings provided that the notification of the indictment is replaced by the time of proclamation made by the judge of the Court of Justice (Article 31(2)).<sup>3</sup>

2a) § 241(4) of the Code of Criminal Procedure shall not apply.<sup>4</sup>

3) The Office of the Public Prosecutor may refrain from prosecuting an offence if the Liechtenstein criminal jurisdiction is only based on § 65(1)(2) of the Criminal Code (StGB) and no public interests are opposed to refraining from prosecution, and in particular if punishment is not required to counteract commission of offences by other persons.

4) In the case that monitoring of a person convicted by a foreign court shall be assumed or the decision of a foreign court to be enforced, the Office of the Public Prosecutor may refrain from prosecuting the offence being the cause of the foreign conviction if it is to be assumed that the domestic court would not deliver a considerably more severe sentence or preventive measure than the one pronounced by the foreign court.

<sup>3</sup> Article 9(2) amended by LGBl. 2007 No. 294.

<sup>4</sup> Article 9(2a) amended by LGBl. 2009 No. 36.

## II. Extradition from Liechtenstein

### A. Permissibility of extradition

#### Article 10

##### *General principle*

The extradition of a person to another State in order to prosecute an act subject to a judicial penalty or to enforce imprisonment imposed for such act or a preventive measure at the request of another State is permissible in accordance with this Act.

#### Article 11

##### *Offences subject to extradition*

1) Extradition for prosecution is permissible for acts committed wilfully which are sanctioned, under the law of the State making the request, with imprisonment of more than one year or with a preventive measure of the same duration, and, under Liechtenstein law, with imprisonment of more than one year. The assessment whether an offence provides reasonable cause for extradition may not be based on the sanctions as amended by § 6 of the Juvenile Court Act. It is irrelevant whether the application required for prosecution under Liechtenstein law or a corresponding permission has been provided.

2) Extradition for enforcement is permissible if imprisonment or the preventive measure has been pronounced due to one or more of the offences mentioned in paragraph 1 and if at least four months' imprisonment are still to be enforced. Several sentences of imprisonment or any remaining periods of imprisonment to be enforced shall be added up.

3) If extradition is permissible in accordance with the provisions in paragraphs 1 or 2, extradition is also permissible in order to prosecute other offences or to enforce other sentences of imprisonment or preventive measures if normally extradition were impermissible due to the extent of the sanction (paragraph 1) or the extent of the sentence or the measure (paragraph 2).

## Article 12

*Extradition of Liechtenstein nationals*

1) A Liechtenstein national may only be extradited to another State or surrendered for prosecution or enforcement of a sentence if he/she, after having been informed about the consequences of his/her statement, has given his/her explicit consent. This must be laid down in the court record. The person may revoke his/her consent up to the time when the surrender has been ordered.

2) Paragraph 1 shall not apply to the transit and return of a Liechtenstein national who is provisionally surrendered to the Liechtenstein authorities by another State.

## Article 13

*Priority of extradition*

If extradition proceedings are pending against a foreigner or if there is reasonable cause for instituting such proceedings, it is impermissible to bring that person abroad based on other legal provisions.

## Article 14

*Offences of a political nature*

Extradition is impermissible

1. for political offences,
2. for other offences based on political motives or objectives, unless, after considering all circumstances of the individual case, in particular the type of perpetration, the means used or threatened to be used or the seriousness of the consequences produced or intended, the criminal character of the offence outweighs its political character.

## Article 15

*Military and fiscal offences*

Extradition for offences, which, under Liechtenstein law,

1. are of an exclusively military nature, or

2. are exclusively constituted by the violation of provisions relating to taxes, monopolies, customs or foreign currencies or provisions relating to the controlled movement of goods or to foreign trade, is impermissible.

#### Article 16

##### *Liechtenstein jurisdiction*

1) Extradition for offences subject to Liechtenstein jurisdiction is impermissible.

2) However, paragraph 1 is not an obstacle to extradition

1. if jurisdiction is only performed in representation of another State, or
2. if, taking into account the specific circumstances, in particular with regard to ascertaining the truth, assessment of sentence or enforcement as well as better social reintegration, implementation of the criminal proceedings in the State making the request shall be preferred.

3) Extradition is also impermissible under the conditions mentioned in paragraph 2 if the person to be extradited has domestically been convicted or acquitted by a final judgment or if the relevant indictment has been dismissed for other reasons than those mentioned in Article 9(3). In the case of paragraph 2(2), extradition is furthermore impermissible if it is to be feared that the person to be extradited would, with regard to the overall consequences of the conviction in the other State, be considerably worse off than in the case of conviction under Liechtenstein law.

#### Article 17

##### *Jurisdiction of a third State*

Extradition is impermissible if the person to be extradited has been

1. acquitted by the final judgment of a court in the State where the offence was committed or if the relevant indictment has been otherwise dismissed, or
2. convicted by the final judgment of a court in a third State and if the sentence has been fully enforced or if it has been revoked up to its full extent or up to the part not yet enforced or if its implementation has become time-barred under the law of the third State.



## Article 18

*Statute of limitations*

Extradition is impermissible if prosecution or enforcement has become time-barred under the law of the State making the request or under Liechtenstein law.

## Article 19

*Safeguarding of constitutional principles; extradition asylum*

Extradition is impermissible if it is to be feared that

1. the criminal proceedings in the State making the request will not meet or have not met the principles of Articles 3 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms,
2. the sentence imposed or to be expected or the preventive measure would be enforced in a manner that does not meet the requirements of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, or
3. the person to be extradited would be subject to persecutions in the State making the request due to his/her origin, race, religion, affiliation to a certain ethnic or social group, nationality or political opinion or that he/she would have to expect other considerable disadvantages due to one of these reasons (extradition asylum).

## Article 20

*Impermissible sentences or preventive measures*

1) Extradition for prosecution of an offence sanctioned with the death penalty under the law of the State making the request is only permissible provided that it is guaranteed that the death penalty will not be pronounced.

2) Extradition for execution of the death penalty is impermissible.

3) The provisions set out in paragraphs 1 and 2 are also applicable *mutatis mutandis* to sentences or preventive measures which do not comply with the requirements of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

## Article 21

*Persons not having attained the age of criminal responsibility*

Extradition of persons who had not, under Liechtenstein law or the law of the State making the request, attained the age of criminal responsibility at the time when the offence was committed is not permissible.

## Article 22

*Cases of hardship*

Extradition is impermissible if it were to affect the person to be extradited, in consideration of the seriousness of the offence the person is charged with due to the person's adolescence (§ 2(2) of the Juvenile Court Act), due to the person's long-time residence in Liechtenstein or due to other serious personal reasons, in an obviously disproportionate manner.

## Article 23

*Specialty of extradition*

- 1) Extradition is only permissible if it is guaranteed that
  1. the extradited person will not, in the State making the request, be prosecuted, punished, restricted in the person's personal freedom or re-extradited to a third State, due neither to an act committed before the person's surrender which is not subject to the permission of extradition nor exclusively due to one or more acts each of which is not subject to the extradition (Article 11(3)),
  2. in the case that the legal assessment of the act underlying the extradition is altered or in the case that other provisions of criminal law than those applied originally are applied, the extradited person is only prosecuted and punished in so far as the extradition would also be permissible under the new circumstances.
- 2) Prosecution or the enforcement of imprisonment or a preventive measure may be consented to upon a request for enforcement of extradition provided that the extradition due to the act underlying the request would be permissible with regard to the State making the request, even if this was only in connection with a permission given in the past. Furthermore, re-extradition to a third State may be consented to provided that extradition would be permissible with regard to that State.

- 3) Consent in accordance with paragraph 2 is not required if
1. the extradited person stays in the territory of the State making the request after his/her release for more than forty-five days even though he/she was able and entitled to leave the territory,
  2. the extradited person leaves the territory of the State making the request and returns voluntarily or is legally brought back to its territory from a third State,
  3. extradition has been enforced pursuant to Article 32.

