



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Liechtenstein

Review by Canada and the United Arab Emirates of the
implementation by Liechtenstein of articles 15 - 42
of Chapter III “Criminalization and law enforcement” and
articles 44 - 50 of Chapter IV “International cooperation” of the
United Nations Convention against Corruption for the review
cycle 2010 - 2015

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Liechtenstein of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Liechtenstein, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Canada, United Arab Emirates and Liechtenstein, by means of telephone conferences and e-mail exchanges and involving, inter alia, the following experts:

Liechtenstein:

- Ms. Isabel Frommelt, Counsellor, Office for Foreign Affairs;

Canada:

- Mr. Paul Saint-Denis, Senior Counsel, Criminal Law Policy, Department of Justice;

United Arab Emirates:

- Mr. Khalid Alshaali, Judge, Ministry of Justice;
- Mr. Humaid Alamimi, Captain, Ministry of the Interior;
- Mr. Hamad Alhammadi, Auditor, State Audit Institution;

Secretariat:

- Mr. Oliver Landwehr, Crime Prevention and Criminal Justice Officer, UNODC/DTA/CEB/CSS
- Mr. Badr El Banna, Crime Prevention and Criminal Justice Officer, UNODC/DTA/CEB/CSS

6. A country visit, agreed to by Liechtenstein, was conducted from 10 to 13 November 2014. During the country visit, the reviewing experts met with the following Liechtenstein representatives:

- Ambassador Martin Frick, Director, Office of Foreign Affairs
- Mr. Patrick Ritter, Minister, Office of Foreign Affairs
- Ms. Isabel Frommelt, Counsellor, Office of Foreign Affairs
- Mr. Robert Wallner, Prosecutor General, Office of the Public Prosecutor
- Mr. Frank Haun, Deputy Prosecutor General, Office of the Public Prosecutor
- Mr. Harald Oberdorfer, Legal Officer, Judicial Affairs Division, Office of Justice
- Mr. Carlo Ranzoni, Judge at the Court of Justice
- Mr. Andreas Schädler, Head of the Crime Investigation Division, National Police
- Mr. Andreas Fuchs, Senior Political Advisor, Ministry of General Government Affairs and Finance
- Mr. Michael Schöb, Deputy Director, Financial Intelligence Unit (FIU)
- Mrs. Bianca Hennig, Executive Officer, Legal/International Affairs, Financial Market Authority

III. Executive summary

1. Introduction

Overview of the legal and institutional framework of Liechtenstein in the context of implementation of the United Nations Convention against Corruption

The Principality of Liechtenstein signed the United Nations Convention against Corruption (UNCAC) on 10 December 2003, ratified it on 16 December 2009 and deposited its instrument of ratification on 8 July 2010.

Liechtenstein uses the incorporation system or monist system for the implementation of international treaties. Therefore, the Convention has become an integral part of Liechtenstein's domestic law following its ratification and entry into force on 7 August 2010. Within the hierarchy of norms, the Convention as an international treaty has at least the status of statutory law in the domestic legal order and takes precedence over earlier laws (*lex posterior*).

Liechtenstein is a constitutional hereditary monarchy on a democratic and parliamentary basis. The power of the State is embodied in the Reigning Prince and the People. The Principality forms a monetary and customs union with Switzerland and therefore, a variety of Swiss laws apply in Liechtenstein as well. The criminal law is largely based on Austrian law. This means it is a civil law system with an inquisitorial court procedure.

As a member of the European Economic Area (EEA), Liechtenstein is fully subjected to the European Union (EU) anti-money laundering and counter terrorist financing (AML/CFT) framework. Additionally, Liechtenstein is party to international and multilateral organizations and agreements, including the OSCE and the Council of Europe (CoE). Liechtenstein has signed, but not yet ratified the CoE Criminal Law Convention against Corruption. It is not a signatory to the CoE Civil Law Convention nor to the OECD Foreign Bribery Convention. The most important institutions in the fight against corruption are the National Police and the Office of the Public Prosecutor.

To bring Liechtenstein criminal law fully in line with the obligations of the Convention, the Government has published a White Paper (*Vernehmlassungsbericht*) that outlines planned amendments to the Criminal Code and other laws (*Korruptionsstrafrechtsrevision*), which was discussed during the country visit. A draft law is expected for autumn 2015.

2. Chapter III: Criminalization and Law Enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18, 21)

The provision on active bribery of officials is contained in § 307 of the Criminal Code (CC). Liechtenstein law distinguishes between official acts contrary to duty (§ 307(1) CC) and acts not contrary to duty (§ 307(2) CC).

The definition of “public official” (*Beamter*) set out in § 74(4) CC applies to elected officials as well as public officials appointed to positions and persons holding a judicial office (professional judges, lay judges and all persons, who participate in the administration of justice). It does not include Members of Parliament or of Municipal Councils or CEOs of public enterprises.

The active bribery of these latter persons for acts contrary to their duties is nevertheless covered by § 307(1) CC because this provision explicitly includes not only national and foreign officials (Art. 16(1) UNCAC) but also Members of Parliament etc. However, for acts not contrary to their duties, § 307(2) CC only covers national officials and managing employees of a public enterprise. Moreover, § 307(2) CC contains a *de minimis* exemption in that it criminalises only advantages that are “not merely minor”. Finally, an exemption at the end of § 307(2) CC (“unless the perpetrator cannot be faulted for offering, promising or granting that advantage under the circumstances”) can be invoked if the advantage was meant to “speed up” the performance of a lawful act. Liechtenstein explained that all these issues would be addressed in the planned reform of the anti-corruption legislation.

The element of “undue advantage” is not defined in the law, but the interpretation of the term includes all material and immaterial rewards and gifts.

Third party beneficiaries of the advantage are explicitly mentioned and include entities.

Passive bribery of national officials is criminalised in §§ 304, 305, 306 and 306a CC.

Liechtenstein has not implemented Art. 16(2) UNCAC.

Liechtenstein has only partially implemented active bribery in the private sector (to the extent that it amounts to unfair competition, § 4 of the Unfair Competition Act) and not implemented passive bribery in the private sector.

Trading in influence is partially criminalised by § 308 CC, which concerns aspects of passive trading in influence (Art. 18(b) UNCAC). However, it envisages a two-person-relationship, whereas Art. 18 UNCAC concerns a three-person-relationship.

Money-laundering, concealment (arts. 23, 24)

§ 165(1) CC criminalizes money laundering. The money laundering offence relates to all kinds of property, either obtained directly from the offense or indirectly through substitution (“embodied”). Indirect proceeds (interest) are also covered according to case law. Predicate offenses to money laundering are

all crimes (punishable by life or more than three years imprisonment) and a series of designated misdemeanors (less than three years imprisonment). Therefore, all Convention offences are predicate offences, with the exception of small-scale embezzlement.

Attempt (as well as any participation in an attempt) is criminalized for all offenses by § 15 CC, including money laundering. § 12 CC (Treatment of all participants as offenders) covers aiding and abetting, facilitating and counselling.

As long as Liechtenstein has jurisdiction over the money laundering activity itself *ratione loci*, it is irrelevant where the predicate offences are committed, provided that the acts would constitute a domestic predicate offence. Liechtenstein even assumes jurisdiction over the money laundering conduct in another country if the predicate offence has been committed in Liechtenstein (§ 64, para 1, 9 CC), and this even in the absence of dual criminality. The offender himself may also be the perpetrator of the predicate crime, thus self-laundering is also a criminalized conduct.

Concealment is criminalized by the offence of handling stolen goods (§ 164 CC).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20, 22)

The CC contains various criminal offences which criminalize embezzlement both in the public and private sector, in particular §§ 133, 153, 302 and 313 CC.

Art. 19 UNCAC is implemented through the provisions of § 302 CC.

Liechtenstein stated that due to constitutional principles (presumption of innocence, reversal of burden of proof), it has not criminalized illicit enrichment but has considered introducing the offence.

Obstruction of justice (art. 25)

Obstruction of justice (Art. 25(a) UNCAC) is an offence against the administration of justice (§§ 288 and 289 CC) or an offence against the reliability of documents and of evidence (§§ 293 and 295 CC). In addition to that, such acts are also considered as coercion (§§ 105 and 106 CC). The provisions listed do not address “undue advantage to induce false testimony, etc.”

The obstruction of the exercise of duties by public officials is criminalised by § 269 CC (Resistance to State authorities) and § 270 CC (Assault of an official), although these provisions do not include intimidation.

Liability of legal persons (art. 26)

The Criminal Code was revised in 2010 and a new section (§§ 74a to 74g CC) on the liability of legal persons was inserted. Apart from the criminal sanctions pursuant to § 74b CC, other administrative and civil remedies are available for legal persons found guilty of committing a Convention offence (e.g. dissolution of the company, § 971(1) no. 5 of the Companies Code [*Personen- und Gesellschaftsrecht*]). However, there is no debarment or blacklisting procedure

The liability of the legal person and the liability of managers or employees for the same act do not exclude each other. Legal persons held liable are subject to

sanctions, including monetary sanctions according to §§ 74b and 74c CC. The maximum penalty is 2.7m CHF.

Participation and attempt (art. 27)

§ 12 CC covers aiding and abetting, facilitating and counselling. It states that a criminal offense is committed also by anybody who abets another person to commit the offense or who contributes to its perpetration in any other way.

Attempt (as well as any participation in an attempt) is criminalized for all offenses by § 15 CC. The mere preparation of a corruption offence is not criminalised.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30, 37)

A peculiarity of the judicial system is that the prosecutor does not ask the court for a specific sentence but leaves this at the discretion of the court. Judges have the discretion to impose the sentence they deem most appropriate under the circumstances. The range of punishment for corruption crimes, including aggravating and mitigating circumstances, makes it possible to take into account the gravity of the relevant offences.

According to the Liechtenstein Constitution, the Reigning Prince enjoys immunity. No immunity is given to officials or judges. MPs only enjoy the very limited immunity for statements and votes in Parliament. Otherwise, only the arrest of an MP during the meeting period of Parliament requires consent of Parliament.

The principle of legality applies in Liechtenstein criminal procedure, i.e. the Office of the Public Prosecutor must in principle prosecute all criminal acts *ex officio*.

§§ 131(5), 138 to 140, and 142(4) of the Liechtenstein Criminal Procedure Code (CPC) govern release pending trial. In accordance with § 46 CC, the timeframe for conditional (early) release from imprisonment in Liechtenstein is based on the specific sentence determined in the judgment. Alternatives to pre-trial detention are available.

Art. 30(6) UNCAC is implemented through § 54 SEA (State Employees Act), §§ 61 to 63 RDG (*Richterdienstgesetz*) and § 51 StAG (*Staatsanwaltschaftsgesetz*), which allows suspension and reassignment.

Pursuant to § 27 CC, an official sentenced by a domestic court to an imprisonment of more than one year for one or more wilfully committed offences shall be stripped of his office.

Disciplinary law permits disciplinary proceedings irrespective of criminal prosecution.

The legislation promotes the reintegration into society of persons convicted of offences. To support reintegration, probation assistance may be ordered (§§ 50 and 51 CPC).

While there is no plea bargaining in Liechtenstein, according to § 22a to 22n CC, the prosecution can drop charges and e.g. only impose a fine in return for cooperation (*Diversio*). Liechtenstein also encourages perpetrators of offences to cooperate with law enforcement by offering mitigation of sentences (§ 41 in conjunction with § 34(1)(15) to (17) CC). Full immunity is not provided for in Liechtenstein due to the specific design of the principle of legality and the requirement of equal treatment.

Protection of witnesses and reporting persons (arts. 32, 33)

Liechtenstein law provides judicial protection of witnesses like the right to refuse testimony, measures to keep the identity of witnesses partially or completely confidential in proceedings (§ 119a CPC) and the use of communication technologies (§ 115a(2) CPC). There are also provisions on the extrajudicial protection of witnesses, e.g. temporary housing at a secure location, the establishment of a new identity, relocation to a new place of residence (including relocation abroad), finding a new job, and securing a livelihood. After a recent amendment of the National Police Act about witness protection, the witness protection also covers relatives and other persons close to the witness. The provisions also apply to victims insofar as they are witnesses. Victims have the right to present their views and concerns at any stage of criminal justice proceedings.

Pursuant to a recommendation by GRECO, it is planned to introduce “whistleblower” provisions in the State Employees Act, which entail an obligation for public sector employees to report suspicions of corruption and other offences immediately to the director of their office and enhance protection for reporting persons against unjustified retaliation measures. There is no whistleblower protection in the private sector.

Freezing, seizing and confiscation; bank secrecy (arts. 31, 40)

Under Liechtenstein law, there are three different concepts of final deprivation of property: (i) deprivation of enrichment (§ 20 CC); (ii) forfeiture (§ 20b CC); and (iii) preventive confiscation of instrumentalities (§ 26 CC). According to § 20 CC, the person concerned is sentenced to payment of an amount of money equal to the wrongful enrichment. § 20 CC provides for the possibility of confiscating the value of the gains from any person (including legal persons) who illegally profits from a criminal act of another person. The extent of the enrichment is measured by the so-called “*Netto-Prinzip*” (after-deduction-principle) which means that the expenditures for gaining the proceeds are deducted.

According to § 20b CC, assets at the disposal of a criminal organization (§ 278a) or a terrorist group (§ 278b) or that have been made available or collected as a means of terrorist financing (§ 278d) shall be declared forfeited. Assets are also subject to forfeiture if they are involved in money laundering (§ 20b (2)(1) CC).

Liechtenstein has also adopted a property-based confiscation model for confiscating instrumentalities. However, instrumentalities will be confiscated only if they endanger the safety of persons, morality or the public order (§ 26 CC).

Evidence and objects subject to confiscation (§ 26 CC) may be seized by judicial order (§ 96 CPC). Assets subject to deprivation of enrichment under § 20 CC or to forfeiture under § 20b CC may be frozen pursuant to § 97a CPC until a final judicial decision has been made.

There are legislative provisions for the process of asset forfeiture and the management of confiscated assets in §§ 253 and 253a CPC.

Intermingling of assets does not prevent deprivation of enrichment pursuant to Article 20 CC. If the amount of enrichment cannot be determined or only with disproportionate effort, the court may specify the amount to be deprived at its discretion.

§ 20(2) and (3) CC allow deprivation of assets where there is a connection with continued criminal activity or with membership in a criminal organization and

the lawful origin of the advantage cannot be demonstrated. § 20(4) CC provides for deprivation of enrichment of third party only if that person has been enriched directly and unjustly.

The obligation to maintain banking secrecy does not apply vis-à-vis the criminal court in connection with criminal proceedings (article 14(2) of the Banking Act). In order to access documents, a court order is needed. However, according to § 14(2) Banking Act, banking secrecy is no valid ground to refuse testimony before a criminal court. Therefore, no lifting of bank secrecy is needed to hear testimony of a bank employee on a specific transaction.

Statute of limitations; criminal record (arts. 29, 41)

The limitation periods for offences are staggered depending on the applicable penalty (§ 57(3) CC). For corruption offences, they will be three or five years, depending on the offence. The statute of limitation applies as soon as the punishable activity is concluded or the punishable conduct has come to an end. The time during which prosecution cannot be initiated or continued according to a legal provision or during which criminal proceedings are pending in court against the perpetrator because of the offence are not included in the limitation period.

Any previous conviction in Liechtenstein or abroad, even outside the EU/EEA, may be taken into account by the competent court when sentencing.

Jurisdiction (art. 42)

Liechtenstein has established territorial jurisdiction and flag State jurisdiction (§ 62, 63 CC). Liechtenstein applies the active personality principle and it partially applies the passive personality principle (acts against Liechtenstein officials; acts by Liechtenstein citizens against Liechtenstein citizens, § 64 CC). Extraterritorial jurisdiction has been established for money laundering, as well as for prosecution in lieu of extradition, § 64, 65 CC.

Consequences of acts of corruption; compensation for damage (arts. 34, 35)

According to § 879(1) of the General Civil Code (ABGB), contracts or contract clauses governing corrupt acts are considered under existing law to be null and void due to their violation of a law. In public law, article 106 of the National Administration Act permits an administrative act or a decree to be declared null and void. There is no debarment or blacklisting procedure but a bidder has to submit information on his criminal record (natural persons).

All victims who have suffered damage as a result of a crime have the right to initiate legal proceedings in order to obtain compensation (§ 1295 ABGB).

