Guidelines on
Pecuniary Orders

in Liechtenstein Law

Tips for Practitioners

Table of Contents

[1. Introduction 3](#_Toc512524620)

[2. Criminal proceedings 4](#_Toc512524621)

[2.1 Pecuniary orders in criminal proceedings 4](#_Toc512524622)

[2.1.1 Forfeiture (§ 20 StGB) 4](#_Toc512524623)

[2.1.2 Extended forfeiture (§ 20b StGB) 4](#_Toc512524624)

[2.1.3 Deprivation order (§ 26 StGB) 5](#_Toc512524625)

[2.1.4 Confiscation (§ 19a StGB) 5](#_Toc512524626)

[2.2 Tracing and securing of assets 6](#_Toc512524627)

[2.2.1 Criminal proceedings in Liechtenstein 6](#_Toc512524628)

[2.2.2 Legal assistance proceedings 10](#_Toc512524629)

[2.2.3 Practical tips 13](#_Toc512524630)

[2.3 Definite deprivation of assets 14](#_Toc512524631)

[2.3.1 Criminal proceedings in Liechtenstein 14](#_Toc512524632)

[2.3.2 Legal assistance proceedings 16](#_Toc512524633)

[2.3.3 Practical tips 18](#_Toc512524634)

[2.4 Use of the assets subject to deprivation 18](#_Toc512524635)

[3. Civil proceedings 19](#_Toc512524636)

[4. Sanctions 21](#_Toc512524637)

[5. Contact points 22](#_Toc512524638)

[5.1 Networks 22](#_Toc512524639)

[5.2 Contact points in Liechtenstein 22](#_Toc512524640)

## Introduction

Any effective fight against cross-border criminal offences in the areas of crimes against property, organized crime, corruption and terrorist financing as well as any preventive measures in this regard not only require the identification and punishment of the perpetrators. It is equally important that the perpetrators are deprived of the material benefits of the crime through pecuniary orders and that the damage caused to victims and other injured parties is made up for.

The obtaining of pecuniary orders is generally divided into three chronological phases. First of all, the assets are traced and secured, then the assets become subject to definite deprivation through the issuance and enforcement of pecuniary orders and, finally, the assets subject to deprivation are used.

Pecuniary orders can be obtained in three distinct proceedings. The major part of these guidelines is dedicated to pecuniary orders in criminal proceedings. In this process, a distinction is made between criminal proceedings carried out in Liechtenstein and legal assistance which is provided for the assistance of criminal proceedings carried out abroad. In addition, the handing over of illegally obtained assets may be achieved not only in criminal proceedings but also by bringing action in civil proceedings and the enforcement of a related civil judgement. In this context, it is possible to bring action in Liechtenstein with subsequent enforcement or to enforce a foreign civil judgement in Liechtenstein. The latter, however, is possible only if a bilateral enforcement agreement exists. Finally, in the context of pecuniary orders, the effects of sanctions adopted in particular by the United Nations or the European Union are of importance as well.

These guidelines are intended to provide only a rough overview of pecuniary orders in Liechtenstein law and, in particular, they have been prepared to provide tips to practitioners. At the end of the guidelines, contact points are listed which can provide further assistance in specific individual cases. The Liechtenstein legal provisions quoted herein are accessible at www.gesetze.li and some of these acts of law have been translated into English, including the Criminal Code (StGB), the Code of Criminal Procedure (StPO), the Legal Assistance Act (RHG) and the Law on the Enforcement of International Sanctions (ISG) (accessible at [www.regierung.li/law](http://www.regierung.li/law)).

## Criminal proceedings

As briefly set out above, the guidelines deal with pecuniary orders in criminal proceedings first.

### Pecuniary orders in criminal proceedings

First of all, the various types of pecuniary orders in criminal proceedings and their substantive requirements will be presented in a concise manner.

#### **Forfeiture (§ 20 StGB)**

Any assets obtained for or through the commission of a punishable act are generally subject to forfeiture (§ 20 (1) StGB). Any expenditure is not to be deducted. The gross principle applies. Any benefits and replacement values are also subject to forfeiture pursuant to § 20 (2) StGB. § 20 (3) StGB provides that if the assets subject to forfeiture are no longer available or if no forfeiture is possible for any other reason, the court shall impose the forfeiture of the monetary equivalent of such assets. The monetary value of assets that were saved through the commission of a punishable act are also subject to forfeiture. § 20 (4) StGB provides that the court is at liberty to determine the extent of asset forfeiture if the determination of such extent is either impossible or involves a disproportionate effort. Cases in which there is no forfeiture are regulated by § 20a StGB.