#### Article 24

##### *Requests for extradition by several States*

If two or more states request the extradition of one and the same person, priority of the requests for extradition must be determined taking into account all circumstances, in particular treaty obligations, the place where the offence was committed, the time of receipt of the requests, the nationality of the person to be extradited, the possibility of re-extradition and, if the requests refer to different offences, also the seriousness of the offences.

#### Article 25

##### *Handing over of objects*

1) In connection with an extradition, it is also permissible to hand over objects which may be used as evidence or which were obtained by the person to be extradited through the offence or by realising the objects originating from that act.

2) If an extradition permissible in accordance with the provisions of this Act cannot be consented to because the person to be extradited has fled or died or could not be seized in Liechtenstein, handing over of objects is still permissible based on the request for extradition or a separate request.

3) Handing over of objects to be used as evidence may be consented to with the reservation that the objects are returned immediately on request.

4) Handing over is in any event impermissible if it is to be feared that such handing over would obstruct or disproportionately impede the pursuit or realisation of the rights of third parties.

## B. Competence and proceedings

### Article 26

#### *Competence of the Court of Justice*

1) The Court of Justice is the court competent for examining a request for extradition or for imposing detention pending extradition as well as for preparing an offer of extradition.

2) If several persons are extradited for participating in the same offence or for offences linked to each other, common extradition proceedings must be held for all persons. This provision is subject to § 12 of the Juvenile Court Act.

3) The provisions set out in paragraphs 1 and 2 also apply to the handing over of objects in connection with an extradition.

### Article 27

#### *Search*

1) Requests for imposition of detention pending extradition shall be examined by the Court of Justice in order to determine whether there is reasonable cause for the assumption that the underlying offence provides sufficient grounds for extradition. If this requirement is met, the search for the person wanted must be arranged for and, if necessary, his/her custody to be ordered.

2) The Court of Justice may refrain from dealing with a request received by way of an automated search facility, the International Criminal Police Organization - INTERPOL - or otherwise via mutual assistance of the international criminal police, if there is no reason to assume that the person wanted is in Liechtenstein and the request only gives rise to search measures which do not comprise a call to the population for support.<sup>5</sup>

<sup>5</sup> Article 27(2) inserted by LGBI. 2015 No. 282.

## Article 28

*Offer of extradition*

1) If there is reasonable cause to assume that a person apprehended in the State has committed an extraditable offence, the Office of the Public Prosecutor must examine if there are sufficient reasons for extradition. If this is the case, the Office of the Public Prosecutor, after questioning of the person to be extradited by the judge of the Court of Justice, must apply for reporting to the Minister of Justice with that judge. The Minister of Justice must ask the State in which the offence was committed whether it is going to request extradition. The Minister of Justice may refrain from asking if it must be assumed that no such request will be made, or if it may be seen from the documents that extradition would have to be refused on one of the grounds set out in Articles 2 and 3(1). Refraining from questioning and the reason for this shall be notified to the Court of Justice. An appropriate period must be determined for the receipt of the request for extradition. If a request for extradition is not received within the time limit, the Minister of Justice must inform the Court.<sup>6</sup>

2) In the case of the notification that questioning is refrained from in accordance with paragraph 1 or that a request for extradition was not received within the time limit, the Court of Justice must immediately release the person under detention pending extradition, unless the Office of the Public Prosecutor applies for immediate imposition of detention pending trial. Allowance must be made for the time already served under detention pending extradition in the case of conviction by a domestic court in accordance with § 38 StGB.

## Article 29

*Detention pending extradition*

1) Detention pending extradition may only be imposed if there is reasonable cause to assume that a person apprehended in the State has committed an extraditable offence. The provisions with regard to detention pending trial shall be applied *mutatis mutandis* to the detention pending extradition, except as otherwise provided for in this Act.

2) Detention pending extradition may not be imposed or maintained if the purpose of detention could also be fulfilled by means of simultaneous legal detention pending trial or after trial. The judge of the Court of Justice must order the changes from the enforcement of the detention pending

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<sup>6</sup> Article 28(1) amended by LGBl. 2012 No. 348.

trial or after trial which are essential for the purpose of the extradition proceedings. If the purpose of detention cannot be fulfilled by means of simultaneous detention after trial or if the extradition proceedings would be considerably impeded by the maintenance of the detention, the judge of the Court of Justice must impose detention pending extradition; this is an interruption of the enforcement of the sentence. Allowance must be made for the time of detention pending extradition already served with regard to detention after trial interrupted by the detention pending extradition.

3) Prior to the decision on the imposition of detention pending extradition, the person to be extradited must be informed about the charges that are brought against him/her and that he/she is free to give evidence or to refuse to do so and to talk to a defence counsel before giving evidence. The person must also be informed about his/her right to apply for public proceedings before the Court of Appeal.

4) The duration of the detention pending extradition must not exceed six months. The judge of the Court of Justice may, however, on account of particular difficulties or the particular scope of the proceedings and provided that the offence subject to extradition is a crime, decide at the request of the Office of the Public Prosecutor that detention pending extradition may last up to one year. The time limit of the detention pending extradition and of the most recent ruling on the imposition or continuation of detention pending extradition is cancelled as soon as the court has taken a decision with regard to the request for extradition; following the decision, *ex officio* hearings relating to the application for release of unconvicted prisoners are cancelled as well. The same applies if and as soon as the person concerned consents to simplified extradition (Article 32).<sup>7</sup>

5) If detention pending extradition is imposed on a person not represented by a defence counsel, the person must simultaneously be assigned a defence counsel (§ 26(3) of the Code of Criminal Procedure).<sup>8</sup>

#### Article 30

##### *Handling of requests received*

Requests for extradition received by the Office of Justice shall be transmitted to the Court of Justice. If there are any circumstances opposed to extradition for one of the grounds set out in Articles 2 and 3(1), or if the

<sup>7</sup> Article 29(4) amended by LGBL 2007 No. 294

<sup>8</sup> Article 29(5) amended by LGBL 2007 No. 294

request is not suitable for legal handling, the Minister of Justice must immediately refuse the request.<sup>9</sup>

#### Article 31

##### *Proceedings before the Court of Justice*

1) The judge of the Court of Justice must question the person to be extradited with regard to the request for extradition; Article 29(3) shall be applied *mutatis mutandis*. Whether there is reasonable suspicion based on the extradition documents that the person to be extradited has committed the offence he/she is charged with, only must be examined if there are considerable doubts concerning this, in particular if evidence is available or provided which would serve to invalidate the suspicion without any delay.

2) After completion of any necessary investigations, the judge of the Court of Justice must submit the documents to the Court of Appeal together with a well-founded statement as to whether extradition is permissible.

#### Article 32

##### *Simplified extradition*

1) If the person to be extradited due to a foreign request for extradition or imposition of detention pending extradition has consented to his/her extradition during his/her questioning and agreed to be surrendered without carrying through the formal extradition proceedings, the judge of the Court of Justice must transmit the documents directly to the Office of Justice after obtaining a statement by the Office of the Public Prosecutor. If several requests have been received, the declaration of consent shall only be effective if it covers all requests. If the person concerned is under detention pending extradition, the person may however only declare effective consent at the earliest during the first hearing relating to the application for release of unconvicted prisoners (§ 132(2)(1) of the Code of Criminal Procedure). Such consent shall in any case only be legally valid if it has been entered in the record by the Court.<sup>10</sup>

1a) If consent to simplified extradition has been given, no formal extradition request is required.<sup>11</sup>

<sup>9</sup> Article 30 amended by LGBL 2012 No. 348 and LGBL 2013 No. 6.

<sup>10</sup> Article 32(1) amended by LGBL 2013 No. 6.

<sup>11</sup> Article 32(1a) amended by LGBL 2013 No. 36.

2) The judge of the Court of Justice must inform the person to be extradited that he/she, in the case of his/her extradition pursuant to paragraph 1, is not entitled to protection in accordance with Article 23(1) or in accordance with corresponding provisions contained in international agreements, and that he/she may only revoke his/her agreement until his/her surrender is ordered.

3) Simplified extradition of an adolescent is only permissible provided that his/her legal representative agrees as well or he/she is represented by a defence counsel.