Specialized authorities and inter-agency coordination (arts. 36, 38, 39)

Liechtenstein does not have a specialized anti-corruption agency. Instead, the national police is the authority responsible for investigating corruption. However, there are specialized corruption investigators within the criminal police. The specialized corruption investigators, who are also responsible for internal investigations against police officers, consist of the Chief of the Criminal Police, the Head of the Financial Crimes Unit and his deputy. The Financial Crimes Unit is part of the Crime Investigation Division (CID), which has 9 staff members. They are supervised by the Chief of the Criminal Police.

The specialized corruption investigators regularly take part in events on the topic in Switzerland and maintain contact with the Federal Bureau of Anti-Corruption (BAK) in Austria.

The corruption investigators are authorized by the Government to communicate directly with the Office of the Public Prosecutor in corruption cases. They do not have to follow the usual official channels of communication. The status of prosecutors is laid down in the Act on the Office of the Public Prosecutor. According to this act, prosecutors cannot be instructed by the Ministry of Justice to drop prosecution. The Office of the Public Prosecutor comprises 7 prosecutors. There are no specialized anti-corruption prosecutors.

The Financial Intelligence Unit (FIU) is an administrative type FIU; it does not investigate cases. It was established in 2001 and is a member of the Egmont Group. Pursuant to the Due Diligence Act, persons subject to due diligence shall refrain from all actions that might obstruct or interfere with any order by the court at most until the conclusion of five business days from receipt by the FIU of the STR, unless such actions have been approved in writing by the FIU.

§ 53 ff CPC govern cooperation between domestic authorities and officials. Article 25(1) of the National Administration Act also sets out a mutual obligation of assistance for administrative authorities and courts.

All relevant financial associations have quarterly meetings with the Financial Markets Authority (FMA) as well as the FIU.

It is planned that the FMA will soon operate a whistleblower website.

There is no reporting obligation – but a reporting right – for citizens (§ 55 CPC).

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- Liechtenstein assumes jurisdiction over money laundering conducted in another country if the predicate offence has been committed in Liechtenstein (§ 64, para 1, 9 CC), and this even in the absence of dual criminality (Art. 23(2)(c), 42(2)(c) UNCAC);
- The limited scope of immunities granted by Liechtenstein (Art. 30(2) UNCAC);
- The creation of a specialised unit within the criminal police despite the small size of the country (Art. 36 UNCAC).

2.3. Challenges in implementation

While noting Liechtenstein's efforts in the field of anti-corruption, a number of challenges in implementation and/or grounds for further improvement were identified and it was recommended (depending on the mandatory or optional nature of the relevant UNCAC requirements) that Liechtenstein:

- Swiftly adopt and implement the planned amendments to the criminal code and other laws (*Korruptionsstrafrechtsrevision*) as envisaged in the White Paper; in this sense, it is particularly recommended that the bill to be prepared endorses the recommendations below.
- Concerning Art. 15, 16 and 21 UNCAC:
 - criminalize active bribery of Members of Parliament, Members of a Municipal Council, and managing employees and staff members of a public enterprise also for acts not contrary to duty;

- criminalise active bribery of foreign officials and officials of international organizations also for acts not contrary to duty (“facilitation payments”);
- consider criminalizing passive bribery of foreign officials and officials of international organizations;
- abolish or significantly lower the value of the *de minimis* exemptions;
- abolish the “no fault” exemption at the end of Section 307 (2) CC;
- Consider criminalizing passive bribery in the private sector; consider fully criminalizing active bribery in the private sector;
- Concerning Art. 18 UNCAC, consider comprehensively criminalising active and passive trading in influence;
- Consider the introduction of a specific offence to fully implement the mandatory criminalization requirements of article 25(a) UNCAC;
- Concerning Art. 26 UNCAC, it was recommended to reconsider if the existing maximum penalty would be a sufficiently dissuasive deterrent sanction for larger enterprises and banks;
- Concerning Art. 31 UNCAC, it was recommended to
 - amend the law according to the White Paper, including a switch to the so-called “*Brutto-Prinzip*”, in order to bring Liechtenstein law fully in compliance with Art. 31(1)(a) UNCAC;
 - amend the law according to the envisaged § 19a CC, in order to bring Liechtenstein law fully in compliance with Art. 31(1)(b) UNCAC;
- Concerning Art. 33 UNCAC, Liechtenstein is encouraged to consider the introduction of whistleblower protection in the private sector.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Liechtenstein can directly apply self-executing provisions of the Convention.

The rules on extradition are laid down in Chapter II of the Mutual Legal Assistance Act of 15 September 2000 (MLAA).

Extradition can be granted for the prosecution of acts that are punishable under the law of the requesting State by a deprivation of liberty of more than one year and that are subject to a deprivation of liberty of more than one year under Liechtenstein law. Liechtenstein does not make any exceptions to the principle of dual criminality. Article 11(3) MLAA explicitly allows extradition for connected offences as laid down in Art. 44(3) UNCAC. Convention offences are not considered political offences.

Liechtenstein does not make extradition conditional on the existence of a treaty. Extradition can also be granted on the basis of reciprocity. Concerning extradition requests to and from States parties to the Convention, the Convention can be used as the legal basis for dealing with such a request. All Convention offenses fulfil the minimum penalty threshold for extradition stated in Art. 11 MLAA (one year imprisonment), except for small-scale cases of embezzlement.

Simplified extradition procedures are possible according to Art. 32 MLAA in case of consent of the person. Provisional custody and detention pending extradition is possible under §§ 127, 129 CPC, Art. 29 MLAA.

Extradition of nationals is not admissible pursuant to Art. 12, para 1 MLAA, except if the person has given his/her express consent. In that case, the extradition is not conditional on his/her return to serve the sentence in Liechtenstein. The principle “*aut dedere, aut iudicare*” and jurisdiction to prosecute offences committed abroad by nationals is provided for in § 65 para 1 CC. Art. 64 MLAA provides the basis for the enforcement of foreign court decisions.

All procedural rights and guarantees are applicable during the extradition process (Art. 9 MLAA). According to Art. 19(3) MLAA, extradition is not permissible if the request has been made for the purpose of prosecuting or punishing a person on account of that person’s sex, race, religion, nationality, ethnic origin or political opinions. Liechtenstein will not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters (Art. 15 MLAA).

Opportunity to communicate before refusing extradition is used frequently both by the Princely Court and the authority responsible for extradition in Liechtenstein. Liechtenstein is a Member State to the European Convention on Extradition (ETS No. 24) and its Additional Protocol (ETS. No. 86). It has concluded several treaties on extradition, including with the US (1936) and Belgium (1938).

Liechtenstein has ratified the Convention of the Council of Europe on the transfer of sentenced persons (ETS No. 112) and its Additional Protocol (ETS No. 167).

Transfer of proceedings is possible according to Art. 60 and 74 MLAA and multilateral treaties (European Convention on the Transfer of Proceedings in Criminal Matters, ETS No. 73).

Mutual legal assistance (art. 46)

Like extradition, mutual legal assistance (MLA) is regulated by the Mutual Legal Assistance Act of 15 September 2000 (MLAA) and bilateral and multilateral treaties, including the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959. MLA can be afforded in relation to offences committed by legal persons.

According to the MLAA, Liechtenstein can afford all the forms of legal assistance listed in Art. 46(3) UNCAC. Art. 54a MLAA explicitly regulates spontaneous transmission of information, which is also used in practice. The confidentiality of the information provided will not prevent Liechtenstein from disclosing it when such information is exculpatory for an accused person. In criminal procedures and in MLA cases in criminal matters, bank secrecy is not a ground for refusing testimony or refusing the provision of documents requested. The relevant rules set out in the CPC apply also to MLA.

Art. 51(1) MLAA normally requires dual criminality. However, Liechtenstein can render MLA when it is consistent with the basic concepts of its legal system. In this respect the Convention is self-executing regarding requests not involving coercive measures. Requests are not refused on the sole ground that they involve matters of a *de minimis* nature.

The transfer of a person being detained or is serving a sentence for the purpose of testimony is possible according to Art. 53, 54, 59, 73 MLAA, 38 CC and the CoE Convention on the Transfer of Sentenced Persons. Liechtenstein also permits hearings to take place by video conference.

The Ministry of Justice of Liechtenstein serves as the central authority with respect to all international mutual legal assistance in criminal matters. MLA requests and any related communications can be directly transmitted to the central authority. Requests through INTERPOL are accepted. Requests and the related documents have to be submitted in German or English. Nothing in the

law excludes accepting requests made orally in urgent circumstances. The form and contents of requests for MLA are governed by Art. 56 MLAA. The rule of specialty is laid down in Art. 52(4) MLAA. Requests can be treated confidentially, but before sending objects or documents to the requesting State the entitled parties must first be granted a fair hearing (Art. 52(4) MLAA).

MLA may be refused if the request violates the *ordre public* or other essential interests of Liechtenstein. MLA will be refused for exclusively fiscal offences (Art. 15 MLAA). For requests that do not only involve fiscal matters but also non-fiscal offences, MLA can be granted. If MLA is not granted, the requesting State will be informed and grounds for refusal will be indicated (Art. 57(1) MLAA). The only reason for postponing MLA is the need of objects or documents for a pending domestic proceeding. If it is possible to grant assistance subject to concrete terms and conditions, the requesting State party will be consulted before refusing a request or postponing its execution.

Safe conduct is granted on the basis of Art. 53 MLAA. Normally, all costs are borne by Liechtenstein (Art. 5 MLAA). Documents in the public domain can be provided upon request. Confidential documents or information can be provided to the requesting State if the conditions of Art. 52 and 55(4) MLAA are met.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49, 50)

Law enforcement authorities cooperate through organizations and networks such as INTERPOL, Europol, Schengen Information System/SIRENE, and the Global Focal Point Initiative established by StAR and Interpol. The National Police have also a close and good cooperation with different liaison officers (e.g. with the FBI and the Royal Canadian Mounted Police). Liechtenstein's FIU is a member of the Egmont Group and exchanges information with its foreign counterparts through the Egmont Secure Web. The FIU provides all information it keeps in its own databases to foreign counterparts. The only caveat is that the FIU (which is not a law enforcement agency) can only share information internationally that it holds domestically. Banking and account information that are not held by the FIU can only be provided to foreign authorities through the MLA channel.

Evidence can be made available for investigation and evaluation purposes pursuant to Art. 52 MLAA. INTERPOL purple notices are used to exchange information on *modi operandi*, objects, devices and concealment methods used by criminals. Since the beginning of 2014 Liechtenstein is part of Europol and its network of liaison officers. The current as well as the new (not yet in force) Trilateral Cooperation Treaty between Liechtenstein, Switzerland and Austria also foresees the possibility to exchange liaison officers if necessary.

Liechtenstein can establish joint investigations in the framework of Interpol, Europol and (soon) the Trilateral Cooperation Treaty, as well as on a case-by-case basis, when needed.

Special investigation methods are governed by §§ 103 to 104c CPC (surveillance of communication, observation, covert investigation, bogus transactions/controlled delivery). So far, these techniques have been used primarily in cases of drug trafficking or human trafficking.

The Trilateral Cooperation Treaty envisages special investigative techniques. Art. 35 and 35a of the Police Act allow special investigative methods within the framework of international police assistance with all foreign law enforcement authorities that have the same scope of responsibilities as the National Police. Controlled delivery is regulated in § 104c(2) CPC.

3.2. Successes and good practices

- The comprehensive and coherent legal framework on international cooperation in criminal matters, which regulates in a detailed manner all forms of international cooperation used by the Liechtenstein authorities;
- By prohibiting Liechtenstein authorities from making an MLA request if they could not comply with an identical request made by another State, Art. 3(2) MLAA contains an implicit guarantee of reciprocity to the requested State, which might facilitate the rendering of MLA.

3.3. Challenges in implementation

With regard to international cooperation, it is recommended that Liechtenstein:

- take appropriate measures to enable its competent law enforcement authorities to cooperate on the international level in conducting inquiries concerning the movement of proceeds of crime or property derived from the commission of offences covered by the Convention, when such proceeds are held in a banking institution.

IV. Implementation of the Convention

A. Ratification of the Convention

7. The UN Convention against Corruption (UNCAC) was signed on 10 December 2003 and ratified by the Liechtenstein Parliament on 16 December 2009. Liechtenstein deposited its instrument of ratification with the Secretary-General of the United Nations on 8 July 2010.
8. Liechtenstein uses the incorporation system or monist system for the implementation of international treaties. A ratified agreement becomes part of domestic law at the date of entry into force of the agreement, without the need for separate legislation to be created. Therefore, UNCAC has become an integral part of Liechtenstein's domestic law following its ratification by Parliament, signature by the Head of State, the countersignature by the Prime Minister and entry into force on 7 August 2010 in accordance with Article 68 of the Convention. Liechtenstein confirmed that the Convention is directly applicable to the extent that its provisions are precise enough to allow for direct effect. Within the hierarchy of norms, the Convention as an international treaty has at least the status of statutory law in the domestic legal order and takes precedence over earlier laws (*lex posterior*).
9. To bring Liechtenstein criminal law fully in line with the obligations of the Convention, the Government has published a White Paper (*Vernehmlassungsbericht*) that outlines planned amendments to the criminal code and other laws (*Korruptionsstrafrechtsrevision*), which are i.a. modelled on the reform of the Austrian criminal code in 2012.

B. Legal system of Liechtenstein

10. System of State: With a population of about 37,000 and an area of 160 km², Liechtenstein is the fourth-smallest State in Europe. The State consists of two constituencies with eleven communes in total. The Principality of Liechtenstein is a constitutional hereditary monarchy on a democratic and parliamentary basis. The power of the State is embodied in the Reigning Prince and the People. The relatively strong position of the Reigning Prince is balanced by the

far-reaching direct-democratic rights of the People. Every citizen who has reached the age of 18 is entitled to vote and stand for election.

11. The Principality forms a monetary and customs union with Switzerland and therefore, a variety of Swiss laws apply in Liechtenstein as well.
12. Separation of powers: In the dualistic system of Liechtenstein, separation of powers is further secured by the vesting of separate rights in the executive (Government), legislative (Parliament) and judicial (courts) branches.
13. Parliament, electoral system and political parties: The Liechtenstein Parliament consists of 25 members. They are elected every four years in universal, equal, direct and secret elections according to the system of proportional representation. The most important responsibilities of Parliament are participation in the legislative process and the approval of legislative acts, assent to international treaties, approval of the State's financial resources, election of judges on the proposal of the body for the selection of judges, and oversight of the State administration. The Parliament elects the Government and proposes it to the Reigning Prince for appointment. The Parliament may also initiate dismissal of the Government or one of its members if either loses its confidence. Currently, there are four political parties in Liechtenstein.
14. Government: The Government is a collegial body consisting of five members: the Prime Minister, the Deputy Prime Minister, and three additional Ministers. The Government members are appointed by the Reigning Prince on the proposal of the Parliament. The Government is the supreme executive body, to which 38 Government offices and units as well as eight diplomatic representations abroad are subordinate. About 60 commissions and advisory councils support the work of the Administration. The Government has the power to enact ordinances and is thus also a rule-making body. Ordinances may only be enacted on the basis of laws and international treaties, however. Following the last election in February 2013, a coalition government was formed by the two largest political parties.
15. Legislative process: Every enactment and amendment of constitutional and legislative provisions begins with an initiative. Without the participation of the Parliament, no law may enter into force in Liechtenstein or be declared valid. Similarly, a law requires the assent (signature) of the Reigning Prince and the countersignature by the Prime Minister to become valid. In the vast majority of cases, the initiative for the enactment or amendment of constitutional provisions and laws originates with the Government. The Parliament may accept, change, or reject the draft law. For this purpose, two readings and a final vote are held in Parliament. If the Parliament adopts a law, the decision is subject to a facultative referendum for a period of 30 days. In addition to the Government, Liechtenstein citizens have the right of initiative and may submit a legislative initiative. A popular initiative may also concern a partial or total revision of the Constitution. Both instruments, referenda and initiatives, are used by the People.
16. Judiciary: Ordinary jurisdiction is distinguished from jurisdiction under public law. Ordinary jurisdiction covers the administration of justice in civil and criminal matters. The Court of Justice, the Court of Appeal and the Supreme Court constitute the three instances.
17. The Court of Justice is the first instance in civil and criminal matters. It decides all cases involving crimes as well as certain misdemeanours exhaustively enumerated by law. Currently, the Court of Justice is composed of 14 full-time Judges of the Court of Justice and three full-time judicial officers. The Court of Appeal is the second instance of ordinary

jurisdiction in Liechtenstein, to which appeals against judgments or decisions of the Court of Justice may be addressed. Appeals against judgments or decisions of the Court of Appeal may be lodged with the third and last instance, the Supreme Court.