#### **Extended forfeiture (§ 20b StGB)**

Extended forfeiture is characterized by the fact that under certain conditions no express proof of the concrete punishable acts from which the assets were derived is necessary. For example, § 20b (1) StGB provides that any assets under the control of a criminal organization (§ 278a StGB) or a terrorist group (§ 278b StGB) or provided or collected for the financing of terrorism (§ 278d StGB) shall be subject to forfeiture. Pursuant to § 20b (2) StGB, if a crime has been committed for the commission of which or by which assets have been obtained, any such assets obtained in a temporal connection with this act shall also be subject to forfeiture if there is reason to believe that they were derived from an unlawful act and if their lawful origin cannot be substantiated. If misdemeanours of money laundering (§ 165 StGB), criminal group (§ 278 StGB), terrorist offences (§ 278c StGB) and corruption (§ 304 to § 309 StGB) have been committed in a continuous or repeated manner for the commission of which or by which assets have been obtained, any such assets obtained in a temporal connection with these acts shall also be subject to forfeiture if there is reason to believe that they were derived from further misdemeanours of this nature and if their lawful origin cannot be substantiated. As far as the extended forfeiture is concerned, § 20 (2) to (4) StGB applies analogously. § 20c StGB contains the conditions under which there is no extended forfeiture.

#### **Deprivation order (§ 26 StGB)**

§ 26 (1) StGB provides that any objects used by the perpetrator or intended by the perpetrator to be used to commit the act carrying a penalty, or any objects obtained from this act shall be subject to a deprivation order if these objects endanger the safety of persons, morality or the public order.

The reason for the deprivation order regarding an object is thus that its particular properties represent a potential hazard. These are in particular objects the particular properties of which are permanently associated with the object, such as special tools for the commission of burglaries, explosives, counterfeit money, narcotics and forged public documents.

Unlike confiscation, a deprivation order is not a punishment, but only a preventive measure. The purpose of the deprivation order is not the deprivation or destruction of the assets concerned. Rather, the purpose is to eliminate the hazard that the objects which are the subject of a deprivation order pose. For reasons of proportionality, no deprivation order shall be made if the particular properties of the object which represents the danger are eliminated (§ 26 (2) StGB). § 26 (3) StGB provides that if the preconditions for a deprivation order are met, then the objects shall be subject to a deprivation order even if no particular person can be prosecuted or convicted for the act carrying a penalty.

#### **Confiscation (§ 19a StGB)**

§ 19a (1) StGB provides that any objects used by the perpetrator or intended by the perpetrator to be used in the commission of an intentional offence or any objects obtained from such an offence shall be confiscated if they are owned by the perpetrator at the time of the decision. Pursuant to § 19a (2) StGB no confiscation shall occur if such confiscation is disproportionate to the significance of the act or also to the blameworthiness of the perpetrator.

By contrast to the deprivation order, the confiscation represents a penalty, which is why the conviction of the perpetrator is a precondition. The confiscation has a mitigating effect on the monetary penalty or term of imprisonment to be imposed.

### Tracing and securing of assets

Irrespective of the type of proceedings and the resulting recourse to legal action, one of the preconditions for obtaining pecuniary orders is that any relevant assets are available at all. Therefore, the assets need to be traced first. In order to prevent that pecuniary orders are thwarted until their issuance, it must be assured that traced and available assets can be secured under certain conditions as quickly as possible.

#### **Criminal proceedings in Liechtenstein**

In the light of the fact that the provisions on pecuniary orders are of a mandatory nature, the National Police are required, within their duty to investigate offences *ex officio* (§ 9 and § 10 StPO), to include the preconditions for pecuniary orders in their investigation. As soon as, during the investigation of a punishable act, there is a suspicion that assets were obtained for or through the commission of a punishable act or that objects were used in the commission of an intentional criminal offence, the National Police are also under an obligation to conduct an investigation on forfeiture, extended forfeiture, a deprivation order or confiscation and to report these investigation results to the Public Prosecutor's Office. In order to create the basis of a possible pecuniary order, the National Police must ascertain as early as at the beginning of their investigation whether assets were obtained for or through the commission of a punishable act and who obtained such assets.

In addition, the National Police are endowed with an independent power to seize objects (§ 96a StPO). § 96a (1) StPO provides that the National Police are entitled to seize objects on their own initiative if these objects are not subject to anyone’s power of disposal, if they were taken from the injured party through the offence, if they were found at the scene of the offence and might have been used to commit the offence or might have been intended for that purpose, or if they are of little value or can easily be replaced on a temporary basis, if the possession of such objects is generally prohibited, or if they are found on a person arrested by the National Police or found in a search that the National Police are permitted to carry out on their own accord. This independent power of seizure granted to the National Police only concerns objects and its primary purpose is thus to ensure a deprivation order or confiscation.

A very important source for the tracing of assets in Liechtenstein as a financial centre is the provision of information to the Financial Intelligence Unit (FIU), in particular the submission of a suspicious activities report by persons subject to due diligence under article 17 (1) of the Due Diligence Act (SPG). Where suspicion of money laundering, a predicate offence of money laundering, organized crime, or terrorist financing exists, the persons subject to due diligence must immediately report in writing to the Financial Intelligence Unit (FIU) (article 17 (1) SPG). Pursuant to article 18 (1) of the Due Diligence Act, persons subject to due diligence may in general – apart from certain exceptions - execute transactions in respect of which there is an obligation to report any suspicious activity only once they have submitted such a report. The persons subject to due diligence may carry out client orders relating to substantial assets only in such a manner that the transaction can be traced (article 18 (2) SPG).