### Article 33

#### *Adoption of rulings concerning permissibility*

1) Permissibility of extradition is subject to the decision of a closed session of the Court of Appeal if neither the Office of the Public Prosecutor nor the person to be extradited have requested proceedings in an open court and such proceedings are not regarded as necessary for assessing the permissibility of extradition. Irrespective of a request for fixing a day for proceedings in the open court, the Court of Appeal may always declare extradition decided by a closed court session to be impermissible. Before a decision taken by a closed session of the court, the Office of the Public Prosecutor as well as the person to be extradited and his/her defence counsel must have been given the opportunity to comment on the request for extradition.

2) In other cases, a day for proceedings in open court must be fixed, and the Office of the Public Prosecutor, the person to be extradited and his/her defence counsel shall be summoned to appear. The person to be extradited must be represented by a defence counsel in court (§ 26 StPO). If the person to be extradited is under arrest, he/she must be brought before the court. The person to be extradited and his/her defence counsel shall be summoned to appear and the person to be extradited under arrest shall be informed in such a way that a period for preparation of at least eight days is provided to all parties involved.

3) Publicity of the proceedings may be prohibited, except in the cases set out in the Code of Criminal Procedure, at the request of the person to be extradited or if international relations could be affected by the trial.

4) During the trial, a member of the Court of Appeal provides a representation of the course of the trial so far without stating an opinion with regard to the decision to be taken. Then, the Office of the Public Prosecutor is given leave to speak and subsequently the person to be extradited and his/her defence counsel must be given the opportunity to



comment on the request for extradition and the statements of the Office of the Public Prosecutor. The person to be extradited and his/her defence counsel are in any event entitled to make a final statement. After these representations, the Court of Appeal retires to deliberate.

5) The Court of Appeal adopts a ruling which shall be pronounced orally by the President. Prior to adopting the ruling, the Court of Appeal may arrange for additional investigations to be carried out by the judge of the Court of Justice.

6) The Court of Appeal must transmit its ruling to the Office of Justice together with all documents after it has become final and absolute.<sup>12</sup>

#### Article 34<sup>13</sup>

##### *Acceptance and refusal of extradition*

1) The Minister of Justice decides on the request for extradition subject to international agreements and the principles of international legal relations. In doing so, it takes into account the interests of the Principality of Liechtenstein, obligations under international law, in particular with regard to the right of asylum as well as to the protection of human dignity. It must refuse the extradition in so far as the Court of Appeal has declared it to be impermissible.

2) If extradition is permissible with regard to several states, the Minister of Justice also must decide which request for extradition to give priority.

3) Provided that the requirements of Article 32 are met and the person to be extradited has not revoked consent, the Minister of Justice, in consideration of Article 37(1) and (3), must order the surrender of the person to be extradited. However, if there are concerns for one of the reasons set out in Articles 10 to 25 with regard to permissibility of the extradition, proceedings must be held in accordance with Articles 31, 33 and 34(1), (2), and (4).

4) The Minister of Justice must notify the State making the request and, except in the case of simplified extradition, also the Court of Appeal of its decision. The Court of Appeal arranges for the person to be extradited and his/her defence counsel to be notified by the Court of Justice.

<sup>12</sup> Article 33(6) amended by LGBL 2013 No. 6.

<sup>13</sup> Article 34 amended by LGBL 2012 No. 348.

## Article 35

*Documents*

1) Permissibility of extradition must be determined by examining the request for extradition and its documents. These documents must, in any event, include the original copy or a certified true copy of a warrant of arrest issued by a court, a deed with the same effect or an enforceable conviction.

2) The Minister of Justice may demand at any one time of the proceedings, on its own account or at the request of the judge of the Court of Justice or the Court of Appeal, supplementary documents from the State making the request for extradition and fix an appropriate period for receipt of these. If no documents are forthcoming after expiry of this period of time, the decision must be taken based on those documents available.<sup>14</sup>

## Article 36

*Surrender*

1) The judge of the Court of Justice must arrange for the extradition to be enforced. If the person to be extradited is at large, he/she must be arrested, provided that the enforcement of the extradition cannot be guaranteed otherwise. The transfer of the person to be extradited to the relevant border crossing point or to another agreed point of surrender must be carried out by the National Police. Personal effects of the person to be extradited which are in the custody of the Court also must be surrendered, unless the person to be extradited has not otherwise disposed of them.

2) The surrender of an adolescent may, provided that the purpose of the extradition is not opposed to this, also be executed by surrendering the adolescent to his/her legal guardian or to a person named by the latter.

3) An adolescent whose extradition will probably be consented to, may be surrendered before the decision on the extradition proceedings if this is regarded as necessary to avoid any disadvantages in connection with extended extradition proceedings and provided that the principle of specialty is observed. The Minister of Justice decides on early surrender.<sup>15</sup>

<sup>14</sup> Article 35(2) amended by LGBl. 2012 No. 348.

<sup>15</sup> Article 36(3) amended by LGBl. 2012 No. 348.

## Article 37

*Deferral of surrender*

Surrender must be deferred

1. if the person to be extradited is not able to be transported,
2. in the case of resumption of extradition proceedings, or
3. if domestic criminal proceedings are pending against the person to be extradited, if the person shall be kept in detention pending trial in connection with other domestic proceedings or if imprisonment or a preventive measure imposed by a court or an administrative authority shall be enforced with regard to the person. If prosecution is refrained from due to the extradition (§ 21(2)(b) StPO), surrender must be carried out immediately.

## Article 38

*Provisional surrender*

1) Irrespective of the deferral of surrender in accordance with Article 37(3), a person subject to the enforcement of imprisonment or a preventive measure may be provisionally surrendered to another State at its request to perform certain procedural actions, in particular final proceedings and the delivery of the judgment, provided that the person's return after performance of the procedural actions is guaranteed. Provisional surrender may not be carried out if such surrender would place the person to be extradited at a disproportional disadvantage.

2) Provisional surrender shall not interrupt the enforcement of domestic imprisonment or preventive measure.

3) The Minister of Justice decides on the request for provisional surrender.<sup>16</sup>

## Article 39

*Resumption of extradition proceedings*

The Court of Appeal must repeal its ruling adopted at a closed court session in accordance with Article 33 if there are new facts or evidence which, alone or in connection with the extradition documents and the result of any investigations, cause serious concerns with regard to the

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<sup>16</sup> Article 38(3) amended by LGBL 2012 No. 348.

correctness of the ruling. Further proceedings are subject to Articles 31, 33 and 34.

#### Article 40

##### *Subsequent extradition proceedings*

If the extradited person has not been surrendered by way of simplified extradition, Articles 31, 33 and 34 shall be applied to the proceedings with regard to requests made in accordance with Article 23(2) subject to the proviso that the Court of Appeal always adopts a ruling at a closed court session. Prior to the ruling, the extradited person must have been given the opportunity to comment on the request.

#### Article 41

##### *Proceedings upon handing over of objects*

1) Articles 31 and 35 shall be applied to the handing over of objects *mutatis mutandis*. In the case of a separate request for handing over, the documents set out in Article 35(1) may be replaced by the official copy or certified true copy of a confiscation order from the court or a deed with the same effect.

2) The surrender of objects must be deferred as long as they are required for pending domestic legal or administrative proceedings.

3) An object taken away through an offence may also be restored to the person entitled to it subject to § 259 StPO without implementation of the procedure in accordance with paragraph 1.

### III. Transit

#### A.

#### Permissibility

##### Article 42

##### *General principle*

1) The transit through the territory of the Principality of Liechtenstein of a person, in order to prosecute an act subject to judicial penalty or to enforce imprisonment imposed for such act or preventive measure, at the request of a State to which the person shall be extradited by a third State, is permissible in accordance with the provisions of this Act.

2) The provisions set out in Articles 42 to 49 must be applied *mutatis mutandis* to requests for transport of persons through the territory of the Principality of Liechtenstein to a third State in order to assume prosecution or enforcement of a decision taken by a foreign court. Transport through the territory of the Principality of Liechtenstein must also be permitted if, for one of the grounds set out in Article 11, extradition would be impermissible.