18. Jurisdiction under public law is exercised by the Administrative Court and the Constitutional Court. The Administrative Court is responsible for appeals (appellate body) against decrees and decisions of the Government or commissions acting on its behalf. It is also the last instance in appellate proceedings against administrative acts. The Constitutional Court has jurisdiction on constitutional questions and is autonomous and independent in relation to other constitutional bodies. Its responsibilities include the protection of constitutionally guaranteed rights, including protection of individual rights guaranteed by international agreements. Other responsibilities include review of the constitutionality of laws and international treaties as well as review of the conformity of ordinances with the Constitution, laws, and international treaties. Moreover, the Constitutional Court decides on conflicts of jurisdiction among courts and administrative bodies, and it is responsible for the consideration of election complaints and indictments of Ministers.
19. While the Office of the Public Prosecutor formally reports to the Government, the Government may, pursuant to the Law on the Office of the Public Prosecutor, only issue very limited instructions to the Office of the Public Prosecutor. The responsibility of the Office of the Public Prosecutor is to investigate criminal offences and to represent public charges in court.
20. International Relations: From the perspective of economic and integration policy, Liechtenstein's relations within the framework of the European Economic Area (EEA) and the European Union (EU) play an important role in Liechtenstein foreign policy and economic framework. As an EEA member, Liechtenstein is fully subjected to the EU AML/CFT framework. Additionally, Liechtenstein is party to international and multilateral organizations and agreements, including: the Statute of the International Court of Justice, since 1950; the OSCE since 1975; the Council of Europe, since 1978; the United Nations, since 1990; the European Free Trade Association (EFTA), full member, since 1991; and the World Trade Organization (WTO), since 1995. Liechtenstein has signed, but not ratified yet, the Council of Europe (CoE) Criminal Law Convention against Corruption. It is not a signatory to the CoE Civil Law Convention nor to the OECD Foreign Bribery Convention.
21. Liechtenstein has never assessed the effectiveness of anti-corruption measures taken by the country

C. Implementation of selected articles

III. Criminalization and law enforcement

Article 15. Bribery of national public officials

Subparagraph (a) of article 15

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

22. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

23. The main article to implement the measure described is § 307 of the Criminal Code (CC):

§ 307 CC Bribery

1) Anyone who offers, promises, or grants a benefit to a third party or to

1. an official, a Member of Parliament or of a Municipal Council, or a foreign official, in return for the performance or omission of an official act contrary to duty (§ 304 paragraph 1),
 2. a managing employee of a public enterprise, in return for the performance or omission of a legal act contrary to duty (§ 305 paragraph 1),
 3. an expert, in return for submission of an untrue finding or opinion (§ 306),
 4. a staff member of a managing employee of a public enterprise, in return for influencing the performance or omission contrary to duty of a legal act (§ 306a paragraph 1),
 5. an expert advisor performing services for compensation, in return for influencing the performance or omission contrary to duty of an official act or a legal act (§ 306a paragraph 2),
- shall be punished with imprisonment of up to two years.

2) Anyone who offers, promises, or grants a benefit that is not merely minor to a third party or to

1. an official, in return for the performance or omission of an official act not contrary to duty (§ 304 paragraph 2), or
 2. a managing employee of a public enterprise, in return for the performance or omission of a legal act not contrary to duty (§ 305 paragraph 1)
- shall be punished with imprisonment of up to six months or a fine of up to 360 daily rates, unless the perpetrator cannot be faulted for offering, promising, or granting this benefit under the circumstances.

§ 74 CC Other definitions

1) For the purposes of this Act: ...

4. "official" means any person appointed in the name of the State, a municipal association, a municipality or another person under public law, with the exception of a church or religion community, to carry out legal acts as an organ thereof alone or together with others, or otherwise entrusted with responsibilities of the national or municipal administration.

24. Examples of cases are attached (See Addendum).

25. Liechtenstein provided the following related statistical data on investigations, prosecutions and convictions/acquittals:

2010	investigations	prosecutions	convictions
Art 105 und 106 CC	0	0	0
Art 133 CC	0	0	0
Art 153 CC	0	0	0
Art 164 CC	0	0	0
Art 165 CC	-	-	-
Art 269 CC	4	1	1
Art 270 CC	1	1	1
Art 288 CC	9	2	2
Art 289 CC	0	0	0
Art 293 CC	1	0	0
Art 295 CC	2	0	0
Art 302 CC	10	1	0
Art 304 CC	0	0	0
Art 305 CC	0	0	0
Art 306 CC	0	0	0
Art 306a CC	0	0	0
Art 307 CC	1	0	0
Art 308 CC	0	0	0
Art 309 CC	0	0	0
Art 4, 22 UWG	0	0	0

2011	investigations	prosecutions	convictions
Art 105 und 106 CC	0	0	0
Art 133 CC	0	0	0
Art 153 CC	0	0	0
Art 164 CC	0	0	0
Art 165 CC	-	-	-
Art 269 CC	5	4	4
Art 270 CC	1	1	1
Art 288 CC	8	2	1

Art 289 CC	0	0	0
Art 293 CC	2	0	0
Art 295 CC	1	0	0
Art 302 CC	7	0	0
Art 304 CC	0	0	0
Art 305 CC	0	0	0
Art 306 CC	0	0	0
Art 306a CC	0	0	0
Art 307 CC	1	0	0
Art 308 CC	0	0	0
Art 309 CC	0	0	0
Art 4, 22 UWG	0	0	0

2012	investigations	prosecutions	convictions
Art 105 und 106 CC	0	0	0
Art 133 CC	0	0	0
Art 153 CC	0	0	0
Art 164 CC	0	0	0
Art 165 CC	-	-	-
Art 269 CC	8	6	5
Art 270 CC	2	1	1
Art 288 CC	3	1	1
Art 289 CC	0	0	0
Art 293 CC	6	0	0
Art 295 CC	1	0	0
Art 302 CC	1	0	0
Art 304 CC	0	0	0
Art 305 CC	0	0	0
Art 306 CC	0	0	0
Art 306a CC	0	0	0
Art 307 CC	3	0	0
Art 308 CC	0	0	0
Art 309 CC	0	0	0
Art 4, 22 UWG	0	0	0

(b) Observations on the implementation of the article

26. Liechtenstein law distinguishes between official acts contrary to duty (§ 307 paragraph 1 CC) and acts not contrary to duty (§ 307 paragraph 2 CC).

27. Liechtenstein clarified that the term “anyone” includes natural and legal persons (see §§ 74a to 74g CC under paragraphs 1 and 2 of article 26 UNCAC). The definition of “public official” (*Beamter*) set out in § 74(4) CC applies to elected officials as well as public officials appointed to positions and persons holding a judicial office (professional judges, lay judges and all persons, who participate in the administration of justice). It does not include Members of Parliament or of Municipal Councils or CEOs of public enterprises.
28. The active bribery of these persons for acts contrary to their duties is nevertheless covered by § 307(1) CC because this provision explicitly includes not only officials but also Members of Parliament, Members of a Municipal Council, managing employees of a public enterprise and staff member of a managing employee of a public enterprise. However, for acts not contrary to their duties, § 307(2) CC only covers officials and managing employees of a public enterprise.
29. Moreover, § 307(2) CC contains a *de minimis* exemption in that it criminalises only advantages that are “not merely minor”. During the country visit, Liechtenstein explained that gifts up to a value of 150 CHF/100 EUR would be considered to be minor and thus not constitute an offence.
30. Liechtenstein explained that the exemption at the end of § 307 (2) CC (“unless the perpetrator cannot be faulted for offering, promising or granting that advantage under the circumstances”) could be invoked if the advantage was meant to “speed up” the performance of a lawful act.
31. During the country visit, Liechtenstein explained that all these issues would be addressed in the planned reform of the anti-corruption legislation. This reform, like most of the criminal law in Liechtenstein, was modelled on Austrian criminal law and would implement in Liechtenstein the amendments of the 2012 Austrian reform of anti-corruption legislation. A White Paper (*Vernehmlassungsbericht*) outlining the reform in detail had already been published, and currently a consultation procedure is ongoing until May 2015. A draft law was expected for autumn 2015. The reviewing experts took note of the explanation and the draft amendments.
32. The term “benefit” is not defined in the law, but the interpretation of the term includes all monetary (material and immaterial) rewards and gifts. This benefit is always an undue advantage, either because of demanding, accepting or obtaining a promise for an official act contrary to duty in the sense of § 304 paragraph 1 CC or for a dutiful official act (§ 304 paragraph 2 CC).
33. The provisions on active bribery explicitly cover all cases where the advantage is offered not only for the benefit of the public official himself/herself, but also for the benefit of a third person (third-party beneficiary). Third-party is defined as any natural person and/or entity distinct from the perpetrator.
34. While the indirect commission of the act is not explicitly mentioned in the wording of the relevant §§ of the CC, it is self-evident that this is also covered. § 12 CC provides that a criminal offence is committed not only by the immediate perpetrator who commits the

criminal offence, but also by anyone who instigates another person to commit the offence or who contributes to its perpetration in any other way.

35. It was concluded that Liechtenstein is partially in compliance with Art. 15(a) UNCAC.

(c) Challenges and recommendations

36. The reviewing experts recommended that Liechtenstein should implement the draft amendments to the CC and

- criminalise active bribery of Members of Parliament, Members of a Municipal Council, managing employees and staff members of a public enterprise also for acts not contrary to duty;
- abolish or significantly lower the value of the *de minimis* exemption in § 307 (2) CC ;
- abolish the “no fault” exemption at the end of § 307 (2) CC.

Subparagraph (b) of article 15

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

37. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

38. The measure described above has been implemented by the following §§ of the Criminal Code (CC), including not only officials, but also employees of a public enterprise, experts, staff members and expert advisors:

§ 304 CC Acceptance of gifts by officials

1) An official who demands, accepts, or obtains a promise of a benefit for himself or a third party in return for the performance or omission of an official act contrary to duty shall be punished with imprisonment of up to three years.

2) An official who demands, accepts, or obtains a promise of a benefit for himself or a third party in return for the performance or omission of an official act not contrary to duty shall be punished with imprisonment of up to one year.

3) If the value of the benefit exceeds 10,000 francs, then the perpetrator shall be punished with imprisonment of up to five years in the case of paragraph 1 and with imprisonment of up to three years in the case of paragraph 2.

4) Anyone who only accepts or obtains a promise of a minor benefit shall not be punished according to paragraph 2 unless the act is committed on a professional basis.

§ 305 CC Acceptance of gifts by managing employees of a public enterprise

1) Anyone who demands, accepts, or obtains a promise of a benefit for himself or a third party in return for the performance or omission of a legal act which he can perform as a managing

employee of a public enterprise shall be punished with imprisonment of up to one year; however, if he does so for the purpose of performance or omission of a legal act contrary to duty, he shall be punished with imprisonment of up to three years.

2) If the performance or omission of the legal act is not contrary to duty, then the perpetrator according to paragraph 1 shall not be punished if he only accepts or obtains a promise of a minor benefit and does not commit the act on a professional basis.

§ 306 CC Acceptance of gifts by experts

An expert appointed by a court or another authority for specific proceedings who demands, accepts, or obtains a promise of a benefit for himself or a third party in return for submission of an untrue finding or opinion shall be punished with imprisonment of up to three years.

§ 306a CC Acceptance of gifts by staff members and expert advisors

1) A staff member of a managing employee of a public enterprise who regularly influences the business conduct through information, proposals, or documentation and who in this capacity demands, accepts, or obtains a promise of a benefit for himself or a third party in return for an act aimed at influencing the performance or omission contrary to duty of a legal act by the managing employee shall be punished with imprisonment of up to one year.

2) An expert advisor performing services for compensation who significantly influences an official or a managing employee of a public enterprise in conducting official business or in managing the enterprise through information, proposals, or documentation and who in this capacity demands, accepts, or obtains a promise of a benefit for himself or a third party in return for influencing the performance or omission contrary to duty of an official act by the official or a legal act by the managing employee shall be punished in the same manner.

§ 74 CC Other definitions

1) For the purposes of this Act: ...

4. "official" means any person appointed in the name of the State, a municipal association, a municipality or another person under public law, with the exception of a church or religion community, to carry out legal acts as an organ thereof alone or together with others, or otherwise entrusted with responsibilities of the national or municipal administration.

39. For related statistical data on investigations, prosecutions and convictions/acquittals see above.

(b) Observations on the implementation of the article

40. Liechtenstein clarified the interpretation of the expression “committed on a professional basis” and explained that this is defined in § 70 CC: A person shall be deemed to commit an offence on a professional basis if the person commits the act with the purpose of obtaining regular income by repeatedly committing the act.

41. Like in § 307 CC, a “minor benefit” in §§ 304 (4) and 305 (2) is a benefit of less than EUR 100 or CHF 150.

42. The reviewing experts made the same remarks, *mutatis mutandis*, as with regard to Art. 15(a) UNCAC.

43. It was concluded that Liechtenstein is partially in compliance with Art. 15(b) UNCAC.

(c) Challenges and recommendations

44. The reviewing experts recommended that Liechtenstein should implement the draft amendments to the CC and

- criminalise passive bribery of Members of Parliament, Members of a Municipal Council, managing employees and staff members of a public enterprise also for acts not contrary to duty;
- abolish or significantly lower the value of the *de minimis* exemption;

Article 16. Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

45. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

46. The main article to implement this UNCAC-provision is § 307 of the Criminal Code (CC).

§ 307 CC Bribery

1) Anyone who offers, promises, or grants a benefit to a third party or to

1. an official, a Member of Parliament or of a Municipal Council, or a foreign official, in return for the performance or omission of an official act contrary to duty (§ 304 paragraph 1),
2. a managing employee of a public enterprise, in return for the performance or omission of a legal act contrary to duty (§ 305 paragraph 1),
3. an expert, in return for submission of an untrue finding or opinion (§ 306),
4. a staff member of a managing employee of a public enterprise, in return for influencing the performance or omission contrary to duty of a legal act (§ 306a paragraph 1),
5. an expert advisor performing services for compensation, in return for influencing the performance or omission contrary to duty of an official act or a legal act (§ 306a paragraph 2), shall be punished with imprisonment of up to two years.

2) Anyone who offers, promises, or grants a benefit that is not merely minor to a third party or to

1. an official, in return for the performance or omission of an official act not contrary to duty (§ 304 paragraph 2), or
 2. a managing employee of a public enterprise, in return for the performance or omission of a legal act not contrary to duty (§ 305 paragraph 1)
- shall be punished with imprisonment of up to six months or a fine of up to 360 daily rates, unless the perpetrator cannot be faulted for offering, promising, or granting this benefit under the circumstances.

§ 74 CC Other definitions

1) For the purposes of this Act:

4a. "foreign official" means any person holding an office in legislation, administration or justice in another State who carries out a public responsibility for another State or an authority

or public enterprise of such State or who is an official or representative of an international organisation.

47. No examples of cases are available.

48. No related statistical data on investigations, prosecutions and convictions/acquittals is available.

(b) Observations on the implementation of the article

49. Foreign officials are included in § 307(1) CC but not in § 307(2) CC. The reviewing experts made the same remarks, *mutatis mutandis*, as with regard to Art. 15 UNCAC.

50. It was concluded that Liechtenstein is partially in compliance with Art. 16(1) UNCAC.

(c) Challenges and recommendations

51. The reviewing experts recommended that Liechtenstein should implement the draft amendments to the CC and

- criminalise active bribery of foreign officials also for acts not contrary to duty (“facilitation payments”);
- abolish or significantly lower the value of the *de minimis* exemption;
- abolish the “no fault” exemption.

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

52. Liechtenstein confirmed that it has not implemented this provision of the Convention.

53. Existing law does not provide for the criminal responsibility of foreign officials relating to bribery. An amendment to the Criminal Code (CC) is envisaged which, similar to the Austrian model, would punish foreign officials for bribery.