It is one of the core duties of the FIU to analyse information set out in suspicious activities reports and from public and non-public sources with regard to the question as to whether the suspicion of money laundering, predicate offences of money laundering, organized crime or terrorist financing can be substantiated; and if any suspicion in this regard can be substantiated, the FIU must forward a report of its analysis to the Public Prosecutor's Office (article 4 FIU Act). Pursuant to article 18b of the Due Diligence Act, the persons subject to due diligence and their bodies and employees are prohibited from informing the contracting party, the beneficial owner and third parties.

If the investigation by the National Police set out in greater detail above has revealed any assets, the National Police are under an obligation to report to the Public Prosecutor's Office in writing (§ 11 StPO). On the basis of any such report made by the National Police or any such analysis report made by the FIU, the Public Prosecutor's Office will initiate criminal proceedings, and the Public Prosecutor's Office may also have the National Police or the investigating judge carry out provisional inquiries (§ 21a StPO).

In order to ensure pecuniary orders, the Liechtenstein Court of Justice (Landgericht) may in particular resort to seizure (§ 96 StPO) and to orders as defined by § 97a StPO.

##### **Seizure**

On application of the Public Prosecutor's Office, the investigating judge is required to seize any items which might be of importance to the criminal proceedings or which are subject to confiscation or a deprivation order (§ 96 (1) StPO). Items will be seized either during a search of premises (§ 92 StPO) ordered by the investigating judge on application of the Public Prosecutor's Office, or on the basis of a handover order. For, pursuant to § 96 (2) StPO, everybody is obliged to hand over on request any items that are to be seized, in particular documents, or to enable seizure in another manner.

In line with § 98a (1) StPO, banks, investment firms, insurance undertakings, asset management companies and fund management companies (hereinafter referred to as “institutions”) are, upon court ruling to such effect, required to provide information on business relationships and to hand over documents and other records on business relationships, if this is necessary in the investigation of a case of money laundering, a predicate offence of money laundering, or an offence in connection with organized crime. The same applies if it must be assumed as a result of certain facts that the business relationship was used for the transaction of a pecuniary advantage that is subject to forfeiture or extended forfeiture. If the institution does not surrender the documents or other records and if it fails to provide the information, the investigating judge must, on application of the Public Prosecutor's Office, resort to seizure.

##### **Orders pursuant to § 97a StPO**

On application of the Public Prosecutor's Office, the court must give the following orders in order to ensure the forfeiture (§ 20 StGB) or extended forfeiture (§ 20b StGB) if it is to be feared that collection would otherwise be endangered or considerably impeded:

1. the seizure, custody and administration of tangible movable items, including the depositing of money,

2. the judicial prohibition of the alienation or pledging of tangible movable items,

3. the judicial prohibition of the disposition of credit balances or other assets (this is called “prohibition to make dispositions” or “account freeze”),

4. the judicial prohibition of the alienation, encumbrance, or pledging of real estate or rights registered in the Land Register.

Any such order can also be issued if the exact amount to be secured is not yet certain. The order can define a certain amount of money the depositing of which will suspend the enforcement of the order. Once the deposit has been made, the order is to be lifted in this respect at the request of the party concerned. This amount of money is to be defined so that the presumable forfeiture or the presumable extended forfeiture is covered. The court must lay down a period of time not exceeding two years for which the order given will be valid. On application, this time limit may be extended by a maximum of one year each.

As a result of the prohibition to make dispositions (§ 97a (1) (3) StPO), the State acquires a pledge in respect of the credit balances and other assets. The order must be lifted as soon as the preconditions under which it was given have lapsed, in particular also if it is to be assumed that the forfeiture or extended forfeiture will not take place or if the period set has expired. No order as defined by § 97a StPO may be issued unless there is a reasonable suspicion. This means that there must be facts from which the suspicion can be deduced in a manner that is rationally understandable. Mere assumptions do not suffice. As a general rule, these orders are issued for the maximum duration of two years upon their issuance for the first time, and if the initial suspicion is only very vague, even for a shorter period of time.

There is no legal maximum duration for orders as defined by § 97a StPO. In line with established case law, any such orders are, however, inappropriate beyond the period of three years, unless there are investigation results or findings which substantiate the original initial suspicion or unless there are any circumstances particularly worthy of consideration which warrant an extension beyond this term. A substantiation of the initial suspicion must be assumed in particular if a bill of indictment has already been submitted or if a convicting criminal judgement, albeit not yet final, has even been rendered. In such cases, extensions of up to ten years and beyond are thus also possible. On the other hand, any such orders have also been lifted or not been renewed prior to the expiration of the time period of three years, in particular in cases where a merely vague initial suspicion has not been substantiated or has been removed.

There are no legal rules governing the management of frozen assets. Any change in the investment of frozen assets at banks requires the approval of the court. Any such approval will in general be given only for investments which preserve the value of the assets and for investments which involve very few risks.