##### Article 43

##### *Permissibility of transit*

Transit is only permissible if extradition would be permissible in accordance with Articles 11, 14, 15, 18 to 21, and 23.

##### Article 44

##### *Prohibition of transit of Liechtenstein nationals*

The transit of Liechtenstein nationals through the territory of the Principality of Liechtenstein is only permissible if extradition were permissible in accordance with Articles 11, 12, 14, 15, 18 to 21.

##### Article 45

##### *Liechtenstein jurisdiction*

1) Transit for an offence subject to Liechtenstein jurisdiction is permissible if such offence is not the cause:

1. for obtaining the extradition to the Principality of Liechtenstein of the person to be transited, or
2. that the person to be transited has already been convicted by a final judgment or, for another reason than the lack of Liechtenstein jurisdiction, the person has been acquitted by a final judgment or the indictment has been quashed in the State.

2) A domestic claim for imprisonment against the person to be transited due to an offence which is not subject to the request for transit is only an obstacle to transit if, because of this offence, extradition to the Principality of Liechtenstein must be obtained.

#### Article 46

##### *Use of air transport*

1) Transit need not be authorised if the transport is planned to be carried out via air and no intermediate landing is planned on the territory of the Principality of Liechtenstein. In this case, it is sufficient for the State making the request to confirm that the person to be transited shall not be transited due to one of the offences set out in Articles 14 and 15(1) and that one of the documents set out in Article 48(1) is available. In the case of the transit of a Liechtenstein national, Article 12 applies *mutatis mutandis*.

2) If the flight cannot be immediately continued after an unforeseeable intermediate landing, the notification concerning the transport by air must be regarded as a request for the imposition of detention pending extradition.

## **B. Competence and proceedings**

#### Article 47<sup>17</sup>

##### *Decision*

1) The Minister of Justice decides on the request for transit. It must communicate its decision to the State making the request as provided for.

2) A notification concerning transport by air is examined by the Minister of Justice. If air transport is impermissible, the Minister of Justice must inform the State making the request in the form provided for.

<sup>17</sup> Article 47 amended by LGBL 2012 No. 348.

## Article 48

*Documents*

1) Permissibility of transit must be determined by examining the request for transit and corresponding documents. These documents must, in any event, include the official copy or a certified true copy of a warrant of arrest issued by a court, a deed with the same effect or an enforceable conviction.

2) The Minister of Justice may demand supplementary documents from the State making the request for transit and fix an appropriate period for receipt of these. If no documents are forthcoming after expiry of this period, the decision must be adopted based on those documents available.<sup>18</sup>

## Article 49

*Surrender*

1) If the transit has been authorised, the border crossing points where the person to be transited shall be taken over and surrendered shall be indicated. The person to be transited may only be taken over if his/her transit has been authorised and if he/she may be transported.

2) The enforcement of transit falls into the area of responsibility of the National Police. In connection with the transit, any objects surrendered together with the person to be transited must also be transported.

3) The enforcement of transit must be interrupted if

1. after taking over the person to be transited, new facts or evidence are found which, alone or in connection with the transit documents and the result of any investigations, cause serious concerns with regard to the correctness of the permissibility of transit,
2. the person to be transited has committed an offence on the territory of the Principality of Liechtenstein that must be prosecuted *ex officio*, unless prosecution is refrained from by applying § 21(2)(b) StPO *mutatis mutandis* or
3. the person to be transited is unable to be transported.

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<sup>18</sup> Article 48(2) amended by LGBL 2012 No. 348.

## IV. Legal assistance for foreign countries

### A. Prerequisites

#### Article 50

##### *General principle*

1) Legal assistance may be granted at the request of a foreign authority in accordance with the provisions of this Act with regard to criminal matters including proceedings for the ordering of preventive measures and for the pronouncing of a pecuniary order as well as with regard to matters of redemption and criminal records, the proceedings for compensation of taking into custody and conviction, clemency cases and matters of sentence and measure enforcement.

1a) Foreign civil proceedings for the pronouncing of a pecuniary order within the meaning of §§ 20 and 20b of the Criminal Code shall be deemed a criminal matter for the purpose of paragraph 1.<sup>19</sup>

2) An authority within the meaning of paragraph 1 is a court, the Office of the Public Prosecutor or an authority active in sentence and measure enforcement.

3) Legal assistance within the meaning of paragraph 1 is every kind of support granted for foreign proceedings in criminal matters. It also includes the approval of activities within the framework of cross-border observations based on international agreements.

#### Article 51

##### *Impermissibility of legal assistance*

- 1) Granting of legal assistance is impermissible in so far as
1. the act underlying the request is either not sanctioned with legal punishment under Liechtenstein law or not subject to extradition in accordance with Articles 14 and 15(1),<sup>20</sup>
  2. extradition would be impermissible with regard to the proceedings underlying the request in accordance with Article 19(1) and (2), or

<sup>19</sup> Article 50(1a) amended by LGBL 2009 No. 36.

<sup>20</sup> Article 51(1)(1) amended by LGBL 2015 No. 367.



3. either the substantive conditions for the performance of certain investigative acts under Title IX of the Code of Criminal Procedure are not met or the granting of legal assistance would violate an obligation under Liechtenstein law to maintain secrecy also with regard to criminal courts (§ 8(2) StPO).<sup>21</sup>

1a) Repealed<sup>22</sup>

2) The fact that an action is not liable to prosecution under Liechtenstein law is not an obstacle to the service of documents if the addressee is willing to accept them.<sup>23</sup>

3) If the act underlying the request is a fiscal offence for which legal assistance is permissible under paragraph 1, then a measure in accordance with §§ 92 to 95, 96, 98, 98a, 113, or 114 of the Code of Criminal Procedure may also be ordered if the offence is sanctioned under Liechtenstein law with imprisonment of up to six months.<sup>24</sup>

4) Granting of legal assistance under paragraphs 1 and 3 for fiscal offences is permissible even if otherwise specified in international agreements on international mutual legal assistance that entered into force before 1 January 2016.<sup>25</sup>

## Article 52

### *Sending of objects and documents*

1) Objects or documents may only be sent if it can be guaranteed that they will be restored as soon as possible. Objects which are no longer required need not be restored.

2) Objects which are subject to rights of the Principality of Liechtenstein or third parties may only be sent under the reservation that these rights remain unaffected. Sending is impermissible if it is to be feared that this would obstruct or disproportionately impede the pursuit or realisation of such rights.

3) Sending of objects or documents must be deferred as long as they are required for pending domestic legal or administrative proceedings.

<sup>21</sup> Article 51(1)(3) amended by LGBL 2015 No. 367.

<sup>22</sup> Article 51(1a) repealed by LGBL 2015 No. 367.

<sup>23</sup> Article 51(2) amended by LGBL 2008 No. 331.

<sup>24</sup> Article 51(3) inserted by LGBL 2015 No. 367.

<sup>25</sup> Article 51(4) inserted by LGBL 2015 No. 367.

4) Sending of objects or documents is only permissible if it can be guaranteed that

1. the objects or documents will neither be used, in the State making the request, for the purpose of evidence or investigation on the grounds of an act committed before their surrender which is not subject to the granting of legal assistance, nor for the purpose of evidence or investigation on the grounds of one or more acts each of which is not subject to legal assistance (Article 51(1)),
2. in the case that the legal assessment of the offence underlying legal assistance is altered or in the case that other provisions of criminal law than those applied originally are applied, the sent documents and objects are only made use of in so far as legal assistance would also be permissible under the new circumstances.

5) If the entitled parties consent to the sending of objects and documents until the end of the legal assistance proceedings, the Court of Justice sends the objects and documents subject to the parties' consent without any further formal procedures to the authority making the request. The consent of the entitled parties must be given in writing or declared and entered in the record; it is irrevocable. Such consent to the sending of objects and documents is not unlawful unless it was granted with the intention of causing damage to another person.<sup>26</sup>

#### Article 52a<sup>27</sup>

##### *Entitled parties*

For purposes of this chapter, whoever is personally and directly affected by a legal assistance action shall be deemed an entitled party.