(b) Observations on the implementation of the article

54. The reviewing experts took note of the explanation and the draft amendment.

(c) **Challenges and recommendations**

55. It was concluded that Liechtenstein has not implemented Art. 16(2) UNCAC.

56. The reviewing experts recommended to implement the draft amendments to the CC and

- criminalise passive bribery of foreign officials.

Article 17. Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) **Summary of information relevant to reviewing the implementation of the article**

57. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

58. The Liechtenstein Criminal Code (CC) contains various criminal offences which are in accordance with the offences of Art. 17 of UNCAC, in particular:

§ 133 CC Embezzlement

1) Anyone who, with the intent to unjustly enrich himself or a third party, appropriates a good that has been entrusted to him shall be punished with imprisonment of up to six months or with a monetary penalty of up to 360 daily rates.

2) Anyone who embezzles a good with a value exceeding 5,000 francs shall be punished with imprisonment of up to three years, and anyone who embezzles a good with a value exceeding 75,000 francs shall be punished with imprisonment of one to ten years.

§ 153 CC Criminal breach of trust

1) Anyone who knowingly abuses the authorization granted to him by law, official mandate, or legal transaction to dispose of third-party assets or to obligate another person and thereby inflicts a pecuniary disadvantage on the other person shall be punished with imprisonment of up to six months or with a fine of up to 360 daily rates.

2) Anyone who brings about damage exceeding 5,000 francs through the offence shall be punished with imprisonment of up to three years, and anyone who brings about damage exceeding 75,000 francs shall be punished with imprisonment of one to ten years.

§ 302 CC Abuse of authority

1) An official who, for the purpose of injuring another person with respect to his rights, knowingly abuses his powers to conduct official acts in the name of the country, a municipal association, a municipality, or another entity under public law as its organ in the execution of the laws shall be punished with imprisonment of six months to five years.

2) Anyone who commits the offense while conducting official acts with a foreign power or a supranational or international institution shall be punished with imprisonment of one to ten years.

§ 313 CC Offences while taking advantage of an official position

If a wilful act that otherwise likewise carries a penalty is committed by an official while taking advantage of an opportunity afforded by his official position, then the maximum penalty of imprisonment or monetary penalty provided may be exceeded by half in respect of that official. However, the time-limited term of imprisonment may not exceed twenty years.

59. Related statistical data on investigations, prosecutions and convictions/acquittals is provided above.

(b) Observations on the implementation of the article

60. Liechtenstein indicated that, in respect of §§ 133 and 153 CC, the terms “good” and “asset” are defined in a manner that is consistent with the definition of “property” set out in Article 2 UNCAC. “Good” is defined as all moveable property including money in bank accounts. “Asset” is the same as property.

61. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 17 UNCAC.

Article 18. Trading in influence

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(a) Summary of information relevant to reviewing the implementation of the article

62. Liechtenstein confirmed that it has partially implemented this provision of the Convention.

63. Liechtenstein cited the following implementation legislation:

§ 308 CC Prohibited intervention

1) Anyone who knowingly and directly or indirectly exerts influence so that an official, a managing employee of a public enterprise, a Member of Parliament or a Municipal Council, or a foreign official performs or omits an official act or legal act falling within his scope of responsibilities on behalf of a party, and if the person demands, accepts, or obtains a promise of a benefit for himself or a third party in return for this exertion of influence, shall be punished with imprisonment of up to three years.

2) Anyone who only accepts or obtains a promise of a minor benefit shall not be punished under paragraph 1 unless the act is committed on a professional basis.

3) A person shall not be punished under paragraph 1 if he acts within the scope of his powers to engage in representation against payment.

64. Liechtenstein further explained that “official act” means “service work”, “engage in representation against payment” in Sub§ 308(3) means for example the activities of a lawyer.

(b) Observations on the implementation of the article

65. The offence indicated by Liechtenstein is different than that contemplated in this subparagraph. § 308 CC concerns passive trading in influence (Art. 18(b) UNCAC). Moreover, it envisages a two-person-relationship, whereas Art. 18(a) UNCAC concerns a three-person-relationship (instigator, intermediary who uses his influence, and the administration or public authority that grants the advantage to the instigator).
66. Liechtenstein also argued that the offence in subparagraph (a) of article 18 is covered by § 307 CC (see subparagraph (a) of article 15). However, the person receiving the advantage in § 307 CC must be an official or another of the listed recipients. By contrast, the intermediary in Art. 18 UNCAC can be “any other person”. In addition, § 307 also only concerns two-person-relationships.
67. Finally, under Liechtenstein law, supposed influence is not enough.
68. During the country visit, Liechtenstein conceded that this interpretation was correct.
69. Therefore, the reviewing experts concluded that Liechtenstein has so far not implemented Art. 18(a) UNCAC.

(c) Challenges and recommendations

70. The reviewing experts recommended to implement the draft amendments to the CC and comprehensively criminalise active trading in influence.

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

71. Liechtenstein confirmed that it has partially implemented this provision of the Convention.
72. Liechtenstein cited the following implementation legislation:

§ 308 CC Prohibited intervention

1) Anyone who knowingly and directly or indirectly exerts influence so that an official, a managing employee of a public enterprise, a Member of Parliament or a Municipal Council, or a foreign official performs or omits an official act or legal act falling within his scope of responsibilities on behalf of a party, and if the person demands, accepts, or obtains a promise

of a benefit for himself or a third party in return for this exertion of influence, shall be punished with imprisonment of up to three years.

2) Anyone who only accepts or obtains a promise of a minor benefit shall not be punished under paragraph 1 unless the act is committed on a professional basis.

3) A person shall not be punished under paragraph 1 if he acts within the scope of his powers to engage in representation against payment.

(b) Observations on the implementation of the article

73. The reviewing experts referred to their observations under Art. 18(a) UNCAC.

(c) Challenges and recommendations

74. The reviewing experts recommended implementing the draft amendments to the CC and comprehensively criminalise passive trading in influence.

Article 19. Abuse of functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

75. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

76. Liechtenstein cited the following implementation legislation:

§ 302 CC Abuse of authority

1) An official who, for the purpose of injuring another person with respect to his rights, knowingly abuses his powers to conduct official acts in the name of the country, a municipal association, a municipality, or another entity under public law as its organ in the execution of the laws shall be punished with imprisonment of six months to five years.

2) Anyone who commits the offense while conducting official acts with a foreign power or a supranational or international institution shall be punished with imprisonment of one to ten years.

77. Related statistical data on investigations, prosecutions and convictions/acquittals is attached

(b) Observations on the implementation of the article

78. The reviewing experts note that this article is optional in nature. The article proposes the creation of an offence of abuse of functions or position in violation of laws by an official for the purpose of obtaining an undue advantage.

79. The offence at § 302 CC, which Liechtenstein presents as addressing the offence in article 19, prohibits an official from abusing his powers to conduct official acts, for the purpose of injuring another person with respect to that person's rights. This offence appears to be

narrower than that contemplated by article 19 in that the offence at § 302 is restricted by committing the offence for the purpose of injuring another whereas the offence proposed in article contains no such restriction.

80. On the other hand, however, the offence at § 302 need not be committed for the purpose of obtaining an undue advantage.
81. Liechtenstein agrees, but argues that Article 19 UNCAC is also covered by § 304 paragraph 1 CC (an “official act” contrary to duty, see answer to Art. 15(b) UNCAC above).
82. The reviewing experts concluded that Liechtenstein has adequately implemented Art. 19 UNCAC.

Article 20. Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

83. Liechtenstein confirmed that it has not implemented this provision of the Convention.
84. The criminalization of illicit enrichment would lead to insurmountable constitutional problems (presumption of innocence, reversal of burden of proof) because the European Convention on Human Rights has constitutional status in Liechtenstein. There is also no asset declaration scheme in place.
85. On the basis of the Liechtenstein Constitution and the essential principles of the Liechtenstein legal order, illicit enrichment *per se* does not constitute an offence. But in § 20(2) and (3) CC, Liechtenstein law does ease the burden of proof especially in connection with the assets of persons belonging to or supporting a criminal organization.

§ 20 CC Deprivation of enrichment

1) Anyone who

1. has committed an act carrying a penalty and has thereby gained assets

, or

2. has received assets for the commission of an act carrying a penalty shall be sentenced to pay an amount of money equal to the unjust enrichment obtained thereby. To the extent that the amount of enrichment cannot be determined or only with disproportionate effort, the court shall specify the amount to be deprived at its discretion.²

2) If

1. the perpetrator has continually or repeatedly committed crimes (§ 17) and obtained assets through or for their commission, and

2. he has received other assets during the time connected with the crimes committed, and it is reasonable to assume that such assets originate from other crimes of this kind, and their lawful origin cannot be credibly shown, then these assets shall also be taken into account when specifying the amount to be deprived.³

3) A perpetrator who has gained assets during the time connected with his membership of a criminal organization (§ 278a) or a terrorist group (§ 278b) shall be sentenced to pay an amount of money specified at the court's discretion to be equal to the enrichment obtained, if it is reasonable to assume that such assets originate from offences and their lawful origin cannot be credibly shown.

4) Anyone who has been enriched directly and unjustly through the act carrying a penalty of another person or through a pecuniary advantage paid for the commission of such act shall be sentenced to pay an amount of money equal to that enrichment. If a legal person or partnership has been enriched, then it shall be sentenced to pay this amount.

5) If a directly enriched party is deceased or if a directly enriched legal person or partnership no longer exists, then the enrichment shall be deprived from the legal successor, to the extent that enrichment still existed at the time of legal succession.

6) Several enriched parties shall be sentenced according to their share in the enrichment. If this share cannot be determined, then the court shall specify it at its discretion.

(b) Observations on the implementation of the article

86. The reviewing experts observed that Liechtenstein has a useful sentencing provision in § 20(4) CC that allows a court to impose a fine equal to the assets obtained through the commission of a crime.

87. It was concluded that Liechtenstein has fulfilled its obligation to consider illicit enrichment in compliance with Art. 20 UNCAC.

Article 21. Bribery in the private sector

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(a) Summary of information relevant to reviewing the implementation of the article

88. Liechtenstein confirmed that it has partially implemented this provision of the Convention.

89. Liechtenstein's only provision criminalizing private bribery is § 4(b) of the Unfair Competition Act (UWG), which establishes a private prosecution offence. The penalty is a fine (§ 22 UWG) with joint liability of the enterprise (§ 25 UWG).

90. Private bribery may, however, also be punishable as criminal breach of trust under § 153 CC if the elements of the crime enumerated there apply.

§ 4 UWG

Inducement to breach or cancel a contract

Unfair practices are committed in particular by anyone who

- a) induces purchasers to breach a contract in order to conclude a contract with those purchasers himself;
- b) attempts to gain advantages for himself or someone else by granting or offering employees, representatives or other auxiliary persons of a third party benefits that those persons are not entitled to and that are likely to induce those persons to violate their official or commercial duties;
- c) induces employees, representatives or other auxiliary persons to betray or spy out manufacturing or business secrets of their employer or client;
- d) causes a buyer or borrower who has concluded a purchase on account, a prepayment purchase, or a consumer credit contract to revoke the contract or who causes a buyer who has concluded a prepayment purchase to cancel that purchase in order to conclude such a contract with the buyer himself.

Anyone wilfully committing such an offence shall, upon application and pursuant to § 22 UWG, be punished with a fine of up to CHF 100'000.

§ 153 CC Criminal breach of trust

1) Anyone who knowingly abuses the authorization granted to him by law, official mandate, or legal transaction to dispose of third- party assets or to obligate another person and thereby inflicts a pecuniary disadvantage on the other person shall be punished with imprisonment of up to six months or with a fine of up to 360 daily rates.

2) Anyone who brings about damage exceeding 5,000 francs through the offence shall be punished with imprisonment of up to three years, and anyone who brings about damage exceeding 75,000 francs shall be punished with imprisonment of one to ten years.

(b) Observations on the implementation of the article

- 91. The reviewing experts noted Liechtenstein's efforts to implement the provision under review: The Office of Justice is currently developing a legislative project to revise the criminal law governing corruption (see para. 31 above). The project includes introduction of a new § 309 CC (Acceptance of gifts and bribery of employees or mandatees). According to § 309(2) CC, anyone who, in the course of business transactions, offers, promises, or grants an advantage to a person employed or mandated by an enterprise in return for the undertaking or omission of a legal act contrary to duty for himself or a third party shall be punished with imprisonment of up to two years. The offences enumerated in § 309 CC are all subject to ex officio prosecution. The proposed provision in § 309 corresponds to § 309 of the Austrian Criminal Code.
- 92. It was concluded that Liechtenstein has only partially implemented Art. 21(a) UNCAC.

(c) Challenges and recommendations

- 93. The reviewing experts recommended to implement the draft amendments to the CC and
 - criminalise active bribery in the private sector.

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

94. Liechtenstein confirmed that it has not implemented this provision of the Convention.

95. Liechtenstein's efforts to date to implement the provision under review: The Office of Justice is currently developing a legislative project to revise the criminal law governing corruption. The project includes introduction of a new § 309 CC (Acceptance of gifts and bribery of employees or mandatees). According to §309(1) CC, any person employed or mandated by an enterprise who, in the course of business transactions, demands, accepts, or obtains a promise of an advantage for himself or a third party from another person in return for the undertaking or omission of a legal transaction contrary to duty shall be punished with imprisonment of up to two years. If the value of the advantage exceeds 5,000 CHF, § 309(3) CC requires that the perpetrator shall be punished with imprisonment of up to three years, and if the value of the advantage exceeds 75,000 CHF, the penalty shall be imprisonment of six months to five years. Conversely, § 309(2) CC provides that anyone who, in the course of business transactions, offers, promises, or grants an advantage to a person employed or mandated by an enterprise in return for the undertaking or omission of a legal act contrary to duty for himself or a third party shall be punished with imprisonment of up to two years. The offences enumerated in § 309 CC are all subject to ex officio prosecution. The proposed provision in § 309 corresponds to § 309 of the Austrian Criminal Code.

96. Steps needed to ensure full compliance with the provision under review: It must again be noted here that the comments on the planned § 309 CC relate to a version of the consultation draft that has not yet been adopted by the Government. Both the Government's decision-making process and the results of the consultation and parliamentary procedures may still give rise to changes. The proposed version is therefore not the final text of the law. Parliament will likely be able to consider the draft at the end of 2015.

(b) Observations on the implementation of the article

97. The reviewing experts made the same remarks, *mutatis mutandis*, as with regard to Art. 21 (a) UNCAC.

98. It was concluded that Liechtenstein has not implemented Art. 21(b) UNCAC.

(c) Challenges and recommendations

99. The reviewing experts recommended to implement the draft amendments to the CC and

- criminalise passive bribery in the private sector.

Article 22. Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

100. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

101. Liechtenstein cited the following implementation legislation:

Criminal Code (CC)

§ 133 CC Embezzlement

1) Anyone who, with the intent to unjustly enrich himself or a third party, appropriates a good that has been entrusted to him shall be punished with imprisonment of up to six months or with a monetary penalty of up to 360 daily rates.

2) Anyone who embezzles a good with a value exceeding 5,000 francs shall be punished with imprisonment of up to three years, and anyone who embezzles a good with a value exceeding 75,000 francs shall be punished with imprisonment of one to ten years.

§ 153 CC Criminal breach of trust

1) Anyone who knowingly abuses the authorization granted to him by law, official mandate, or legal transaction to dispose of third-party assets or to obligate another person and thereby inflicts a pecuniary disadvantage on the other person shall be punished with imprisonment of up to three years or with a fine of up to 360 daily rates.

2) Anyone who brings about damage exceeding 5,000 francs through the act shall be punished with imprisonment of up to three years, and anyone who brings about damage exceeding 75,000 francs shall be punished with imprisonment of one to ten years.