#### **Legal assistance proceedings**

There is a common interest of all nations to prosecute criminal offences in an appropriate manner. Therefore, the aim is not only to convict the perpetrator, rather he/she should also be deprived of the material benefits derived from the offence. The perpetrator must be faced with the fact that crimes do not pay off. The increasing internationalisation of criminal activities and the ability to transfer assets across various borders with no problems at all have required intensive international cooperation between the law enforcement authorities. Therefore, Liechtenstein authorities provide legal assistance in around 300 proceedings every year for criminal proceedings conducted by foreign law enforcement authorities. Granting assistance in these foreign criminal proceedings presupposes that the foreign State submits a request for legal assistance and that this request for legal assistance meets the legal requirements for granting legal assistance in Liechtenstein, in particular that the measures requested thereunder are permissible under Liechtenstein law. The information on legal assistance in criminal matters set out below applies both to the tracing and to the securing of assets and to any additional steps to be taken.

The Act on International Legal Assistance in Criminal Matters (Legal Assistance Act, RHG) governs the requirements under which legal assistance for criminal proceedings abroad may be provided. The Legal Assistance Act forms the basis of legal assistance in criminal matters, and article 1 thereof clearly provides that these provisions apply unless otherwise provided for in international agreements (priority of international agreements). As a matter of fact, Liechtenstein has ratified significant multilateral agreements which are aimed at facilitating international pecuniary orders. These include in particular Council of Europe Conventions (e.g. the European Convention on Mutual Assistance in Criminal Matters, the Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, or the Criminal Law Convention against Corruption) and United Nations Conventions (e.g. the United Nations Convention against Transnational Organised Crime and the United Nations Convention against Corruption). In addition, Liechtenstein has also entered into several bilateral agreements with other States.

Under Liechtenstein law, however, the granting of legal assistance is possible and permissible even without an existing international agreement, provided that the requesting State can ensure mutuality. In the combat against crime, Liechtenstein has maintained a good and trustworthy cooperation with a great number of States and granted legal assistance without the existence of an agreement to this effect.

Article 50 (1) RHG sets forth the general principle which provides that legal assistance in criminal matters will be provided at the request of a foreign authority pursuant to the provisions of the Act, including proceedings concerning the issuance of a pecuniary order. The term “criminal matter” also includes foreign civil proceedings aimed at the issuance of a pecuniary order as defined by § 20 and § 20b StGB (article 50 (1a) RHG). In this connection, the term “foreign civil proceedings” comprises any and all proceedings the aim of which is the forfeiture of benefits derived from punishable acts, if no criminal proceedings against a specific person can be conducted (see, in this respect, also item 2.3.1.2). As a general rule, this also includes the “civil forfeiture” proceedings or “civil confiscation” proceedings common in common-law countries.

A court or a Public Prosecutor's Office is considered an authority that may request legal assistance in criminal matters. Legal assistance is any kind of assistance granted for foreign proceedings in criminal matters. As a result, this also includes any and all investigation measures aimed at tracing assets.

Legal assistance proceedings are governed not only by the Legal Assistance Act, but the provisions set out in the Code of Criminal Procedure must also be applied mutatis mutandis (article 9 (1) RHG).

As far as the securing of assets is concerned, reference must first be made to the definition of pecuniary orders in article 8a of the Legal Assistance Act. Therein, pecuniary order is defined as confiscation (§ 19a StGB), forfeiture (§ 20 StGB, § 20b StGB), deprivation order (§ 26 StGB) and any other penalty, preventive measure or legal consequence consisting in the deprivation of an asset or object, which penalty, measure or consequence is imposed after conducting criminal proceedings in Liechtenstein or abroad, with the exception of monetary penalties, fines, awards to civil claimants and procedural costs.

Due to the general reference in article 9 of the Legal Assistance Act to the provisions of the Code of Criminal Procedure, the provisions on seizure (§ 96 StPO) and the orders as defined by § 97a StPO must also be applied for the securing of assets in legal assistance proceedings in criminal matters.

Pursuant to article 58 of the Legal Assistance Act, legal assistance must be provided in line with the provisions on criminal court proceedings applicable in Liechtenstein. If legal assistance is provided in the form of an order as defined by § 97a StPO, such order must contain a time period. The requesting foreign authority must be notified thereof in the manner provided for. Any extension of the order pursuant to § 97a StPO requires an application to this effect by the requesting authority prior to the expiration of the time limit. The requesting authority must be informed thereof in this notification.

As regards the form and the contents of a request for legal assistance, article 56 (1) of the Legal Assistance Act provides that legal assistance may be granted only if the request sets out the facts and the legal assessment of the punishable acts which form the basis of the request. Article 56 (2) of the Legal Assistance Act provides that the request for the search of persons or premises, for the seizure of objects or for the surveillance of telecommunications must include the original copy, a certified true copy or a 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. If it is not possible to order such measures under the law of the State making the request, article 56 (3) of the Legal Assistance Act states that a confirmation by the requesting authority that these measures are permissible in the State making the request is sufficient.

Requests for legal assistance are received via various channels in Liechtenstein, be it via diplomatic channels, via the Office of Justice or directly by the Court of Justice. The channel to be complied with is governed by the applicable international agreements and/or by the Legal Assistance Act. Failing any such provision, the channel via the Office of Justice must be complied with. If a request for legal assistance is transmitted via a channel that is not permitted or to an authority that is not competent (e.g. the Public Prosecutor's Office), it will be forwarded to the competent authority and, if necessary, the requesting State is asked to comply with the correct channel.