#### Article 53

##### *Summons to appear*

1) A summons to appear before a foreign authority may only be served on a person who is staying in the State if it can be guaranteed that the person will not be prosecuted or punished and that his/her personal freedom will not be restricted due to an act committed prior to his/her departure from the Principality of Liechtenstein. However, prosecution, punishment or restriction of personal freedom is permissible

<sup>26</sup> Article 52(5) inserted by LGBL. 2009 No. 36.

<sup>27</sup> Article 52a inserted by LGBL. 2009 No. 36.

1. due to an offence which is the subject of the person's summons to appear as the accused,
  2. if the person summoned to appear stays in the territory of the State making the request for more than fifteen days after termination of questioning even though he/she was able and entitled to leave the country, or
  3. if he/she leaves the territory of the State making the request and returns voluntarily or is legally brought back.
- 2) Summons to appear containing a warning that compulsory measures will be taken if the summons is not observed may only be served with the information that such measures cannot be enforced in Liechtenstein.
- 3) Witnesses and experts must be paid an appropriate advance on their travel expenses on request if a corresponding request was made by the other State and if refunding of the advance by the other State is guaranteed.

#### Article 54

##### *Transfer of arrested persons for the purpose of evidence*

- 1) A person who is in detention pending trial or after trial or is subject to the enforcement of measures due to a decision taken by a Liechtenstein court may be transferred to a foreign country at the request of a foreign authority in order to carry out important investigations, in particular for questioning or confrontation, provided that
1. he/she agrees to such transfer,
  2. his/her presence is not required for criminal proceedings pending in the State,
  3. imprisonment is not prolonged by the transfer, and
  4. the State making the request guarantees to keep the person under arrest, to return him/her immediately after execution of the investigation and not to prosecute or punish him/her for an offence committed before transfer.
- 2) Transfer shall not interrupt the implementation of detention pending trial or after trial or the preventive measure.

Article 54a<sup>28</sup>*Spontaneous transmission of information*

1) The court may spontaneously transmit to a foreign authority information that it has obtained for its own criminal proceedings if

1. an international agreement provides a basis for such transmission,
2. this information might be helpful for the opening or carrying out of investigations or proceedings of a foreign authority, and
3. the transmission of the information would also be permissible within the framework of a request for legal assistance by the foreign authority.

2) The transmission of information is also permissible without an international agreement if

1. on the basis of specific facts, it must be assumed that the content of the information may help prevent an offence subject to extradition (Article 11) or defend against an immediate and serious threat to public security, and
2. the precondition set out in paragraph 1(3) is met.

3) The transmission of information in accordance with paragraphs 1 and 2 must take place under the condition that

1. the transmitted information may not be used without prior consent of the transmitting authority for any purpose other than the purpose giving rise to the transmission,
2. the transmitted data must immediately be deleted or corrected by the receiving authority as soon as
  - a) it turns out that the data is incorrect,
  - b) the transmitting authority communicates that the data has been gathered or transmitted unlawfully, or
  - c) it turns out that the data is not or no longer needed for the purpose giving rise to the transmission.
- 4) Article 77(3) shall be applied *mutatis mutandis*.

<sup>28</sup> Article 54a inserted by LGBL 2009 No. 36.

## B. Competence and proceedings

### Article 55

#### *Competence for the handling of requests for legal assistance*

- 1) Without prejudice to paragraphs 2 and 3, the Court of Justice is responsible for handling requests for legal assistance.
- 2) If a person to be transferred is under detention after trial or subject to the enforcement of measures, the Court of Justice decides on the request for transfer. The Minister of Justice must be notified of the decision. The Minister of Justice must refuse transfer in the case of one of the circumstances set out in Articles 2 and 3(1). The transfer to the relevant border crossing point or to another agreed point of surrender must be carried out by the National Police.<sup>29</sup>
- 3) If a person under arrest in another State is to be transferred to a third State via the territory of the Principality of Liechtenstein in order to carry out important investigations, in particular for questioning or confrontation, Article 44, 47, and 49 shall be applied *mutatis mutandis*.
- 4) If in a request for extradition, transmission of objects and documents is demanded, it must be decided separately after seizure of these which objects and documents are actually given to the authority making the request. The entitled parties must first be granted a fair hearing.<sup>30</sup>
- 5) The announcement and sending of final criminal court decisions to the requesting authority is permissible without a formal procedure.<sup>31</sup>

### Article 56

#### *Form and contents of requests for legal assistance*

- 1) Legal assistance may only be granted if the facts and the legal assessment of the offence underlying the request may be seen from the request. In the case of a request for service it is sufficient to indicate the provisions of criminal law to be applied or applied by the State making the request.
- 2) The request for the search of persons or premises, for seizure of objects or for surveillance of telecommunications must include the original

<sup>29</sup> Article 55(2) amended by LGBl. 2012 No. 348.

<sup>30</sup> Article 55(4) amended by LGBl. 2009 No. 36.

<sup>31</sup> Article 55(5) inserted by LGBl. 2009 No. 36.

copy or a certified true copy of the order given by the competent authority. If this is not a court order, a declaration of the authority making the request for legal assistance must be provided which states that the requirements necessary for this measure are met under the law of the State making the request.

3) If it is not possible to order measures under the law of the State making the request in accordance with paragraph 2, a confirmation that these measures are permissible in the State making the request is sufficient.

Art. 56a<sup>32</sup>

*Comment by the Fiscal Authority*

A request for legal assistance referring to a fiscal offence must be transmitted by the Court of Justice to the Fiscal Authority for comment.

Article 57

*Refusal of legal assistance; lack of competence*

1) If legal assistance is not granted in whole or in part, the foreign authority making the request must be informed by indicating the reasons in the form provided for.

2) Requests for legal assistance received by other authorities shall be transmitted to the Court of Justice.

Article 58<sup>33</sup>

*Applicable procedural provisions*

Legal assistance must be granted in accordance with the provisions on criminal proceedings applicable in Liechtenstein. However, a request for carrying out another process must be granted provided that this process is compatible with the principles of the Liechtenstein criminal proceedings. If legal assistance is granted in the form of an order in accordance with § 97a of the Code of Criminal Procedure, a time period must be fixed; the foreign authority making the request must be notified accordingly in the form provided for.

<sup>32</sup> Article 56a inserted by LGBL. 2015 No. 367.

<sup>33</sup> Article 58 amended by LGBL. 2009 No. 36.

Article 58a<sup>34</sup>*Participation in the proceedings*

1) The entitled persons may participate in the proceedings and inspect the documents to the extent required to safeguard their interests.

2) The rights provided in paragraph 1 may be limited only:

1. in the interest of the foreign proceedings;
2. for the protection of an essential interest, provided that the requesting authority so requests;
3. in light of the nature or the urgency of the legal assistance action to be performed;
4. for the protection of essential private interests;
5. in the interest of Liechtenstein proceedings.

3) Inspection of documents or participation in proceedings may only be denied in regard to documents and procedural actions with respect to which the preconditions set out in paragraph 2 are met.

Article 58b<sup>35</sup>*Service of decisions and summons to appear*

1) The legal assistance court and the appellate courts shall serve their decisions and summons to appear on:

1. the entitled parties residing or domiciled in Liechtenstein;
2. the entitled parties situated abroad having an address for service in Liechtenstein.

2) in the case of legal persons and companies without legal personality that no longer have governing bodies, service shall be effected on the governing body or representative that most recently performed this function.

<sup>34</sup> Article 58a inserted by LGBl. 2009 No. 36.

<sup>35</sup> Article 58b inserted by LGBl. 2009 No. 36.

Article 58c<sup>36</sup>*Appeal in court proceedings*

1) The ruling of the legal assistance court concluding the legal assistance proceedings as well as the preceding rulings shall be subject to appeal.

2) The preceding rulings may be contested separately, provided they effect an immediate and irreparable disadvantage; this applies particularly to orders pursuant to § 97a of the Code of Criminal Procedure.

3) Any legal remedies pursuant to paragraph 2 do not constitute an obstacle to the continuation of the legal assistance proceedings.

Article 58d<sup>37</sup>*Right to appeal*

The following have the right to appeal:

- a) whoever is personally and directly affected by a legal assistance action and has an interest worthy of protection that it be annulled or modified;
- b) the Liechtenstein Office of the Public Prosecutor.