(b) Observations on the implementation of the article

102. The reviewing experts conclude that Liechtenstein is in compliance with this provision of the Convention.

Article 23. Laundering of proceeds of crime

Subparagraph 1 (a) (i) and (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) *The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

(a) **Summary of information relevant to reviewing the implementation of the article**

103. Liechtenstein confirmed that it has fully implemented this provision of the Convention.
104. § 165, para 1 CC criminalizes money laundering. § 165 CC is complying with the elements as stated in the 1988 Vienna Single Convention and Palermo Convention, i.e. concealment (hiding), acquisition, possession, management and use (conversion, realization or transfer).
105. Although § 165 CC does not contain specific terminology on the *mens rea*, it is clear that at a minimum the “wilful” standard applies. Liechtenstein criminal law (§ 5 CC) knows three forms of “*mens rea*” characterizing an offence “wilfully”, “intentionally”, or “knowingly.” When a criminal provision does not specify the mental element required, such as in § 165, para 1 and 2 CC, the act is deemed “wilful”, which is an even lower standard than the required “intention” according to the terminology used in the relevant Conventions.
106. According to § 165, para 4 CC, the assets (“asset components”) originate from a criminal offence if the offender has either obtained the assets himself through the offence or for its commission or if the value of the originally obtained or received assets are embodied in it. Disregarding the reference to assets obtained to commit an offence (which are not proceeds but instrumentalities), the ML offence relates to all kinds of property, either obtained directly from the offence or indirectly through substitution (“embodied”).

§ 165 CC Money laundering

1) Anyone who hides asset components originating from a crime, a misdemeanour under §§ 223, 224, 278, 278d or 304 to 308, a misdemeanour under articles 83 to 85 of the Foreigners Act, a misdemeanour under the Narcotics Act, or an infraction under article 24 of the Market Abuse Act, or conceals their origin, in particular by providing false information in legal transactions concerning the origin or the true nature of, the ownership or other rights pertaining to, the power of disposal over, the transfer of, or the location of such asset components, shall be punished with imprisonment of up to three years or with a monetary penalty of up to 360 daily rates.

2) Anyone who appropriates or takes into safekeeping asset components originating from a crime, a misdemeanour under §§ 180, 182, 223, 224, 278, 278d or 304 to 308, a misdemeanour under articles 83 to 85 of the Foreigners Act, a misdemeanour under the Narcotics Act, or an infraction under article 24 of the Market Abuse Act, whether merely in order to hold them in safekeeping, to invest them, or to manage them, or who converts, realizes, or transfers such asset components to a third party, shall be punished with imprisonment of up to two years or with a monetary penalty of up to 360 daily rates.

3) Anyone who commits the act referred to in paragraph 1 or 2 in relation to a value exceeding 75,000 francs or as a member of a criminal group that has joined together for the purpose of continued money laundering shall be punished with imprisonment of six months to five years.

3a) Anyone shall likewise be punished in accordance with paragraph 1 or 2 who commits one of the acts referred to there in relation to asset components arising from a misdemeanour referred to in article 88 of the Value Added Tax Act associated with detriment to the budget of the European Communities, provided the evaded tax or unjust advantage exceeds 75,000 francs.

4) An asset component shall be deemed to arise from an offence if the perpetrator of the offence has obtained the asset component through the act or received it for the commission of the act or if the value of the originally obtained or received asset is embodied therein.

5) Repealed

6) Anyone who appropriates or takes into safekeeping asset components of a criminal organization (§ 278a) or a terrorist group (§ 278b) on behalf of or in the interest of such a criminal organization or terrorist group, whether merely in order to hold them in safekeeping, to invest them, or to manage them, or who converts, realizes, or transfers such asset components to a third party, shall be punished with imprisonment of up to three years; anyone who commits the act in relation to a value exceeding 75,000 francs shall be punished with imprisonment of six months to five years.

107. In addition to the provision in the CC, several laws include provisions to fight and prevent money-laundering:

- Law of 11 December 2008 on Professional Due Diligence in Financial Transactions (Due Diligence Act, **DDA**)
- Ordinance of 17 February 2009 on Professional Due Diligence to Combat Money Laundering, Organized Crime and Terrorist Financing (Due Diligence Ordinance, **DDO**)
- Law of 12 March 2003 on the Business Activities of E-Money Institutes (E-Money Act) · Law of 21 October 1992 on Banks and Finance Companies (Banking Act)
- Law of 6 December 1995 on the Supervision of Insurance Undertakings (Insurance Supervision Act)
- Law of 3 May 1996 on Investment Undertakings (IUG)
- Amendments to the Criminal Code and the Mutual Legal Assistance Act · Law of 14 March 2002 on the Financial Intelligence Unit (FIUG)
- Law of 18 June 2004 on the Financial Market Authority (FMA Act)
- Law of 20 September 2007 on the Additional Supervision of Undertakings in a Financial Conglomerate (Financial Conglomerate Act; FKG)

108. The Due Diligence Act (**DDA**) requires all persons subject to due diligence to identify the contracting partner, to determine the beneficial owners, to carry out special inquiries with due care, where applicable to submit suspicious activity reports to the FIU, and to keep records even after termination of a business relationship.

- Art. 3 Due Diligence Act (DDA) Scope of application
- Art. 2 (1) (e), 5 (1) (a) and (b), Art. 6 and 7 DDA; Art. 3 Due Diligence Ordinance (DDO), Art. 6-13 DDO - customer and beneficial owner identification
- Art. 20 DDA and Art. 27-29 DDO - record-keeping
- Art. 17 DDA and Art. 26 DDO - reporting of suspicious transactions
- Liechtenstein as a member of the EEA has to transpose the relevant EU directives. Once EU regulations are incorporated into the EEA Agreement they are directly applicable in Liechtenstein and do not require national implementing legislation. Therefore Liechtenstein is fully subject to the EU AML/CFT framework. In 2009 Liechtenstein implemented the directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (3rd EU AML Directive).

109. Supervisory and disciplinary measures

- Article 28 DDA - Supervisory measures
- Penal provisions: Article 30 DDA - Misdemeanours, Article 31 DDA - Administrative offences

110. Means or procedures for information sharing

111. Liechtenstein provided the following statistical data:

2010	Investigations		Prosecutions		Convictions (final)	
	cases	Persons	Cases	Persons	Cases	persons
ML	50	>50	0	0	0	0

2011	Investigations		Prosecutions		Convictions (final)	
	cases	Persons	Cases	Persons	Cases	persons
ML	55	>55	1	2	0	0

2012	Investigations		Prosecutions		Convictions (final)	
	Cases	Persons	Cases	Persons	Cases	persons
ML	56	>56	1	1	0	0

2013	Investigations		Prosecutions		Convictions (final)	
	Cases	Persons	Cases	Persons	Cases	persons
ML	74	>74	3	3	0	0

2014 (30.09.2014)	Investigations		Prosecutions		Convictions (final)	
	Cases	Persons	Cases	Persons	Cases	persons
ML	43	>43	6	7	1	1

(b) Observations on the implementation of the article

112. Liechtenstein confirmed that the term “asset” is as broad as the term “property” as defined in the UNCAC. The money laundering offence relates to all kinds of property, either obtained directly from the offense or indirectly through substitution (“embodied”). Indirect proceeds (interest) are also covered according to case law.

113. The reviewing experts concluded that Liechtenstein law is in compliance with this provision of UNCAC.

Subparagraph 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

114. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

115. § 165, para 2 PC criminalizes money laundering.

§ 165 CC Money laundering

...

2) Anyone who appropriates or takes into safekeeping asset components originating from a crime, a misdemeanour under §§ 180, 182, 223, 224, 278, 278d or 304 to 308, a misdemeanour under articles 83 to 85 of the Foreigners Act, a misdemeanour under the Narcotics Act, or an infraction under article 24 of the Market Abuse Act, whether merely in order to hold them in safekeeping, to invest them, or to manage them, or who converts, realizes, or transfers such asset components to a third party, shall be punished with imprisonment of up to two years or with a monetary penalty of up to 360 daily rates.

...

(b) Observations on the implementation of the article

116. The reviewing experts conclude that Liechtenstein is in compliance with this provision of the Convention.

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system: ...

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

117. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

118. Attempt (as well as any participation in an attempt) is criminalized for all offenses by § 15 CC, including money laundering.
119. § 12 CC (Treatment of all participants as offenders) covers aiding and abetting, facilitating and counselling. It states that a criminal offense is committed also by anybody who abets another person to commit the offense or who contributes to its perpetration in any other way. If the incitement or the induction is for the specific offense of money laundering, this case is also covered by § 12 CC.
120. All relevant ancillary offences are presently covered. Conspiracy in the common law sense is not an offence in a continental (civil) law based criminal law tradition such as in Liechtenstein. The international standards (including the relevant Conventions) alternatively require the criminalization of association to commit money laundering. Such association is criminalized pursuant § 278, para 2 CC.

§ 12 CC Treatment of all participants as perpetrators

Not only the immediate perpetrator shall be deemed to commit the offence, but also every person who directs another to carry out the offence or who otherwise contributes to its being carried out.

§ 15 CC Punishability of attempt

- 1) The penalties provided for wilful acts shall not only apply to a completed act, but also to an attempt and to any participation in an attempt.
- 2) The act shall be deemed attempted as soon as the perpetrator actuates his decision to carry out or direct another person to carry out (§ 12) the act by way of an action immediately preceding the carrying out of the act.
- 3) An attempt and participation in an attempt shall not be punishable if completion of the act was not possible under any circumstances, for lack of personal qualities or circumstances that the law requires the person acting to fulfil or given the type of the action or the type of the object against which the act was perpetrated.

§ 278 CC Criminal group

- 1) Anyone who establishes a criminal group or participates in such a criminal group as a member shall be punished with imprisonment of up to three years.
- 2) A criminal group shall mean an affiliation intended to exist for an extended period of time of more than two persons aiming at the commission of one or more crimes, other substantial acts of violence against life and limb, not merely petty damage to property, theft or fraudulent acts, or misdemeanours under §§ 104a, 165 paragraphs 1 and 2, 233 to 239, 304 or 307, by one or more members of the group.
- 3) A person shall be deemed to participate as a member in a criminal group who commits an offence within the scope of the group's criminal aim or participates in its criminal activities by providing information or assets or in any other way with the knowledge that he is thereby promoting the group or its offences.
- 4) Where the group has not resulted in any offence of the planned kind, no member shall be punished if the group disbands voluntarily or its conduct otherwise indicates that it has voluntarily renounced its undertaking. Moreover, no one shall be punished for the act of criminal group who voluntarily resigns from the group before an act of the planned kind has been carried out or attempted; anyone who has participated in a leading capacity in the group shall be exempt from such punishment if he voluntarily notifies the authority (§ 151 paragraph 3) or otherwise causes the danger arising from the group to be eliminated.

(b) Observations on the implementation of the article

121. The reviewing experts concluded that Liechtenstein law is in compliance with this provision of UNCAC.

Subparagraphs 2 (a) and 2 (b)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

122. Liechtenstein confirmed that it has fully implemented this provision of the Convention.
123. The Liechtenstein approach of including predicate offences is partly threshold-based, partly list-based. Predicate offenses to money laundering are all crimes (punishable by life or more than three years imprisonment) and a series of designated misdemeanors (less than three years imprisonment).
124. Predicate offences in accordance with this Convention are: corruption and bribery (§§ 304 to 308 CC), embezzlement (§ 133, para. 2 CC), criminal breach of trust (§ 153, para. 2 CC), abuse of authority (§ 302 CC), aggravated coercion (§ 106 CC), resistance to state authorities (§ 269 CC) and false testimony in court (§ 288, para. 2 CC).

(b) Observations on the implementation of the article

125. The reviewing experts observed that § 165 CC appears to be in compliance with subparagraphs 2 (a) and (b) of article 23 with the exception of embezzlement of 5000 CHF or less which is no crime and therefore not a predicate offence. The new trading in influence offence will be included once it has been created.

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article: ...

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

126. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

127. As long as Liechtenstein has jurisdiction over the money laundering activity itself *ratione loci*, it is irrelevant where the predicate offences are committed, provided that the acts would constitute a domestic predicate offence.
128. Liechtenstein even assumes jurisdiction over the money laundering conduct in another country if the predicate offence has been committed in Liechtenstein (§ 64, para 1, 9 CC), and this even in the absence of dual criminality.
129. § 65, para 3 CC finally provides that, if there is no penal power at the place where the criminal act was committed (such as the Antarctica or the high seas) it is sufficient that the offence is punishable in Liechtenstein.

§ 64 CC - Offences abroad that are punished irrespective of the laws of the place where they are committed

1) The Liechtenstein criminal laws shall apply to the following acts committed abroad, irrespective of the criminal laws of the place where the act is committed:

1. high treason (§ 242), preparation of high treason (§ 244), subversive groups (§ 246), attacks against the highest bodies of the State (§§ 249 to 251), treason (§§ 252 to 258), and offences against the national defence (§§ 259 and 260);
2. offences committed against a Liechtenstein official (§ 74 paragraph 4) during or because of execution of his duties and offences committed as a Liechtenstein official;
3. false testimony in court (§ 288) and false testimony before an administrative authority under oath or confirmed by oath (§ 289) with respect to proceedings pending before a Liechtenstein court or a Liechtenstein administrative authority;

...

6. other offences which the Principality of Liechtenstein is required to prosecute, irrespective of the criminal laws of the place where the offence is committed, even if they are committed abroad;

7. offences that a Liechtenstein citizen commits against another Liechtenstein citizen, if both have their residence or habitual abode in Liechtenstein;

8. termination of pregnancy (§ 96), termination of pregnancy without the consent of the pregnant woman (§ 97), careless intervention with respect to a pregnant woman (§ 98), provided that the pregnant woman has her residence or habitual abode in Liechtenstein;

9. participation (§ 12) in an offence committed by the immediate perpetrator in Liechtenstein, as well as handling stolen goods (§ 164) and money laundering (§ 165) with respect to a (predicate) offence committed in Liechtenstein;

10. terrorist group (§ 278b) and terrorist offences (§ 278c) as well as offences under §§ 128 to 131, 144, 145, 223, and 224 committed in connection therewith if

- a) the perpetrator was a Liechtenstein citizen at the time of the act or acquired Liechtenstein citizenship later and still has it at the time the criminal proceedings are initiated,
- b) the perpetrator has his residence or habitual abode in Liechtenstein,

c) the act was perpetrated for the benefit of a legal person domiciled in Liechtenstein,

d) the act was committed against the Reigning Prince, Parliament, the Government, a court or other authorities or against the population of the Principality of Liechtenstein,

e) the perpetrator was a foreign citizen at the time of the act, is situated in Liechtenstein, and cannot be extradited;

11. terrorist financing (§ 278d), if

a) the perpetrator was a Liechtenstein citizen at the time of the act or acquired Liechtenstein citizenship later and still has it at the time the criminal proceedings are initiated, or

b) the perpetrator was a foreign citizen at the time of the act, is situated in Liechtenstein, and cannot be extradited.

2) If the criminal laws enumerated in paragraph 1 cannot be applied merely because the act is an act punishable with a more severe penalty, then the act committed abroad shall nevertheless

be punished in accordance with Liechtenstein criminal laws, irrespective of the criminal laws of the place where the act is committed.

(b) Observations on the implementation of the article

130. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 23(2)(c) UNCAC.

(c) Successes and good practices

131. The reviewing experts identified as good practices that

- Liechtenstein assumes jurisdiction over the money laundering conduct in another country if the predicate offence has been committed in Liechtenstein (§ 64, para 1, 9 CC), and this even in the absence of dual criminality;
- if there is no penal power at the place where the criminal act was committed (such as the Antarctica or the high seas), it is sufficient that the offence is punishable in Liechtenstein (§ 65, para 3 CC).

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article: ...

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

132. Liechtenstein has not furnished copies of its laws to the Secretary-General of the United Nations

(b) Observations on the implementation of the article

133. The reviewing experts recommended that Liechtenstein should furnish copies of its laws to the Secretary-General of the United Nations.

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article: ...

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

134. Self-laundering is criminalized in Liechtenstein in § 165, paras. 1 and 2 CC. § 165, para. 5 CC, which precluded a person who had been punished for “participation” in the predicate offense from being punished for money laundering, has been abolished by amendment in

March 2009. Criminalization of self-laundering in respect of “appropriation and taking into custody” is justifiably precluded by the fundamental “*ne bis in idem*” principle (the commission of the predicate offence infers the acquisition and taking into possession of the assets).

(b) Observations on the implementation of the article

135. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 23(2)(e) UNCAC.

Article 24. Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

136. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

137. Concealment as a criminal offence in Liechtenstein includes several elements of crime concerning money laundering (§ 165 CC) as well as handling stolen goods (§ 164 CC).