Pursuant to article 55 (1) of the Legal Assistance Act, the Court of Justice is responsible for handling requests for legal assistance. If legal assistance is not granted in whole or in part, article 57 (1) of the Legal Assistance Act provides that the foreign authority making the request must be informed in the manner provided for and that the reasons must be indicated.

#### **Practical tips**

As part of criminal proceedings, the Liechtenstein law enforcement authorities are allowed to conduct investigations, and in this process they may consult data in registers and obtain information from other agencies and authorities. The success of these financial investigations cannot be predicted for individual cases. It strongly depends on the state of the findings in the criminal proceedings conducted by the requesting State and the available investigative approaches in Liechtenstein. In this context, it is important to communicate any personal data as specifically as possible and to indicate possible variations in spelling or birth and identity card data. Investigations are also facilitated if pointers for links to Liechtenstein are provided, e.g. repeated travels to Liechtenstein, names and addresses of relatives or friends in Liechtenstein or findings resulting from business relationships with Liechtenstein.

As early as in the phase of tracing and securing assets, it might prove necessary to implement measures against the wishes of the persons concerned or it might be necessary to interfere in a particular manner with their rights otherwise, e.g. in the form of the search of premises and seizure or in the form of measures aimed at the securing of assets. Under Liechtenstein law, this requires an order by the Court of Justice which is competent for legal assistance. It is therefore indispensable that the request for legal assistance set out the facts with as much detail as possible, including any links to assets (if any) located in Liechtenstein. This is the only manner in which it is possible to carry out the necessary examination as to whether the requirements set forth in the relevant provisions of the Code of Criminal Procedure (StPO) or the Legal Assistance Act (RHG) are met.

Cooperation in legal assistance proceedings is facilitated if the request for legal assistance sets out a direct contact, and it should be set out how this contact can be reached by telephone and/or email (if necessary, language skills should be stated as well). This makes it possible to directly communicate with the contact for brief questions.

If the request for legal assistance contains a request for measures aimed at the securing of assets, any such measures are promising only if a link between the punishable conduct abroad and the assets located in Liechtenstein is provided. Failing this, one must expect that the request for legal assistance measures will be denied on the grounds of an impermissible fishing expedition. Measures aimed at the securing of assets in domestic criminal proceedings and in one or more legal assistance proceedings for foreign criminal proceedings do not rule each other out, because any such measures may be issued simultaneously in respect of the same assets. If a measure aimed at the securing of assets is lifted in domestic criminal proceedings or in legal assistance proceedings, this has thus no direct bearing on the measures issued simultaneously in other proceedings.

### Definite deprivation of assets

Once the judicial decision on pecuniary orders becomes final, the ownership of the objects subject to confiscation or a deprivation order and of the assets subject to forfeiture passes to the State of Liechtenstein. Relevant execution measures then allow the State of Liechtenstein to have access to these objects and assets.

#### **Criminal proceedings in Liechtenstein**

The aim of pecuniary orders in criminal proceedings is not to punish the perpetrator. Rather, they are aimed at a re-establishment of the lawful financial circumstances. This is achieved either by returning the assets to the injured party or, if there is no injured party or if such injured party cannot be located, by way of asset forfeiture which operates in favour of the State of Liechtenstein.

If a criminal judgment sentences the perpetrator to damages or any other performance under civil law in ancillary proceedings, the economic effect of this award to the civil claimant is to eliminate the enrichment. Any such award to a civil claimant, however, does not entail that there is no forfeiture; a forfeiture decision must be rendered nonetheless.

##### **Decision in a criminal judgement**

Pursuant to § 353 (1) of the Code of Criminal Procedure (StPO), forfeiture, extended forfeiture, deprivation orders, and other pecuniary orders laid down in supplementary criminal laws must be decided on in a criminal judgement. The application for forfeiture (§ 20 StGB), extended forfeiture (§ 20b StGB) and a deprivation order (§ 26 StGB) is therefore submitted in the bill of indictment (or in the application for sentencing or in the punishment application). However, if the results of the criminal proceedings do not suffice to make a reliable judgement on pecuniary orders, the court may issue a ruling pursuant to § 353 (2) of the Code of Criminal Procedure to the effect that the decision on such orders is reserved for a separate decision (§§ 356, 356a StPO). If no such reservation decision directing the proceedings is rendered, the pecuniary order is impermissible.

§ 353 (3) of the Code of Criminal Procedure states that the decision on pecuniary orders is equivalent to the imposition of the sentence and may thus be challenged by appeal.

(Extended) forfeiture is not an ancillary punishment but an independent pecuniary consequence of wrongdoing which, if no payment is made, must be collected under execution law. On the basis of the criteria determined by the European Court of Human Rights (ECtHR), pecuniary orders are thus not to be qualified as a punishment, which is why they are not governed by the principle of non-retroactivity (nulla poena sine lege) set forth in article 7 (1) of the European Convention on Human Rights (ECHR).