## Article 59

*Admission of foreign organs and parties involved in the proceedings to carry out actions of legal assistance*

1) Foreign organs are not allowed to make investigations or carry out procedural actions on the territory of the Principality of Liechtenstein under this Act. However, the competent foreign judge, public prosecutor and other persons involved as well as their legal representatives must be granted permission to inspect documents and to be present and take part in legal assistance actions if this appears necessary for the appropriate handling of the request for legal assistance. The official actions of foreign organs necessary for this, except in the case of cross-border observations, are subject to approval by the Minister of Justice.<sup>38</sup>

<sup>36</sup> Article 58c inserted by LGBl. 2009 No. 36.

<sup>37</sup> Article 58d inserted by LGBl. 2009 No. 36.

<sup>38</sup> Article 59(1) amended by LGBl. 2012 No. 348.



2) Persons who have been permitted to be present upon performance of an action of legal assistance in accordance with paragraph 1, must not be prosecuted, punished or restricted in their personal freedom during their stay in Liechtenstein due to an act committed before their entering the country. However, prosecution, punishment or restriction of personal freedom is permissible

1. if the person admitted to perform an action of legal assistance stays on the territory of the Principality of Liechtenstein after termination of such action for more than fifteen days even though he/she was able and entitled to leave the territory,
2. if the person leaves the territory of the Principality of Liechtenstein and returns voluntarily or is legally brought back.

3) If a person admitted to perform an action of legal assistance is under arrest abroad, he/she may be taken over at the request of the other State if detention is based on the conviction of a competent court or if there is a reason for arrest also recognised under Liechtenstein law. The person transferred must be kept in custody in Liechtenstein and returned immediately after termination of the legal assistance action.

## **V. Assumption of prosecution and monitoring; enforcement of decisions taken by a foreign criminal court**

### **A. Assumption of prosecution**

#### Article 60

##### *Competence and proceedings*

1) Requests for the assumption of prosecution shall be examined on a provisional basis by the Minister of Justice. If the request does not provide sufficient grounds for prosecution, the Minister of Justice must refuse further dealing with the request or otherwise send it to the Office of the Public Prosecutor. The Minister of Justice may demand at any one time of the proceedings, on its own account or at the request of the judge of the Court of Justice or the Office of the Public Prosecutor, supplementary documents from the State making the request for assumption of prosecution. It must inform the State making the request about the orders decided and the result of the criminal proceedings.<sup>39</sup>

<sup>39</sup> Article 60(1) amended by LGBL. 2012 No. 348.

2) If Liechtenstein jurisdiction is exclusively based on an international agreement, the Court of Justice must question the suspect with regard to the requirements for assumption of prosecution.

## **B. Assumption of monitoring**

### Article 61

#### *Prerequisites*

Monitoring of a person convicted by the final judgment of a foreign court whose sentence is subject to conditional respite, whose sentence or preventive measure was conditionally waived or who was conditionally released from imprisonment or a preventive measure connected with imprisonment, is permissible at the request of another State if

1. the decision of the foreign court has been taken in a trial that complies with the basic principles of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms,
2. the person was convicted due to an offence which is subject to judicial penalty under Liechtenstein law,
3. the person was not convicted due to an offence set out in Articles 14 and 15,
4. the convicted person is not, due to the offence, prosecuted or convicted by a final judgment or, for another reason than the lack of Liechtenstein jurisdiction, the person has been acquitted by a final judgment or the indictment has been quashed in Liechtenstein, and
5. if the convicted person has his/her residence or abode in Liechtenstein.

### Article 62

#### *Monitoring measures*

Monitoring is supposed to prevent the lawbreaker from committing additional offences. As far as is necessary or useful, the measures provided by Liechtenstein law (§§ 51 and 52 StGB) for this purpose shall be ordered taking into account the foreign decision.

### Article 63

#### *Competence and proceedings*

1) Requests for assumption of monitoring shall be transmitted from the Office of Justice to the Court of Justice (paragraph 2). If a request does not, for one of the grounds set out in Articles 2 and 3(1), provide reasonable cause for monitoring or if it is unsuitable for legal treatment, the Minister of Justice must refuse further dealing with this request. It may demand at any one time of the proceedings, on its own account or at the request of the Court, supplementary documents from the State making the request for assumption of monitoring.<sup>40</sup>

2) The Court of Justice is the competent court for taking the decision on monitoring as well as for ordering the monitoring measures. This decision may be contested by the Office of the Public Prosecutor and the convicted person by appealing to the Court of Appeal within fourteen days.

3) The Minister of Justice must notify the State making the request of its decision with regard to the request for assumption of monitoring in the form provided for as well as of the measures ordered due to such request and their result.<sup>41</sup>

### **C. Enforcement of decisions taken by foreign criminal courts**

#### Article 64

##### *Prerequisites*

1) Enforcement or further enforcement of a decision taken by a foreign court in connection with which a fine or imprisonment, a preventive measure or pecuniary order has been pronounced by a final judgment, is permissible at the request of another State if

1. the decision of the foreign court has been taken in a trial that complies with the basic principles of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms,
2. the decision was taken due to an act which is subject to judicial penalty under Liechtenstein law,

<sup>40</sup> Article 63(1) amended by LGBL. 2012 No. 348 and LGBL. 2013 No. 6.

<sup>41</sup> Article 63(3) amended by LGBL. 2012 No. 348.

3. the decision was not taken due to an offence set out in Articles 14 and 15,
4. enforceability would not have become time-barred under Liechtenstein law yet,
5. the person affected by the decision taken by the foreign court is not, due to the offence, prosecuted, convicted or acquitted by a final judgment or if the indictment has been quashed for another reason in Liechtenstein.

2) Enforcement of the decision taken by a foreign court in connection with which imprisonment or a preventive measure has been pronounced is only permissible if the convicted person is a Liechtenstein national and has his/her residence or abode in Liechtenstein.<sup>42</sup>

3) Enforcement of preventive measures is only permissible if Liechtenstein law provides for equivalent measures.

4) Enforcement of the decision taken by a foreign court in connection with which pecuniary orders are given is only permissible as far as, under Liechtenstein law, the requirements for a monetary penalty or pecuniary order are provided and a corresponding domestic order has not been issued yet.<sup>43</sup>

5) Enforcement of the decision taken by a foreign court in connection with which a monetary penalty or forfeiture in accordance with § 20(3) of the Criminal Code has been pronounced, is only permissible if collection is expected to be in Liechtenstein and the person concerned has been heard provided that he/she could be contacted.<sup>44</sup>

6) Enforcement of the decision taken by a foreign court in connection with which qualified confiscation, confiscation, forfeiture in accordance with § 20(1) and (2) of the Criminal Code, or expanded forfeiture in accordance with § 20b of the Criminal Code has been pronounced by a final judgment is only permissible if the objects or assets subject to the decision are located in Liechtenstein and the person concerned has been heard provided that he/she could be contacted.<sup>45</sup>

7) Monetary penalties, forfeited assets, and objects subject to confiscation or qualified confiscation devolve upon the State.<sup>46</sup>

<sup>42</sup> Article 64(2) amended by LGBl. 2009 No. 36.

<sup>43</sup> Article 64(4) amended by LGBl. 2016 No. 165.

<sup>44</sup> Article 64(5) amended by LGBl. 2016 No. 165.

<sup>45</sup> Article 64(6) amended by LGBl. 2016 No. 165.

<sup>46</sup> Article 64(7) amended by LGBl. 2016 No. 165.

## Article 65

*Domestic decision of enforcement*

1) If the enforcement of a decision taken in criminal matters by a foreign court is assumed, the sentence, preventive measure, or pecuniary order to be enforced in Liechtenstein must be determined under Liechtenstein law taking into account the measure pronounced in such decision.<sup>47</sup>

2) The person affected by the decision must not, by the assumption of the enforcement, be put in a less favourable position than by the enforcement in the other State.

3) §§ 38 and 66 StGB shall be applied *mutatis mutandis*.