§ 164 CC Handling stolen goods

1) Anyone who, after an act carrying a penalty against the assets of another, supports the perpetrator of that act in concealing or realizing an object the perpetrator has obtained through that act shall be punished with imprisonment of up to six months or with a monetary penalty of up to 360 daily rates.

2) Anyone shall be punished likewise who buys or otherwise takes possession of such an object or procures the object for a third party.

3) Anyone who handles a stolen object with a value of more than 5,000 francs shall be punished with imprisonment of up to two years or with a monetary penalty of up to 360 daily rates.

4) Anyone who handles a stolen object with a value of more than 75,000 francs or who handles stolen goods on a professional basis shall be punished with imprisonment of six months to five years. The handler of stolen goods shall be punished likewise if the act carrying a penalty by which the object was obtained carries a penalty of imprisonment that reaches or exceeds five years other than for reasons of commission on a professional basis, and the handler of stolen goods knows the circumstances giving rise to this penalty.

(b) Observations on the implementation of the article

138. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 24 UNCAC.

Article 25. Obstruction of justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

139. Liechtenstein confirmed that it has fully implemented this provision of the Convention.
140. This kind of obstruction of justice in Liechtenstein is judged as an offence against the administration of justice (§§ 288 and 289 CC) or as offence against the reliability of documents and of evidence (§§ 293 and 295 CC). In addition to that such acts are possibly also judged as coercion (§§ 105 and 106 CC).
141. See the following paragraphs accordingly:

§ 288 CC

False testimony in court

- 1) Anyone who as a witness or, unless he is simultaneously a party, as a person providing information gives false testimony on the matter during his formal questioning, or as an expert provides a false finding or a false opinion, shall be punished with imprisonment of up to three years.
- 2) Anyone who gives false testimony (paragraph 1) under oath or confirms false testimony by an oath or otherwise commits perjury in court with respect to an oath provided by law shall be punished with imprisonment of six months to five years. Reference to an earlier oath shall be considered equivalent to an oath, and in the case of persons exempt from the duty to swear an oath, the affirmation provided for in lieu of an oath shall be considered equivalent to an oath.
- 3) Anyone shall likewise be punished in accordance with paragraph 1 who, as a witness or expert, commits one of the acts referred to in that paragraph in proceedings conducted by the National Police in accordance with the Code of Criminal Proceedings.

§ 306

Acceptance of gifts by experts

An expert appointed by a court or another authority for specific proceedings who demands, accepts, or obtains a promise of an advantage for himself or a third party in return for submission of an untrue finding or opinion shall be punished with imprisonment of up to three years.

§ 307

Bribery

- 1) Anyone who offers, promises, or grants an advantage to
- ...
3. an expert, in return for submission of an untrue finding or opinion (§ 306),

§ 289 CC

False testimony before an administrative authority

Anyone who, as a witness before an administrative authority, gives false testimony in a case during formal questioning or who, as an expert, provides false findings or a false opinion shall be punished with imprisonment of up to one year.

§ 293 CC

Falsification of evidence

1) Anyone who fabricates false evidence or falsifies true evidence shall, if acting wilfully so that the evidence be used in proceedings in court or before an administrative authority or in proceedings conducted by the National Police in accordance with the Criminal Procedure Code, be punished with imprisonment of up to one year, unless the offence is punishable under §§ 223, 224, 225, or 230.

2) Anyone shall be punished likewise who uses false or falsified evidence in proceedings in court or before an administrative authority or in proceedings conducted by the National Police in accordance with the Criminal Procedure Code.

§ 295 CC

Suppression of evidence

Anyone who, acting wilfully to prevent the evidence from being used in the proceedings, destroys, damages, or suppresses evidence that is intended for use in proceedings in court or before an administrative authority or in proceedings conducted by the National Police in accordance with the Criminal Procedure Code and that is not at the disposal of that person or of that person alone shall be punished with imprisonment of up to one year, unless the offence is punishable under §§ 229 or 230.

§ 105 CC

Coercion

1) Anyone who, using force or a dangerous threat, coerces another person to perform, tolerate, or omit an act shall be punished with imprisonment of up to one year.

2) The act shall not be considered unlawful if the use of force or threat does not contravene good morals as a means for achieving the intended purpose.

§ 106 CC

Aggravated coercion

1) Anyone committing coercion by

1. threatening death, substantial mutilation or conspicuous disfigurement, kidnapping, arson, endangerment through nuclear energy, ionizing radiation, or explosives, or destruction of livelihood or social status,

2. by these means and for an extended period of time, inflicts a state of agony on the coerced person or another person against whom the force or dangerous threat is directed, or

3. induces the coerced person into marriage, registration of a partnership, prostitution, or participation in a pornographic depiction (§ 215a paragraph 3) or otherwise into an act, acquiescence, or omission that violates the particularly important interests of the coerced person or a third party shall be punished with imprisonment of six months to five years.

§ 12.

Treatment of all participants as perpetrators

A criminal offence is committed not only by the immediate perpetrator who commits the criminal offence, but also by anyone who instigates another person to commit the offence or who contributes to its perpetration in any other way.

142. Liechtenstein provided statistics in an attachment.

(b) Observations on the implementation of the article

143. The reviewing experts observed that the provisions listed seem not to have dealt with the requirements of the article in relation to “undue advantage to induce false testimony, etc.” Moreover, a “dangerous threat” (§ 105 CC) seems to be more restrictive than a threat or intimidation (UNCAC).

144. Liechtenstein explained that the main purpose of § 288 CC is to protect the integrity of the judicial process. In combination with § 12 CC, § 288 CC also fulfils the Convention's requirement to prohibit the act of contacting or promising undue advantages to a witness (anyone who instigates another person to commit the offence). The intention of the convention to protect witnesses from being influenced by others through threats or harassments is covered by §§ 105 and 106 CC.
145. However, the offense of obstruction of justice, as set forth in the Convention, is intended to protect witnesses from being influenced by others through threats or promises of undue advantages. The witness is a victim of the offence, while according to § 288 CC, the witness is the perpetrator of an offence. In addition, while complicity to an offence includes as per the general law (§ 12 CC) those who persuaded the offender to commit the act or abetted them in any way, the combination of § 288 that prohibits giving false testimony and § 12 that incriminates those who cause the witness to give false testimony as participants in the offence, does not seem to fulfill the Convention's requirement to prohibit the act of contacting or harassing a witness.
146. § 105 PC (*Nötigung* – coercion) was also cited. However, it would seem that certain situations which are covered by the Convention would not be criminalized by either § 105 or § 288 CC (in conjunction with § 12 CC), e.g. where money is given to a potential witness/observer of the bribe as a reward for not reporting it.
147. Therefore, the reviewing experts recommended the introduction of a specific offence to fully implement the mandatory criminalization requirements of article 25(a) UNCAC.

(c) Challenges and recommendations

148. The reviewing experts encouraged Liechtenstein to consider the introduction of a specific offence to fully implement the mandatory criminalization requirements of article 25(a) UNCAC.

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: ...

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

149. Liechtenstein confirmed that it has fully implemented this provision of the Convention.
150. Liechtenstein cited the following applicable measures, along with the answer to Subparagraph a.

§ 269 CC

Resistance to State authorities

1) Anyone who, by force or the threat of force, prevents an authority from performing an official act and anyone who, by force or a dangerous threat, prevents an official from performing an official act shall be punished with imprisonment of up to three years, but in the case of serious coercion (§ 106) with imprisonment of six months to five years.

2) Anyone shall be punished likewise who, by force or the threat of force, coerces an authority or, by force or a dangerous threat, coerces an official to perform an official act. 3) Only an act by which the official exercises the power of command or compulsion as a body of the sovereign administration or the judiciary shall be deemed an official act for the purpose of paragraphs 1 and 2.

4) The perpetrator shall not be punished under paragraph 1 if the authority or the official is not entitled to perform the kind of official act concerned or if the official act violates provisions of criminal law.

§ 270 CC

Assault of an official

1) Anyone who assaults an official in the course of an official act (§ 269(3)) shall be punished with imprisonment of up to six months or with a monetary penalty of up to 360 daily rates.

2) § 269(4) shall apply mutatis mutandis.

§ 105 CC

Coercion

§ 106 CC

Aggravated coercion

(b) Observations on the implementation of the article

151. The Liechtenstein authorities confirmed that the definition of “public official” set out in § 74(4) CC applies to elected officials as well as public officials appointed to positions and persons holding a judicial office (professional judges, lay judges and all persons, who participate in the administration of justice).

152. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 25(b) UNCAC.

Article 26. Liability of legal persons

Paragraphs 1 and 2

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

153. Liechtenstein has established the forms of liability referred to in the provision above.

154. The Criminal Code was revised in 2010 and a completely new section on the liability of legal persons was inserted to be in compliance with several international treaties and agreements.

155. Part 9 of the Criminal Code includes the following paragraphs:

§ 74a CC Liability

1) To the extent they are not acting in enforcement of the laws, legal persons shall be liable for crimes and misdemeanours when these are committed unlawfully and culpably, in the performance of business activities and for the purpose of the legal person, by managers.

2) Legal persons shall mean

1. legal persons entered in the Commercial Register as well as legal persons which neither have their registered office nor a place of operation or establishment in Liechtenstein, insofar as these would have been entered in the Commercial Register under domestic law, and

2. foundations and associations not entered in the Commercial Register as well as foundations and associations which neither have their registered office nor a place of operation or establishment in Liechtenstein.³

3) Manager shall mean any person

1. authorized to represent the legal person in external relations, 2. who performs control duties in a leading capacity, or

3. otherwise exerts meaningful influence over the business management of the legal person.

4) Where the underlying acts have been committed by employees of the legal person, even when not culpably, the legal person shall be liable only when the commission of the act was made possible or was significantly facilitated by the omission of managers, as referred to in paragraph 3, who failed to take the necessary and reasonable measures to prevent such underlying acts.

5) The liability of the legal person for the underlying act and the punishability of managers or employees for the same act shall not be exclusive of each other. See §§ 74b and 74c of the Criminal Code (Paragraph 4 of Art. 26 (164)).

§ 74d CC Legal succession

1) Where the rights and obligations of the legal person are transferred to another legal person by way of universal succession, the legal consequences provided under this law or the Code of Criminal Procedure shall apply to the legal successor. Legal consequences imposed on the legal predecessor shall have effect also for the legal successor.

2) Singular succession shall be deemed equivalent to universal succession if essentially the same ownership situation in regard to the legal person exists and the operation or activity is essentially continued.

3) Where more than one legal successor exists, the corporate monetary penalty may be enforced against every legal successor. Other legal consequences may be attributed to individual legal

successors to the extent those legal consequences affect their area of activity.

§ 74e CC Domestic jurisdiction

Where by law the validity of Liechtenstein criminal laws for acts committed abroad depends on the place of residence or abode of the perpetrator in Liechtenstein or the perpetrator's Liechtenstein citizenship, the registered office or place of operation or establishment of the legal person shall be decisive.

§ 74f CC Limitation of enforceability

The period of limitation for enforceability of the imposed corporate monetary penalty shall be ten years.

§ 74g CC

Application of the general criminal laws

- 1) The general criminal laws shall apply mutatis mutandis also to legal persons, to the extent they are not applicable exclusively to natural persons.
- 2) Where a legal person is sentenced to a corporate monetary penalty, the statutory provisions on joint liability of legal persons for monetary penalties and costs shall not be applicable.

156. Liechtenstein stated that until now, there are only very few and minor cases with relatively low sanctions and few final judgements.

(b) Observations on the implementation of the article

157. Liechtenstein stated that apart from the criminal sanctions pursuant to § 74b CC, other administrative and civil remedies are available for legal persons found guilty of committing a Convention offence (e.g. dissolution of the company, § 971(1) no. 5 *Personen- und Gesellschaftsrecht*).

158. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 26(1) and (2) UNCAC.

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

159. Liechtenstein explained that criminal and disciplinary liability are not exclusive and do not depend on one another.

§ 74a CC Liability

...

- 5) The liability of the legal person for the underlying act and the punishability of managers or employees for the same act shall not be exclusive of each other.

(b) Observations on the implementation of the article

160. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 26(3) UNCAC.

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions

(a) **Summary of information relevant to reviewing the implementation of the article**

161. Liechtenstein confirmed that it has fully implemented this provision of the Convention.
162. Legal persons held liable are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions according to §§ 74b and 74c of the Criminal Code:

§ 74b CC Corporate monetary penalty

- 1) Where a legal person is liable for an underlying act, a corporate monetary penalty shall be imposed on that legal person.
- 2) The corporate monetary penalty shall be assessed in daily rates. It shall amount to at least one daily rate.
- 3) The number of daily rates shall amount to at least

180, if the act carries a penalty of imprisonment for life or imprisonment of up to twenty years; 155, if the act carries a penalty of imprisonment of up to fifteen years; 130, if the act carries a penalty of imprisonment of up to ten years; 100, if the act carries a penalty of imprisonment of up to five years; 85, if the act carries a penalty of imprisonment of up to three years; 70, if the act carries a penalty of imprisonment of up to two years, 55, if the act carries a penalty of imprisonment of up to one year; 40 in all other cases.

4) The daily rate shall be assessed in accordance with the income situation of the legal person, taking account of its economic ability apart from the income situation. It shall be assessed at an amount that corresponds to 1/360th of the annual corporate income or that is less or more than that amount by at most one third, but at least 100 francs and at most 15,000 francs. If the legal person serves common-benefit, humanitarian, or ecclesiastic purposes or if it is otherwise not for profit, then the daily rate shall be assessed at least 4 and at most 1,000 francs.

5) The number of daily rates shall be determined in accordance with the seriousness and consequences of the underlying act and the seriousness of the lack of organization. Additionally, the conduct of the legal person after the act shall be taken into account, especially whether it has rectified the consequences of the act.

§ 74c CC Suspension and instructions

1) Where the legal person is sentenced to a corporate monetary penalty, the corporate monetary penalty shall be suspended and a probationary period of at least one and at most three years determined, and instructions (paragraph 3) shall be issued as appropriate, if it is likely that this will be sufficient to prevent the commission of further acts for which the legal person is liable (§ 74a) and enforcement of the corporate monetary penalty is not needed to deter the commission of acts in the context of the activity of other legal persons. In this regard, especially the kind of act, the gravity of the lack of organisation, prior convictions of the legal person, the reliability of the managers, and the measures taken by the legal person after the act shall be taken into account.

2) Where a legal person is sentenced to a corporate monetary penalty and the conditions referred to in paragraph 1 apply to part of the corporate monetary penalty, then that part, but at least one third and at most five sixths, shall be suspended and a probationary period of at least one and at most three years determined, and instructions (paragraph 3) shall be issued as appropriate.

3) Where the corporate monetary penalty imposed on a legal person is suspended in whole or in part, the court may issue instructions imposing technical, organisational, or personnel measures on the legal person to deter the commission of further acts for which the legal person is liable. The legal person shall in all cases be instructed to rectify the damage arising from the act to the best of its ability, to the extent that has not already occurred.

(b) Observations on the implementation of the article

163. The experts noted that the maximum penalty is 180 x 15 000 CHF, i.e. 2.7m CHF. They encouraged Liechtenstein to reconsider if this penalty would be a sufficiently dissuasive deterrent sanction for larger enterprises and banks.
164. Apart from this remark, the reviewing experts concluded that Liechtenstein law is in compliance with Art. 26(4) UNCAC.

Article 27. Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

165. Liechtenstein confirmed that it has fully implemented this provision of the Convention.
166. § 12 CC (Treatment of all participants as perpetrators) covers aiding and abetting, facilitating and counselling. It states that a criminal offense is committed also by anybody who abets another person to commit the offense or who contributes to its perpetration in any other way.

§ 12 CC

Treatment of all participants as perpetrators

Not only the immediate perpetrator shall be deemed to commit the offence, but also every person who directs another to carry out the offence or who otherwise contributes to its being carried out.

(b) Observations on the implementation of the article

167. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 27(1) UNCAC.

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

168. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

169. Attempt (as well as any participation in an attempt) is criminalized for all offenses by § 15 CC, therefore including money laundering.

§ 15 CC Punishability of attempt

- 1) The penalties provided for wilful acts shall not only apply to a completed act, but also to an attempt and to any participation in an attempt.
- 2) The act shall be deemed attempted as soon as the perpetrator actuates his decision to carry out or direct another person to carry out (§ 12) the act by way of an action immediately preceding the carrying out of the act.