##### **Decision in independent *in rem* proceedings**

If there are sufficient reasons to assume that the preconditions for forfeiture (§ 20 StGB), extended forfeiture (§ 20b StGB), or a deprivation order (§ 26 StGB) are met, and if it is not possible to decide on this in criminal proceedings against a specific person, the prosecutor shall submit a separate application for the issuing of such pecuniary order (§ 356 StPO). Any such application must be decided on by that court which had or would have jurisdiction for the trial and judgement for the offence that supposedly gives rise to the order; it shall decide by judgement in separate proceedings after a public oral hearing.

Pursuant to established case law, the independent *in rem* forfeiture proceedings are proceedings of their own kind which are governed by civil law rather than by criminal law. They are *in rem* proceedings similar to the civil forfeiture proceedings or civil confiscation proceedings common in common-law countries. The principle of non-retroactivity as defined by article 7 (1) of the European Convention on Human Rights (ECHR) therefore does not apply to the *in rem* forfeiture proceedings. In these proceedings, the summons to the trial need not be served upon the jointly liable person personally. Rather, service upon their legal counsel will suffice.

##### **Enforcement of decisions on pecuniary orders**

§ 253 (1) of the Code of Criminal Procedure (StPO) provides that if the forfeiture, extended forfeiture, confiscation, or deprivation order in respect of assets or items has been ordered and if these are not already in court custody, the convicted offender or the jointly liable person shall be directed by the Court of Justice in writing to hand over such assets or items within 14 days or to transfer the power to dispose of them to the Court, failing which such transfer will happen by coercion. If the person with power to dispose of these assets or items does not comply with this direction, he/she shall be deprived of them by way of execution. As already set out above, case law holds that the forfeiture order becoming final operates by virtue of the law as an acquisition free of any encumbrance by the State of Liechtenstein of the rights in the objects and assets concerned. This corresponds to an original acquisition of ownership.

If the convicted offender does not deposit the amount of money subject to forfeiture pursuant to § 20 (3) of the Criminal Code (StGB) immediately after the judgement has become final, § 249 (1) of the Code of Criminal Procedure (StPO) provides that he/she shall be asked in writing to pay this amount of money within fourteen days on penalty of collection by coercion. Collection will be carried out in line with the provisions set forth in the Code of Execution.

Upon the enforcement of pecuniary orders, the pledge acquired by the State of Liechtenstein in respect of the assets subject to the prohibition to make dispositions pursuant to § 97a (1) (3) of the Code of Criminal Procedure (StPO) becomes relevant again. In particular, upon the enforcement of forfeiture pursuant to § 20 (3) of the Criminal Code (StGB), execution may be carried out on the basis of the pledge acquired by means of the prohibition to make dispositions. As a result, the pledge held by the State of Liechtenstein has priority over the pledges (if any) subsequently acquired by other creditors.

#### **Legal assistance proceedings**

As with the tracing and securing of assets, the Liechtenstein legal assistance law takes account of the fact that pecuniary orders may be structured differently under foreign law. Besides the international agreements already set out above, the enforcement of foreign decisions concerning pecuniary orders is governed by articles 64 to 67 of the Legal Assistance Act (RHG). Article 64 (1) RHG provides that the enforcement of pecuniary orders obtained abroad presupposes that the general prerequisites are fulfilled first. One particular prerequisite is that the decision of the foreign court has been taken in a trial that complies with the basic principles of article 6 of the European Convention on Human Rights (ECHR).

Article 64 (4) of the Legal Assistance Act provides that the enforcement of foreign decisions on pecuniary orders is only permissible as far as, under Liechtenstein law, the requirements for a pecuniary order are met and a corresponding domestic order has not been issued yet. This is to prevent that several pecuniary orders access the same assets. Settled case law, however, holds that this provision only applies to enforcements. It does not apply to prohibitions to make dispositions as defined by § 97a (1) (3) of the Code of Criminal Procedure. Their sole aim is to secure the assets for enforcement and they do not constitute themselves any measures of enforcement, which is why article 64 (4) of the Legal Assistance Act does not also apply to the securing of enforcement measures (if any). Therefore, it is possible that several orders as defined by § 97a (1) (3) of the Code of Criminal Procedure are issued simultaneously in domestic proceedings and in one or more legal assistance proceedings with regard to the same assets.

In addition, article 64 (5) of the Legal Assistance Act provides that the enforcement of a decision taken by a foreign court in connection with which forfeiture in accordance with § 20 (3) of the Criminal Code has been pronounced, is permissible only if collection is expected to be in Liechtenstein and the person concerned has been heard provided that he/she could be contacted.

In addition, the enforcement of a decision taken by a foreign court in connection with which a confiscation, deprivation order, forfeiture in accordance with § 20 (1) and (2) of the Criminal Code, or extended forfeiture in accordance with § 20b of the Criminal Code has been pronounced by a final decision is permissible only 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.

Pursuant to § 64 (7) of the Legal Assistance Act, forfeited assets, and objects subject to a deprivation order or confiscation devolve upon the State of Liechtenstein.