## Article 66

*Handling of requests received*

Requests for the enforcement of decisions taken by foreign criminal courts received by the Office of Justice shall be transmitted to the Court of Justice (Article 67(1)). If, on receipt of the request, there are any circumstances opposed to the assumption of enforcement for one of the grounds set out in Articles 2 and 3(1), or if the request is not suitable for legal treatment, the Minister of Justice must immediately refuse the request. The Minister of Justice may demand at any one time of the proceedings, on its own account or at the request of the Court of Justice, supplementary documents from the State making the request for assumption of enforcement.<sup>48</sup>

<sup>47</sup> Article 65(1) amended by LGBL 2016 No. 165.

<sup>48</sup> Article 66 amended by LGBL 2012 No. 348 and LGBL 2013 No. 6.

## Article 67

*Competence and proceedings*

1) The Court of Justice decides on the request for enforcement and adaptation of the sentence, the preventive measure, or pecuniary order by adopting a ruling. The Office of the Public Prosecutor and the party affected by the decision may file an appeal with the Court of Appeal within fourteen days.<sup>49</sup>

2) The Minister of Justice must inform the State making the request about the decision on the request for assumption of enforcement in the form provided for and notify it of the enforcement.<sup>50</sup>

3) After the assumption of enforcement of a sentence or preventive measure, it is no longer permissible to institute criminal proceedings due to the offence underlying the judgment.

4) The provisions of Liechtenstein law shall be applied to enforcement, conditional release and power of pardon.

5) The enforcement must be terminated in any event if the enforceability of the sentence or preventive measure expires under the law of the State making the request.

## **VI. Obtaining of extradition, transit, handing over, legal assistance, and assumption of prosecution, monitoring, and enforcement**

### **A. Obtaining of extradition, transit, and handing over**

## Article 68

*Competence and proceedings*

1) If there is reasonable cause for obtaining the extradition of a person staying abroad in order to prosecute him/her or enforce imprisonment or a preventive measure, the Court of Justice must, at the request of the Office

<sup>49</sup> Article 67(1) amended by LGBl. 2016 No. 165.

<sup>50</sup> Article 67(2) amended by LGBl. 2012 No. 348.

of the Public Prosecutor, transmit the documents necessary for obtaining extradition to the Office of Justice.<sup>51</sup>

2) The Minister of Justice may refrain from obtaining extradition if<sup>52</sup>

1. extradition is not to be expected,
2. presumably only a fine or minor imprisonment or suspended term of imprisonment would be imposed,
3. the sentence of imprisonment to be enforced is minor, or
4. for the Principality of Liechtenstein, there would be disadvantages or burdens linked with the extradition which are disproportionate with regard to the public interest in prosecution or enforcement.

3) The provisions of paragraphs 1 and 2 shall be applied *mutatis mutandis* to obtaining transit and handing over of objects.

#### Article 69

##### *Obtaining of detention pending extradition*

If the requirements for obtaining extradition are complied with, the Court of Justice may, at the request of the Office of the Public Prosecutor, request the competent foreign court to impose detention pending extradition in the form provided for. The Minister of Justice must be immediately notified of such request.<sup>53</sup>

#### Article 70

##### *Specialty of extradition*

1) A person who was extradited to Liechtenstein may not be prosecuted, punished, restricted in his/her personal freedom or re-extradited to a third State without the approval of the requested State due neither to an offence committed before his/her surrender which is not subject to the permission of extradition nor exclusively due to one or more offences each of which is not subject to the extradition. However, specialty of extradition is not an obstacle to such measures if

<sup>51</sup> Article 68(1) amended by LGBL. 2013 No. 6.

<sup>52</sup> Article 68(2) introductory sentence amended by LGBL. 2012. No. 348.

<sup>53</sup> Article 69 amended by LGBL. 2012 No. 348.

1. the extradited person stays in the territory of the Principality of Liechtenstein after his/her release for more than forty-five days even though he/she was able and entitled to leave the territory,
2. the extradited person leaves the territory of the Principality of Liechtenstein and returns voluntarily or is legally brought back to that territory from a third State,
3. the requested State renounces compliance with specialty.

2) In the case that the act underlying the extradition is to be legally assessed in a manner different from that in the request for extradition or in the case that other provisions of criminal law than those applied originally are to be applied, the extradited person may only be prosecuted and punished in so far as the extradition would also be permissible under the new circumstances.

3) If the extradition of a person convicted of several cumulated offences was only authorised for enforcement of an individual part of the sentence linked to individual ones of these offences, it is only permissible to enforce such part. The extent of the sentence to be enforced must be determined by the Court of Justice by adopting a ruling. The Office of the Public Prosecutor and the convicted party may file an appeal against such ruling with the Court of Appeal within fourteen days.

4) The provisions of paragraph 1 to 3 shall be applied *mutatis mutandis* to transit.

## B. Obtaining of legal assistance

### Article 71

#### *Prerequisites and proceedings*

1) Requests for legal assistance shall be submitted, in the form provided for, to the foreign court, the foreign Office of the Public Prosecutor or the authority dealing with the enforcement of sentences or measures in the area of which the legal assistance action shall be performed. The request must include the facts underlying the proceedings and the information necessary to properly handle the matter.



2) In so far as direct legal assistance dealings are not provided for, the Minister of Justice may refrain from transmitting the request for legal assistance based on one of the reasons set out in Articles 2 and 3(1).<sup>54</sup>

#### Article 72

##### *Summons to appear for persons from abroad*

1) If personal appearance of a person to be questioned before court is regarded as necessary, the competent foreign court must be requested to serve the summons to appear on the party in the form provided for. It must not contain a warning that compulsory measures will be taken if the summons is not complied with.

2) The person summoned to appear must not be prosecuted, punished or restricted in his/her personal freedom due to an act committed prior to his/her entering the country. However, prosecution, punishment or restriction of personal freedom is permissible

1. due to an offence which is the subject of the person's summons to appear as the accused,
2. if the person summoned to appear stays in the territory of the Principality of Liechtenstein for more than fifteen days after termination of questioning even though he/she was able and entitled to leave the country, or
3. if he/she leaves the territory of the Principality of Liechtenstein and returns voluntarily or is legally brought back.

#### Article 73

##### *Transfer of arrested persons for the purpose of evidence*

1) A person under arrest abroad may be transferred to Liechtenstein in order to carry out important investigations, in particular for questioning or confrontation. The provisions of Article 59(2) and (3) shall be applied *mutatis mutandis*.

2) If a person who is in detention pending trial or after trial due to a decision taken by a Liechtenstein court shall be transferred to a foreign country in order to carry out important investigations, in particular for questioning or confrontation, Article 54 must be applied *mutatis mutandis*.

<sup>54</sup> Article 71(2) amended by LGBL 2012 No. 348.

However, the consent of the person to be transferred (Article 54(1)(1)) is not required.

### **C. Obtaining of assumption of prosecution, monitoring, and enforcement of domestic convictions under criminal law abroad**

#### Article 74

##### *Obtaining of assumption of prosecution*

1) The Minister of Justice may request another State to institute criminal proceedings against a person due to an offence subject to Liechtenstein jurisdiction if jurisdiction of this State seems to be justified and<sup>55</sup>

1. extradition of a person staying abroad cannot be obtained or extradition is refrained from for another reason, or
2. delivering a judgment on a person staying in Liechtenstein is, in the other State, in the interest of ascertaining the truth or justified for reasons of assessment of punishment or enforcement and if the person is extradited due to another offence or if it must be assumed that the criminal proceedings will be performed in the other State with that person being present.

2) If there is reasonable cause to obtain assumption of prosecution, the Office of the Public Prosecutor must notify the Minister of Justice accordingly and transmit the necessary documents.<sup>56</sup>

3) A request in accordance with paragraph 1 is impermissible if it is to be feared that the person would be placed at a disadvantage for one of the reasons set out in Article 19 or if the offence is sanctioned with the death penalty in the requested State.

4) After receipt of the notification that prosecution has been assumed in the requested State, the domestic criminal proceedings shall be suspended. If the perpetrator is convicted by a final judgment of the foreign court and the complete sentence has been enforced or - if it was not enforced - waived, domestic proceedings must be discontinued.