- 3) An attempt and participation in an attempt shall not be punishable if completion of the act was not possible under any circumstances, for lack of personal qualities or circumstances that the law requires the person acting to fulfil or given the type of the action or the type of the object against which the act was perpetrated.

(b) Observations on the implementation of the article

170. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 27(2) UNCAC.

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

171. Liechtenstein confirmed that it has partially implemented this provision of the Convention.
172. Liechtenstein cited the following applicable measures

§ 278 CC Criminal group

- 1) Anyone who establishes a criminal group or participates in such a criminal group as a member shall be punished with imprisonment of up to three years.
- 2) A criminal group shall mean an affiliation intended to exist for an extended period of time of more than two persons aiming at the commission of one or more crimes, other substantial acts of violence against life and limb, not merely petty damage to property, theft or fraudulent acts, or misdemeanours under §§ 104a, 165 paragraphs 1 and 2, 233 to 239, 304 or 307, by one or more members of the group.
- 3) A person shall be deemed to participate as a member in a criminal group who commits an offence within the scope of the group's criminal aim or participates in its criminal activities by providing information or assets or in any other way with the knowledge that he is thereby promoting the group or its offences.
- 4) Where the group has not resulted in any offence of the planned kind, no member shall be punished if the group disbands voluntarily or its conduct otherwise indicates that it has voluntarily renounced its undertaking. Moreover, no one shall be punished for the act of criminal group who voluntarily resigns from the group before an act of the planned kind has been carried out or attempted; anyone who has participated in a leading capacity in the group shall be exempt from such punishment if he voluntarily notifies the authority (§ 151 paragraph 3) or otherwise causes the danger arising from the group to be eliminated.

(b) Observations on the implementation of the article

173. Liechtenstein confirmed that the mere preparation of a corruption offence is not criminalised.

Article 28. Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

(a) Summary of information relevant to reviewing the implementation of the article

174. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

175. The judge is fully sovereign in assessing the value of the evidence (§ 205, paragraph 2 CPC): The court shall carefully and conscientiously assess the credibility and probative force of evidence both individually and in connection with each other. With respect to the question whether a fact shall be accepted as proven, the judges shall not decide in accordance with evidentiary rules under law, but rather in accordance with their own conviction gained from conscientious review of all evidence presented for and against.

176. A conviction requires the court's certainty of both perpetratorship and guilt. Regarding the standard of proof "likelihood bordering on certainty" (or "utmost probability") is in principal deemed sufficient in this context and this degree of likelihood is considered to equal the truth in a legal sense. Mere assumptions to the detriment of the accused do not comply with the fundamental principles of the criminal proceeding and therefore the accused may not be convicted if doubts remain, since on this basis his guilt and/or his participation in an offense cannot be assumed as being proven to the full extent. Hence, any (major) doubt has to be taken into account in favor of the accused ("*in dubio pro reo*"). However, this principle ought not to be misunderstood as a rule of evidence in a way that a judge is obliged to stick with the most favorable of several possible conclusions. Furthermore, this principle also does not exclude circumstantial evidence, as the limitation on logically compelling evidence would contradict the principle of the free appraisal of evidence. Anyhow, if facts are drawn from probabilities the court's persuasion must meet the level of "likelihood bordering on certainty" (or "utmost probability").

177. There is case law and doctrine that knowledge, intent or purpose required as an element of an offence (mental element, *mens rea*) may be inferred from objective factual circumstances.

(b) Observations on the implementation of the article

178. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 28 UNCAC.

Article 29. Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) **Summary of information relevant to reviewing the implementation of the article**

179. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

180. The statute of limitations is guided by Liechtenstein law and the penalty imposed for the offence committed. Except for offences that are punishable with life imprisonment or imprisonment of ten to twenty years or life imprisonment and that are not subject to any statute of limitations in principle (§ 57(1) CC), the limitation periods for other offences are staggered depending on the applicable penalty (§ 57(3) CC). The statute of limitation applies as soon as the punishable activity is concluded or the punishable conduct has come to an end. According to § 58(2) CC, the statute of limitations is extended if the perpetrator commits another offence during the period covered by the statute of limitations and the offence arises from the same harmful inclination. The time during which prosecution cannot be initiated or continued according to a legal provision or during which criminal proceedings are pending in court against the perpetrator because of the offence are not included in the limitation period (§ 58(3) CC). Even extended enquiries as part of international mutual legal assistance in criminal matters therefore do not have a negative effect on the prosecution. This provision also ensures a sufficient statute of limitations in regard to perpetrators who attempt to evade justice.

§ 57 CC Limitation of punishability

1) Offences carrying a penalty of imprisonment for life or a penalty of imprisonment of ten to twenty years or for life shall not be subject to a limitation period. After expiry of a period of twenty years, however, a penalty of imprisonment of ten to twenty years shall replace penalties of imprisonment for life. Paragraph 2 and § 58 shall apply mutatis mutandis to the time period.

2) The punishability of other acts shall be subject to limitation. The limitation period shall commence as soon as the activity carrying a penalty has been completed or the conduct carrying a penalty has ceased.

3) The limitation period shall be twenty years, if the act carries a penalty of imprisonment of ten to twenty years or for life, or if it does not carry a penalty of imprisonment for life but does carry a penalty of imprisonment of more than ten years; ten years, if the act carries a penalty of imprisonment of more than five years, but at most ten years; five years, if the act carries a penalty of imprisonment of more than one year, but at most five years; three years, if the act carries a penalty of imprisonment of more than six months, but at most one year; one year, if the act carries a penalty of imprisonment of not more than six months or only a monetary penalty.

4) Once the limitation period has expired, deprivation of enrichment, forfeiture, and preventive measures shall also become impermissible.

§ 58 CC

Extension of the limitation period

1) If a result belonging to the elements of an offence occurs only after the activity carrying a penalty is completed or the conduct carrying a penalty has ceased, then the limitation period shall not come to an end until either it has elapsed also since the result came to pass or one and

a half times its duration, but at least three years, has passed since the point in time referred to in § 57 paragraph 2.

2) If, during the limitation period, the perpetrator again commits an act carrying a penalty that arises from the same harmful inclination, the limitation period shall not come to an end until the limitation period has expired also for that act.

3) The limitation period shall not include:

1. the time during which, in accordance with a statutory provision, prosecution cannot be initiated or continued, unless otherwise provided in paragraph 4;
 2. the time during which criminal proceedings for the act are pending in court against the perpetrator;
 3. the time before the victim of genital mutilation (§ 90 paragraph 3) or an offence against sexual self-determination or another sexual offence reaches the age of eighteen.¹
- 4) If the act is prosecuted only on demand, on application, or with the authorization of a person entitled to grant authorization, then the limitation period shall not be tolled because the prosecution is not demanded or applied for or authorization has not been given.

§ 59 CC Limitation of enforcement

1) The enforceability of a sentence of imprisonment for life, a sentence of imprisonment of more than ten years, and placement in an institution for mentally abnormal offenders or for dangerous repeat offenders shall not be subject to limitation.

2) The enforceability of other sentences, deprivation of enrichment, forfeiture, and preventive measures shall be subject to limitation. The limitation period shall commence once the decision becomes final in which the sentence, deprivation of enrichment, forfeiture, or preventive measures was imposed.

3) The period shall be fifteen years, if a sentence of imprisonment of more than one year, but not more than ten years was imposed; ten years, if a sentence of imprisonment of more than three months, but not more than one year was imposed, or a monetary penalty subject to an alternative term of imprisonment of more than three months was imposed; five years in all other cases.

4) If multiple sentences or provisional measures were imposed, the limitation of enforceability of all these sentences or measures shall be determined by the sentence or measure with the longest limitation period. If a sentence of imprisonment and a monetary penalty were imposed at the same time, the alternative term of imprisonment shall be added to the term of imprisonment in order to calculate the limitation period. If a sentence and deprivation of enrichment were imposed on the same perpetrator, then the limitation of enforceability of the deprivation of enrichment shall be determined by the limitation of enforceability of the sentence.

§ 60 CC

Extension of the period of limitation for enforceability

1) If a new sentence or preventive measure is imposed on the convicted person during the limitation period, the period of limitation for enforceability shall not come to an end until the enforceability of that sentence or preventive measures has also expired.

2) The limitation period shall not include:

1. the probationary period, in the case of a suspended sentence or placement in an institution for offenders in need of withdrawal or in the case of conditional release;
2. time periods for which the convicted person has been granted a deferral of enforcement of a sentence of imprisonment, except on grounds of unsuitability for enforcement, or of payment of a monetary penalty;
3. times during which the convicted person was in custody pursuant to official orders;
4. times during which the convicted person was abroad.

3) The enforcement of the sentence of imprisonment or the preventive measure involving deprivation of liberty shall interrupt the limitation period. Once the interruption has come to an end, without the convicted person having been granted final release, the limitation period shall resume, without prejudice to paragraph 2.

(b) Observations on the implementation of the article

181. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 29 UNCAC.

Article 30. Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

182. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

183. There are no sentencing guidelines in Liechtenstein. Judges have the discretion to impose the sentence they deem most appropriate under the circumstances bearing in mind the maximum penalty provided by the relevant provision of the CC. Some of the Convention offences (§§ 133 paragraph 2, 153 paragraph 2 and 302 paragraph 2 CC) are punishable by up to ten years.

184. §§ 32 to 34 CC on sentencing:

Sentencing

§ 32 CC

General principles

1) The culpability of the perpetrator shall be the basis for sentencing.

2) When sentencing, the court shall weigh the aggravating and mitigating causes, to the extent they do not already determine the penalty provided, and also take account of effects of the penalty and other expected consequences of the act on the future life of the perpetrator in society. It shall especially be taken into account to what extent the act is due to a negative or indifferent attitude of the perpetrator toward legally protected values and to what extent it is due to external circumstances or motives that might also make the act suggest itself to a person who is committed to the legally protected values.

3) In general, sentencing shall be more severe the greater the detriment or endangerment is which was the fault of the perpetrator, or which he may not have brought about himself, but to which his fault extended, the more duties he has breached through his action, the more thoroughly he considered the act, the more carefully he prepared it, or the more ruthlessly he carried it out, and the less care could be taken against the act.

§ 33 CC

Special aggravating causes

It shall in particular be an aggravating cause if the perpetrator:

1. has committed several offences of the same or different kinds or continued the offence for an extended period of time;

2. has already been convicted of an act arising from the same harmful inclination;
3. induced another person to commit the offence;
4. was the author or instigator of an offence committed by several persons or participated in such an act in a leading capacity;
5. acted for racist, xenophobic, or other especially reprehensible motives;
6. acted treacherously, cruelly, or in manner inflicting agony on the victim;
7. when committing the act, exploited the defencelessness or helplessness of another;
8. committed the act as part of a criminal group;
9. committed an offence in conscious and deliberate coordination with another person.

§ 34 CC

Special mitigating causes

1) It shall in particular be a mitigating cause if the perpetrator:

1. committed the act after reaching the age of eighteen, but before the age of twenty-one, or if he committed the act under the influence of an abnormal mental state, if he is feeble-minded, or if his upbringing was very much neglected;
2. has so far led a normal life and the act is strikingly contrary to his behaviour otherwise;
3. committed the act for commendable motives;
4. committed the act under the influence of a third party or due to fear or obedience;
5. made himself liable only because he failed to avert the result in a case where the law provides a penalty for bringing about the result;
6. participated only in a subordinate way in one of several offences committed;
7. committed the act only out of rashness;
8. committed the act only by letting himself be carried away by a generally understandable extreme emotion;
9. committed the act enticed more by an especially tempting opportunity rather than with prior purpose;
10. was caused to commit the act in light of severe hardship not due to aversion to work;
11. committed the act under circumstances approaching exclusion of culpability or justification;
12. committed the act under a mistake of law not excluding culpability (§ 9), especially if he is being punished for wilful commission of the act;
13. did not bring about any damage, despite completion of the act, or if the act was only attempted;
14. voluntarily refrained from causing greater damage, although he would have had the opportunity to do so, or if the damage was rectified by the perpetrator or a third party on his behalf;
15. seriously endeavoured to rectify the damage caused or to prevent other negative consequences;
16. turned himself in, although he easily could have escaped or it was probable that he would remain undiscovered;
17. made a remorseful confession or, through his statement, contributed substantially to establishing the truth;
18. committed the act already some time ago and has since shown good behaviour;
19. is affected by the fact that he or someone personally close to him has suffered a considerable bodily injury or damage to health or other grave actual or legal disadvantages due to the act or as a consequence thereof.

2) It shall also be a mitigating cause if the duration of the proceedings conducted against the perpetrator was disproportionately long for reasons not due to the perpetrator or his defence counsel

185. Non-criminal sanctions: These are derived from § 49 of the State Employees Act, § 42 of the Judicial Service Act, and § 51 of the Public Prosecutors Act (see point 115).

***§ 49 of the State Employees Act (SEA)
Measures***

1) If the performance or conduct of employees does not meet the demands or if legal or contractual obligations are breached, the measures necessary for securing proper performance of responsibilities shall be taken.

2) Possible measures shall include:

- a) a warning;
- b) a written reprimand;
- c) reduction of pay by at most 30% for at most three years;
- d) assignment of other responsibilities, transfer, or demotion;
- e) termination of the employment relationship in accordance with Art. 21 in conjunction with 22 or in accordance with Art. 24.

3) The measures may be combined.

§ 42 of the Judicial Service Act (RDG)

Disciplinary penalties

1) Disciplinary penalties shall be:

- a) a reprimand;
- b) a reduction of pay;
- c) dismissal.

2) A reduction of pay may not be imposed for more than three years. The pay may be reduced by at most 30%.

3) If the judge has obtained his position by fraud, the judge shall be dismissed by way of disciplinary proceedings.

4) Disciplinary penalties may be imposed only by a verdict of the disciplinary tribunal after prior oral hearing.

5) In the case of part-time judges, the only available disciplinary penalty shall be that of dismissal.

§ 51 (Law on the Office of the Public Prosecutor Act)

Basic Principle

1) The following articles of the Judicial Service Act shall apply mutatis mutandis to the disciplinary law governing prosecutors: articles 39 (imposition of disciplinary and administrative penalties), 40 (statute of limitation), 41 (administrative penalty), 42, paragraphs 1 to 4 (disciplinary penalties), 43, paragraphs 2 to 4 (disciplinary tribunal), 44 (investigating judge), 45 (exclusion and rejection of judicial persons), 46, paragraphs 1 and 2 (ruling imposing an administrative penalty), 47 (preliminary enquiries), 48 (disciplinary investigation), 49 (questioning and determination of facts), 50 (access to documents and further disciplinary investigations), 51 (closing and referral rulings), 52 (oral hearing), 53 (exclusion of the public and publication of findings), 54 (content and announcement of findings), 55, paragraphs 1 and 3 (appeal of the findings), 56 (decision on reimbursement of costs without oral hearing), 58 (closing of disciplinary proceedings due to death or resignation), 59 (suspension of disciplinary proceedings), 60, paragraphs 1 and 2 (cancellation of disciplinary penalty), 61 (suspension without oral hearing), 62 (cancellation of suspension), 63, paragraphs 1 and 3 (appeal of suspension ruling), 64 (resumption to the benefit of the judge), 65, paragraphs 1 and 2 (decision on application for resumption), 66 (effect of resumption), 67 (findings after resumption), 68 (replacement of lost salary), 69 (reinstatement), 70 (service of documents) and 71 (exemption from fees).

2) The following shall serve as the disciplinary tribunal:

- a) the President of the Supreme Court for the Prosecutor General and the other prosecutors;
- b) as the appellate body, a service senate of the Supreme Court consisting of three judges of the Supreme Court with legal training.

3) The findings of the disciplinary tribunal shall be notified to the Prosecutor General and to the Government once the judgment is final.

186. Information on criminal and non-criminal sanctions imposed is attached

(b) Observations on the implementation of the article

187. During the country visit, it was pointed out by the Liechtenstein authorities that one peculiarity of the judicial system is that the prosecutor does not ask the court for a specific sentence but leaves this at the discretion of the court. Therefore, sentencing guidelines for the prosecution would make no sense.

188. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 30(1) UNCAC.