Pursuant to article 67 (1) of the Legal Assistance Act, the Court of Justice decides on the request for enforcement of a decision on pecuniary orders by adopting a ruling. The Office of Justice must inform the State making the request about the decision on the request for assumption of enforcement in the manner provided for and notify it of the enforcement.

Article 65 (1) of the Legal Assistance Act provides that if the enforcement of a decision taken in criminal matters by a foreign court is assumed, the pecuniary order to be enforced in Liechtenstein must be determined under Liechtenstein law taking into account the measure pronounced in such decision. As already set out above, upon the Liechtenstein enforcement decision becoming final, any forfeited assets, and objects subject to a deprivation order or confiscation devolve upon the State of Liechtenstein. The enforcement of this decision is thus governed by the provisions set out above on the enforcement of domestic pecuniary orders (§ 249 and § 253 StPO).

#### **Practical tips**

The enforcement of foreign pecuniary orders primarily requires a final and enforceable foreign decision, *i.e.* a judgement or an equivalent decision. The foreign criminal proceedings must thus have been fully completed before any enforcement in Liechtenstein by way of a request for legal assistance can be made. Another prerequisite for enforcement is that the Liechtenstein courts are under an obligation to examine whether a minimum standard of procedural rights of the convicted offender or the forfeiture participant has been complied with; these procedural rights primarily include the legal right to be heard and defence rights (article 64 (1) (1) RHG). In the case of default judgements in particular, it is indispensable to provide information on compliance with these procedural rights in the enforcement request for legal assistance.

Furthermore, the enforcement of pecuniary orders presupposes that the prerequisites for a pecuniary order are met under Liechtenstein law as well (article 64 (4) RHG). Pursuant to article 50 (1a) of the Legal Assistance Act, foreign civil proceedings for the pronouncing of a pecuniary order within the meaning of forfeiture (§ 20 StGB) or extended forfeiture (§ 20b StGB) are deemed equivalent to criminal proceedings for the pronouncing of pecuniary orders. The term “foreign civil proceedings” primarily refers to the “civil forfeiture” proceedings or “civil confiscation” proceedings common in common-law countries.

### Use of the assets subject to deprivation

Upon enforcement of the pecuniary order, the definite deprivation of assets has essentially been completed. However, the question arises as to what happens to the assets subject to deprivation. As far as criminal proceedings conducted in Liechtenstein are concerned, the principle applies that assets subject to forfeiture devolve upon the State of Liechtenstein. The same is true for the enforcement of foreign pecuniary orders. These objects and assets, as already set out above, also devolve upon the State of Liechtenstein (article 64 (7) RHG).

§ 253a of the Code of Criminal Procedure, however, provides that in the case of offences committed abroad, the Government may conclude an agreement with the State where the offence was committed with respect to the sharing of forfeited or deprived assets and may in particular include conditions in such agreement concerning the use of such assets. Pursuant to § 253a (2) of the Code of Criminal Procedure, the Government is responsible for the execution of this sharing agreement.

As far as the practical implementation is concerned, the Government generally has a wide margin of discretion with regard to the conclusion of any such sharing agreements. In the case of the embezzlement of public funds, the international obligation resulting from article 57 of the United Nations Convention Against Corruption (UNCAC) requires the Government to always return all assets subject to forfeiture to the State where the offence was committed. If necessary, a reasonable amount to cover the procedural costs will be deducted. In all other cases, the proportion of the sharing depends on the criminal offence and on the assistance provided by the foreign State. In the case of narcotics offences and corruption offences, a 50% to 50% sharing with the State where the offence was committed has become an international standard. Liechtenstein regularly retains a reasonable amount in these cases to cover the procedural costs.

## Civil proceedings

As already set out above, any person injured by a criminal offence is at liberty to assert his/her pecuniary claims in ancillary criminal proceedings. Irrespective of the fact that the criminal offence is brought to the attention of the law enforcement authorities, the injured party may take steps under civil law, in particular in connection with claims for the payment of damages due to a criminal offence committed by the defendant. The initiation and carrying out of civil proceedings are, however, generally up to the plaintiff alone and not to the Liechtenstein authorities. The injured party must therefore submit the facts to the civil court as the plaintiff. The civil court will not investigate ex officio. As a result, the plaintiff is primarily liable to make assertions and furnish evidence with regard to whether and what incriminated assets are available or what other damage has been caused by the criminal offence. Therefore, suing possible criminal offenders or holders of incriminated assets under civil law offers the advantage that the injured party as the plaintiff is in control of the proceedings and may assert his/her claims personally and directly.

The Court of Justice has jurisdiction in respect of such civil proceedings in particular if the defendant has his/her domicile or residence in Liechtenstein. Under certain prerequisites, the Court of Justice also has jurisdiction if assets of the defendant or the object concerned are located in Liechtenstein (forum of the asset’s location). In Liechtenstein, the judicial assertion of claims of even a very high amount does not require representation before the Court of Justice by legal counsel. As soon as an enforceable decision by the civil court has been obtained, the plaintiff is allowed to initiate compulsory execution. Any execution in Liechtenstein, however, requires that assets of the defendant be located on domestic territory. The plaintiff cannot determine whether any such assets are actually available in Liechtenstein until compulsory execution is carried out on the basis of a judgement.