5) Prior to the request for assumption of prosecution, the suspected person must be heard if he/she is staying in the State.

<sup>55</sup> Article 74(1) introductory sentence amended by LGBl. 2012 No. 348.

<sup>56</sup> Article 74(2) amended by LGBl. 2012 No. 348.

Article 75<sup>57</sup>*Obtaining of monitoring*

If there is reasonable cause to request another State to monitor a person for whom a probationary period has been fixed due to the decision taken by a domestic court in accordance with §§ 43, 45, 46, or 47 StGB or § 8 of the Juvenile Court Act, the Court of Justice must transmit the documents necessary for obtaining monitoring to the Office of Justice. Prior to a request for monitoring, a statement by the Office of the Public Prosecutor must be obtained and the convicted person must be heard if he/she is staying in the State.

## Article 76

*Obtaining of enforcement*

1) If there is reasonable cause to request another State to assume the enforcement of a final decision in connection with which a sentence or preventive measure has been pronounced or withdrawn or a pecuniary order has been issued, the Court of Justice must transmit the documents necessary for obtaining the assumption of enforcement to the Office of Justice. The Minister of Justice shall refrain from submitting the request if it must be assumed that the assumption of enforcement will be refused for one of the reasons set out in Articles 2, 3(1) or in paragraph 3(2) and (3).<sup>58</sup>

2) A request for the assumption of enforcement of imprisonment or a preventive measure is permissible if

1. the convicted person is staying in the requested State and his/her extradition cannot be obtained or extradition is refrained from for another reason, or
2. the purposes of enforcement may be fulfilled more efficiently by enforcing or further enforcing the decision in the requested State.

3) A request for the assumption of enforcement of imprisonment or a preventive measure is impermissible if

1. the convicted person is a Liechtenstein national unless his/her residence or abode is in the requested State and that he/she is actually staying there,
2. it is to be feared that the sentence or preventive measure would be enforced in a way that does not comply with the requirements of

<sup>57</sup> Article 75 amended by LGBL. 2013 No. 6.

<sup>58</sup> Article 76(1) amended by LGBL. 2016 No. 165.

Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms,

3. it is to be feared that the convicted person would be subject to persecution or discrimination of the kind set out in Article 19(3) in the case he/she is transferred to the requested State, or
4. it is to be feared that the convicted person would be placed in a considerably less favourable position with regard to the general consequences than through national enforcement or further enforcement.

4) A request for the assumption of enforcement of a monetary penalty or pecuniary order is permissible if collection shall be expected in the requested State.<sup>59</sup>

5) If the requested State notifies the State making the request that it assumes enforcement, national enforcement must be suspended. If the convicted person returns to the territory of Liechtenstein without the sentence or preventive measure ordered in the requested State due to the request for assumption of enforcement having been completely enforced or with the unenforced part of the sentence or preventive measure having been waived, the Court of Justice must arrange for the rest of the sentence or preventive measure to be enforced. However, the Court of Justice must refrain from subsequent enforcement and conditionally or unconditionally waive the rest of the sentence or conditionally or unconditionally release him from the preventive measure in so far as the convicted person would, through the enforcement with regard to the general consequences, be placed in a less favourable position than through enforcement in Liechtenstein.

6) If the enforcement of a sentence imposed due to several cumulated offences is only obtained for the part concerning individual offences and if the sentence has not been separated in the requested State, Article 70(3) must be applied *mutatis mutandis*.

7) The sentence or pecuniary order to be enforced in the requested State remains subject to the provisions of the Liechtenstein power of pardon.

8) The surrender of the convicted person to the authorities of the requested State shall be arranged for by the Court of Justice (paragraph 1) by applying Article 36(1) *mutatis mutandis*.

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<sup>59</sup> Article 76(4) amended by LGBI. 2016 No. 165.

9) Prior to making a request for the assumption of enforcement, a statement by the Office of the Public Prosecutor must be obtained and the person involved must be heard provided that he/she is staying in the State.

## VII. Legal protection

### Article 77

#### *Legal remedies*

1) No legal remedies are permissible against the orders by the Minister of Justice.<sup>60</sup>

2) In judicial proceedings, the legal remedies set out in the Code of Criminal Procedure shall be applied *mutatis mutandis* except as otherwise provided for in this Act.

3) No legal remedies are permissible against Liechtenstein requests to another state.<sup>61</sup>

## VIII. Transitional and final provisions

### Article 78

#### *Transitional provision*

The legal assistance and extradition proceedings pending upon the coming into force of this Act are subject to the law heretofore in force.

### Article 79

#### *Obligation to report*

The courts and the Minister of Justice have the obligation to inform each other immediately about the orders they have given in the legal assistance proceedings.<sup>62</sup>

<sup>60</sup> Article 77(1) amended by LGBl. 2012 No. 348.

<sup>61</sup> Article 77(3) inserted by LGBl. 2009 No. 36.

<sup>62</sup> Article 79 amended by LGBl. 2012 No. 348.

## Article 80

*Implementing ordinances*

The Government shall issue the ordinances necessary for the implementation of this Act.

## Article 81

*Repeal of law hitherto in force*

The Law of 11 November 1992 on International Mutual Legal Assistance in Criminal Matters (Mutual Legal Assistance Act), Liechtenstein Law Gazette LGBL 1993 No. 68, is repealed.

## Article 82

*Entry into force*

This Act shall enter into force on the day of its promulgation.

signed *Hans-Adam*

signed *Dr. Mario Frick*  
Prime Minister

## Transitional provisions

351 Mutual Legal Assistance Act

**Liechtenstein Law Gazette**

Year 2007

No. 294

published on 21 November 2007

**Law  
of 20 September 2007  
amending the Mutual Legal Assistance Act**

...

**II.****Transitional provisions**

1) Changes to the preconditions for asserting rights of appeal and other legal remedies as well as to the competence and procedure for making decisions in this regard shall not have effect if the court's decision in question was made prior to entry into force<sup>1</sup> of this Act. Decisions by the Court of Appeal made on the basis of law heretofore in force but after entry into force<sup>1</sup> of this Act shall trigger a detention period of two months.

2) § 132 StPO (detention periods) redrafted by the Law of 20 September 2007 amending the Code of Criminal Procedure must apply to rulings imposing or continuing detention pending extradition prior to entry into force<sup>1</sup> of this Act, insofar as the accused is still in detention at the time of entry into force<sup>63</sup> of this Act, providing that

1. entry into force of this Act triggers a detention period of two months;
2. a waiver by the accused of an upcoming hearing relating to the application for release of unconvicted prisoners is in any case permissible, in which case the ruling on cancelling or continuing detention pending extradition may be made in writing.

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<sup>63</sup> Entry into force: 1 January 2008



3) In the cases of persons who, at the time of entry into force of this Act are in detention pending extradition, the assignment and appointment of a defence counsel must be governed by Article 29(5) of the Mutual Legal Assistance Act.

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**Liechtenstein Law Gazette**

Year 2009

No. 36

published on 28 January 2009

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**Law**  
of 11 December 2008  
**amending the Mutual Legal Assistance Act**

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**II.**

**Transitional provision**

The legal assistance and extradition proceedings pending upon entry into force<sup>64</sup> of this Act are subject to the law heretofore in force – with the exception of Articles 32(1a), 50(1a), 54a, 55(5), 58 third sentence, 59(1), 64(2), and 77(3) of this Act.

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<sup>64</sup> Entry into force: 1 February 2009

**Liechtenstein Law Gazette**

Year 2015

No. 367

published on 23 December 2015

**Law**  
of 5 November 2015  
**amending the Mutual Legal Assistance Act**

...

**II.****Transitional provision**

1) Granting of legal assistance for fiscal offences as referred to in Article 15(2) shall be permissible only for requests which:

- a) are made on or after 1 January 2016; and
- b) refer to tax years or assessment periods that begin on or after 1 January 2016.

2) Article 51(1a) of the law hitherto in force shall continue to apply to requests for legal assistance that refer to tax years or assessment periods prior to 1 January 2016.

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