The enforcement in Liechtenstein of foreign decisions rendered by civil courts and the enforcement abroad of civil judgements rendered by Liechtenstein courts are possible under bilateral enforcement agreements. Any such enforcement agreements have hitherto been concluded with Switzerland and Austria.

In order to secure monetary claims, provisional injunctions (securing orders) can be issued if there is a likelihood that, without the injunction, the debtor will perform acts, such as causing damage to, destroying, concealing or stashing away assets, will dispose of or make other dispositive acts in respect of assets, in particular by way of agreements in respect thereof with any third parties, or will fail to perform acts, in order to frustrate or complicate the collection of the monetary claim (grounds for securing). There is a ground for securing in particular if the debtor has no fixed abode, if the debtor, in the intent to evade the performance of his/her obligations, makes preparations for his/her flight or flees, if the debtor does not live in Liechtenstein or if the execution title would otherwise have to be enforced abroad.

In order to secure other claims, provisional injunctions (official orders) can be issued under similar preconditions. The related proceedings are only summary, and the applicant is required to furnish suitable prima facie evidence to demonstrate the credibility of his/her claim or at least a ground for securing.

The definite deprivation of assets under civil law requires a final and enforceable title, *i.e.* a decision by a civil court, which renders the execution against available assets possible. This can be a judgement rendered by a Liechtenstein court or a judgement rendered by a foreign court which is intended to be enforced in Liechtenstein. The use of assets against which execution has been carried out and which have been the subject of deprivation under civil law is not subject to any restrictions. The injured party has thus enforced his/her claims as plaintiff himself/herself and is then allowed to make dispositions in respect of the proceeds on his/her own and alone.

## Sanctions

In individual cases, certain individuals, in particular members of governments removed from office or members of parties to civil wars, can be subject to financial sanctions which were inter alia adopted at the level of the United Nations or the European Union.

The enforcement of international sanctions adopted by the United Nations or the most important trading partners of Liechtenstein is governed by the Act on the Enforcement of International Sanctions (ISG). In order to enforce any such international sanctions, coercive measures can be enacted, including restrictions of transactions involving goods and services, payment and capital transfers and the movement of persons, as well as other prohibitions and restrictions. The Government has the authority to enact coercive measures in the form of ordinances. The Government may stipulate exceptions in order to support humanitarian activities, in particular for the provision of food supplies, medicines, or therapeutic products, or in order to safeguard Liechtenstein interests. The Government can, by ordinance, stipulate the automatic adoption of lists issued or updated by the United Nations Security Council or the competent Committee of the Security Council concerning individuals and legal entities, groups, enterprises and organisations. These lists are not published in Liechtenstein. They are available on the United Nations website.

The financial sanctions mentioned above result in the freezing by virtue of the law of monies and other assets held by individuals/legal entities, if these monies and other assets are located in Liechtenstein. No monies or other assets may be made available to individuals and legal entities, groups, enterprises or organisations affected by the freezing. Banks and other institutions directly or indirectly affected by the measures set forth in the ISG are required on request to provide the competent enforcement authorities with the information and documents which are necessary for a comprehensive assessment or monitoring to be carried out. The enforcement authorities have the right to enter and inspect the business premises of persons who are subject to a duty to provide information without prior notice, as well as to examine relevant documents and seize incriminating material.

However, this is not associated with a systematic tracing of assets for the purpose of a deprivation order. The financial sanctions do result in restrictions with regard to the making of dispositions, however, this effect does not operate for the benefit of injured parties (if any). The purpose of the law of sanctions is not to ensure a new and definite allocation of assets, rather the aim is to provisionally deprive the listed persons of the power to make dispositions in respect thereof during the course of the sanctions in order to prevent that the assets are used in any other manner that is incompatible with the purpose of the sanctions.

Objects and assets that are subject to coercive measures may become the subject of a deprivation order by the Government beyond the scope of criminal proceedings where an obligation under international law exists to that effect. To prevent cases of hardship, the Government may, however, grant exceptions. The property and assets subject to the deprivation order are to be used in accordance with obligations under international law.

## Contact points

### Networks

There are various networks with contact persons in national authorities and international organisations for pecuniary orders. Liechtenstein takes part in the Camden Asset Recovery Inter-Agency Network (CARIN), in the Stolen Asset Recovery Initiative (StAR) of the World Bank and the United Nations, in the networks of the International Association of Prosecutors (IAP) and in the European Judicial Network (EJN). There is a cooperation agreement with Eurojust. The Financial Intelligence Unit (FIU) is a member of the Egmont Group. As part of its development cooperation, Liechtenstein also provides support to the International Center for Asset Recovery (ICAR) of the Basel Institute on Governance.

### Contact points in Liechtenstein

The Office of Justice (AJU); [www.llv.li](http://www.llv.li); info.aju@llv.li) is the central contact point for pending and future individual cases of international legal assistance in criminal matters. The National Police (CARIN) and the Public Prosecutor's Office (StAR) represent Liechtenstein in the above mentioned international networks with regard to pecuniary orders. The National Police (kripo@landespolizei.li) is the Liechtenstein contact point in the CARIN networks.