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

189. Liechtenstein confirmed that it has fully implemented this provision of the Convention.

190. Liechtenstein has comparatively restrictive rules governing the immunity of public officials. According to Article 7 para. 2 of the Liechtenstein Constitution, the Reigning Prince and, where applicable, his representative as referred to in article 13bis LV enjoy immunity. No special procedure for lifting their immunity is provided. Nevertheless, article 13ter LV allows at least 1,500 Liechtenstein citizens to submit a justified motion of no-confidence, which must be approved in a popular vote. Thanks to this possibility, the Reigning Prince with his competences and powers as Head of State is also subject to political control.

191. The members of the Liechtenstein Parliament enjoy limited immunity. The members of Parliament may not be arrested for the duration of the meeting period without the assent of Parliament (unless the member is apprehended in flagrante delicto, article 56 LV). In this case, Parliament decides whether the arrest is to be upheld. If Parliament is not in session, the National Committee - which is composed of members of Parliament and exercises the rights of Parliament during its recesses - must be notified of the arrest of a member of Parliament. Members of Parliament shall never be made to answer for their votes, and for their utterances at meetings of Parliaments or its committee only to Parliament (article 57 para. 1 LV). These rules are intended to protect the freedom of decision and independence of Parliament and primarily to ensure the smooth functioning of Parliament.

192. Members of the Government can only be impeached by Parliament on grounds of intentional or reckless violation of the Constitution or laws within the scope of their official

duties. The Constitutional Court rules on the charges of impeachment (article 62(h) LV, articles 28 to 34 of the Constitutional Court Act [StGHG]). The members of the Government are not granted actual criminal or civil immunity, however.

Liechtenstein Constitution (LV) Art. 7 LV

- 1) The Reigning Prince is the Head of State and shall exercise his rights pertaining to the powers of State in accordance with the provisions of this Constitution and of the other laws.
- 2) The person of the Reigning Prince shall not be subject to jurisdiction and shall not be legally responsible. The same shall apply to the member of the Princely House exercising the function of Head of State on behalf of the Reigning Prince pursuant to article 13bis.

Art. 13bis LV

The Reigning Prince may entrust the next Heir Apparent of his House who has attained majority with the exercise of the sovereign powers held by him as his representative should he be temporarily prevented or in preparation for the Succession.

Art. 13ter LV

Not less than 1,500 Liechtenstein citizens shall have the right to submit a reasoned motion of no-confidence against the Reigning Prince. Parliament shall issue a recommendation on such a motion at its next meeting and order a popular vote (article 66 paragraph 6). If the motion of no-confidence is adopted in the popular vote, it shall be communicated to the Reigning Prince for consideration according to the Law on the Princely House. Within six months, the Reigning Prince shall announce to Parliament the decision made in accordance with the Law on the Princely House.

Art. 56 LV

- 1) No Member of Parliament may be arrested for the duration of the meeting period without the assent of Parliament, unless the Member is apprehended in flagrante delicto.
- 2) In the latter case, the arrest and the grounds therefor shall be notified immediately to Parliament, which shall decide whether the arrest is to be upheld. Upon the request of Parliament, all documents relating to the case shall be made available to Parliament immediately.
- 3) If a Member of Parliament is arrested at a time when Parliament is not in session, the National Committee shall be notified immediately of the arrest and the grounds therefor.

Art. 57 LV

- 1) The Members of Parliament shall vote solely in accordance with their oath and their convictions. They shall never be made to answer for their votes, and for their utterances at meetings of Parliament or its committees only to Parliament, and legal action may never be taken against them in relation thereto.
- 2) The regulation of disciplinary powers shall be left to the rules of procedure to be issued.

Art. 62 LV

The scope of action of Parliament shall chiefly encompass the following matters:

- h) resolution on a motion of no-confidence against the Government or one of its Ministers.
- g. Adjudication of impeachment of Ministers

***Art. 28 of the Constitutional Court Act (StGHG)
Preconditions***

- 1) The Constitutional Court shall decide on impeachments by Parliament of members of the Government due to a violation of the Constitution or of other laws if such violation has occurred intentionally or recklessly in the course of official duties.
- 2) The impeachment may be issued only within one year after the facts from which it arises have come to the attention of Parliament.
- 3) The right of Parliament to impeach shall not expire if the member of the Government in question leaves office, whether before or after the impeachment is issued.
- 4) The right of Parliament to impeach shall expire if three years have passed since commission of the violation.

Art. 29

Bill of impeachment

- 1) The impeachment shall be issued by submitting a bill of impeachment to the President of the Constitutional Court.
- 2) The bill of impeachment must refer to the act or omission giving rise to the impeachment as well as evidence, and it must cite the provisions of the Constitution or of the law whose violation is suspected.

Art. 30

Proceedings

- 1) Unless this Act specifies otherwise, the provisions of the Criminal Procedure Code shall apply mutatis mutandis to the proceedings.
- 2) If separate criminal proceedings are being held, the Constitutional Court may delay its decision until the legally effective conclusion of these proceedings, or it may call upon the Criminal Court to delay its decision until the legally effective decision of the Constitutional Court.
- 3) Parliament may withdraw the impeachment up to the announcement of the decision. The withdrawal of the impeachment shall become inoperative if the accused opposes it within one month.
- 4) The initiation and conduct of the proceedings shall not be affected by the end of the term of office or by leaving office.

Art. 31

Preliminary investigation

- 1) The Constitutional Court shall order a preliminary investigation to prepare for the trial.
- 2) This preliminary investigation shall be assigned to a Judge of the Constitutional Court who neither shall participate in the trial nor shall be called upon to participate in the decision.
- 3) The investigation shall be conducted as expeditiously as possible.
- 4) The preliminary investigation shall be dropped if Parliament withdraws the impeachment.
- 5) The President of the Constitutional Court may order further enquiries to prepare for the trial.

Art. 32

Rights of the accused

- 1) The accused may not be arrested, preliminarily detained, or ordered to appear before the investigating judge.
- 2) The accused shall be afforded the opportunity to give an oral statement concerning the impeachment even before the trial.

3) All officials shall be released from their duty of professional secrecy when questioned by the investigating judge and at trial.

Art. 33

Trial

1) Upon conclusion of the preliminary investigation, the President of the Constitutional Court shall schedule the trial and summon the accused, the counsel for the accused, and the persons tasked with representing the impeachment. The date of the trial shall be fixed in such a manner that the accused still has at least four weeks to prepare his defence, unless he himself requests a shorter period.

2) The public may only be barred from the trial on grounds of endangerment of the security of the State.

3) The trial shall begin with the reading out of the impeachment by the clerk.

4) If the accused does not appear at trial or removes himself, the proceedings may continue and a decision may be reached without him, or his presence may be ordered, or the accused may be prevented from removing himself.

Art. 34

Decision

1) The judgment of the Constitutional Court shall determine whether the accused is guilty of a violation of the Constitution or of a specifically named law.

2) In the event the accused is convicted of wilful violation of the Constitution or of a particular law, the Constitutional Court may declare the forfeiture of the accused's office. The removal from office shall be effective upon announcement or service of the judgment.

3) If the accused is convicted, the Constitutional Court shall as a rule also decide on any asserted claims for compensation or pay, unless it wishes to conduct separate proceedings on the matter.

4) A copy of the judgment, including reasoning, shall be transmitted to Parliament and to the Government.

(b) Observations on the implementation of the article

193. Liechtenstein confirmed that no immunity is given to officials or judges. MPs only enjoy the very limited immunity provided in Art. 57 of Constitution for statements and votes in Parliament. Otherwise, only the arrest of an MP during the meeting period of Parliament requires consent of Parliament according to Art. 56 (1) of the Constitution

194. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 30(2) UNCAC.

(c) Successes and good practices

195. The very limited scope of immunity granted by Liechtenstein was identified as a good practice by the reviewers.

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating

to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) **Summary of information relevant to reviewing the implementation of the article**

196. Liechtenstein confirmed that it has fully implemented this provision of the Convention.
197. The principle of legality predominates in Liechtenstein criminal procedure, i.e. the Office of the Public Prosecutor must in principle prosecute all criminal acts *ex officio* that it learns of (Article 21 para. 1 CPC, "Mandatory prosecution", and Article 56 CPC). It may only refrain or pull back from the prosecution of an *ex officio* offence if the accused is alleged to have committed several punishable acts and this would have no substantial impact on the legal consequences associated with sentencing for the remaining criminal acts, or if the accused is extradited on the basis of the remaining criminal acts and the punishment expected in Liechtenstein would be of little consequence in relation to the punishment expected in the foreign country (Article 21 para. 2 CPC). The diversionary measures provided by law in accordance with Articles 22a to 22m CPC ("Diversionary measures") are likewise not within the discretion of the public prosecutor. Rather, these measures must necessarily be imposed where the preconditions set out in Article 22a CPC are met, and only then. Because diversionary measures are excluded by severity of guilt (Article 22a para. 2(2) CPC) and because of the emphasis on their preventive aspect, such measures are from the outset subject to constraints that are in line with the effective punishment of corruption offences.
198. According to Article 32 paragraph 1 CPC, anybody who claims to have suffered damage deriving from an alleged offence is entitled to claim compensation for this damage also within the criminal proceeding.

§ 21 CPC

1) The Office of the Public Prosecutor shall, *ex officio* and with the assistance of the National Police, be responsible for solving all punishable acts of which it gains knowledge and which are not subject to investigation and punishment merely at the request of an involved party, and it shall prosecute those suspected of committing the punishable acts, in order to enable the court to do what is necessary for purposes of investigation and punishment.

2) The Public Prosecutor may, however, if the person is accused of several punishable acts, refrain from prosecuting individual such acts and abandon their prosecution, without prejudice to later resumption (§ 281 paragraph 1, subparagraph 3):

- a) if doing so is unlikely to have a significant influence on the penalties or protective measures or on the legal consequences associated with the sentence;
- b) if the accused is extradited to a foreign authority for the other punishable acts and the penalties or protective measures expected in Liechtenstein are insubstantial compared with those likely to be imposed abroad. If the Public Prosecutor resumes the reserved prosecution at a later time, it shall no longer be permissible to reserve the prosecution of individual punishable acts yet again.

3) The Public Prosecutor may furthermore refrain from prosecution of a punishable act committed abroad or abandon the prosecution thereof if the perpetrator has already been punished abroad for that act and it is not to be expected that the domestic court would impose a stricter penalty.

4) The rights accorded to civil claimants in accordance with §§ 173 and 320 shall not be affected by the provisions set out in paragraphs 2 and 3. For this reason, the civil claimants shall be notified if the Public Prosecutor makes use of one of the possibilities for desisting

from prosecution provided in paragraphs 2 and 3. This notification shall be the responsibility of the Public Prosecutor, unless the investigating judge considered the issue, in which case the latter shall be responsible for notification.

§ 21a CPC

1) For this purpose, the Office of the Public Prosecutor shall also be entitled to have the National Police or the investigating judge carry out provisional enquiries in order to obtain the necessary reference points for initiating criminal proceedings against a specific person (§ 22 paragraph 1).

2) The investigating judge shall have the same rights and duties in these provisional enquiries that he has in the investigation; the National Police shall proceed in accordance with the provisions of Title Ia.

3) The Office of the Public Prosecutor shall be entitled to have the National Police question persons who are likely to be able to provide clarification concerning punishable acts that have been committed. The Office of the Public Prosecutor may also itself question such persons, but not under oath, and have the National Police gather evidence by inspection and search premises, and it may accompany such official acts, if they cannot be carried out or ordered by the competent investigating judge because of an imminent danger.

4) The records of such acts, for which all formalities required for judicial official acts of this kind must be complied with, may however be used as evidence only if they are immediately communicated to the investigating judge, who shall verify their form and completeness and if necessary shall ensure that the acts are repeated or completed; otherwise, the records shall be deemed null and void.

Abandonment of prosecution after payment of a sum of money, performance of community service, a probationary period, and after out-of-court remediation (diversionary measures)

§ 22

1) If, upon reviewing the report of the offence or the final report (§ 11 paragraph 2, subparagraph 4) and the findings of any provisional enquiries conducted additionally at its request, the Office of the Public Prosecutor finds sufficient grounds for initiating criminal proceedings against a specific person, the Office of the Public Prosecutor shall either submit the application for initiation of an investigation or issue the indictment. Otherwise, the Office of the Public Prosecutor shall discontinue the provisional enquiries with a brief record of its considerations in this regard, and shall notify this to the investigating judge, if the investigating judge was involved with the provisional enquiries. In that case, the investigating judge shall immediately release the accused, if the accused was arrested.

2) The Office of the Public Prosecutor shall notify persons who have already been questioned as suspects in punishable act (§ 23 paragraph 3) or who, according to the content of the case files, otherwise gained knowledge of the suspicion directed against them, as well as any victims and civil claimants, that the provisional enquiries have been discontinued.

§ 22a

1) The Public Prosecutor shall proceed according to this Title and abandon prosecution of an offence if, on the basis of facts that have been ascertained sufficiently, the charges cannot be dropped pursuant to § 22 but punishment does not appear necessary to prevent the suspect from committing offences or to deter other persons from committing offences in light of any of the following diversionary measures:

1. payment of a sum of money (§ 22c) or
2. community service (§§ 22d) or
3. determination of a probationary period, possibly in connection with probation assistance and the performance of duties (§ 22f) or
4. out-of-court remediation (§ 22g).

2) However, it shall be permissible to proceed according to this Title only if

1. the offence constitutes an infraction as referred to in article 21 of the Narcotics Act, article 35(2) of the Animal Welfare Act, article 101 or 102(1) to (3) of the Children and Youth Act, a misdemeanour or a burglary as referred to in § 129(1) to (3) of the Criminal Code, where the criminal sanction does not exceed five years,

2. the guilt of the suspect would not be seen as grave and

3. the offence did not result in the death of a human being.

3) It shall likewise never be permissible to proceed according to this Title in the event of offences of sexual coercion (§ 201 of the Criminal Code) and sexual abuse (§ 204 of the Criminal Code).

§ 22b

The Court shall apply the provisions of this Title applicable to the Public Prosecutor *mutatis mutandis* and, after an investigation has been commenced or charges have been brought, it shall issue a ruling suspending proceedings for offences to be prosecuted *ex officio* under the conditions applicable to the Public Prosecutor until the end of the trial.

II. Abandonment of prosecution after payment of a sum of money

§ 22c

1) Under the conditions set out in § 22a, the Public Prosecutor may abandon prosecution of an offence if the suspect pays a sum of money to the State.

2) The sum of money may not exceed the amount corresponding to a monetary penalty of 180 daily rates or a fine of 20,000 francs plus the costs of criminal proceedings to be reimbursed in the event of a conviction. The sum of money shall be paid within four weeks of service of the notification referred to in paragraph 4. If this were to constitute an undue burden on the suspect, however, a deferral of payment of at most six months may be granted, or the payment may be permitted in partial amounts over the course of that time.

3) To the extent possible and appropriate, abandonment of the prosecution shall furthermore be made contingent upon the suspect compensating the damage arising from the offence within a period to be determined not exceeding six months and upon the suspect providing evidence thereof without delay.

4) The Public Prosecutor shall notify the suspect that criminal proceedings against the suspect for a specific offence are intended, but that they will not be carried out if the suspect pays a specified sum of money and possibly also compensation for damages in a specific amount. Moreover, the Public Prosecutor shall inform the suspect for the purposes of § 22k and also on the possibility of a deferral payment (paragraph 2), unless the Public Prosecutor grants such a deferral *ex officio*.

5) After payment of the sum of money and any compensation for damages, the Public Prosecutor shall abandon the prosecution, unless the proceedings are subsequently to be initiated or continued in accordance with § 22h.

III. Abandonment of prosecution after performance of community service

§ 22d

1) Under the conditions set out in § 22a, the Public Prosecutor may temporarily abandon prosecution of an offence if the suspect expressly has agreed to perform free community service within a period to be determined not exceeding six months.

2) Community service must manifest the willingness of the suspect to take responsibility for the offence. Service shall be performed in the suspect's free time at an appropriate facility with which agreement is to be reached.

3) To the extent possible and appropriate, abandonment of the prosecution after community service shall furthermore be made contingent upon the suspect compensating the damage

arising from the offence, or otherwise contributing to remediation of the consequences of the offence, within a period to be determined not exceeding six months and upon the suspect providing evidence thereof without delay.

4) The Public Prosecutor shall notify the suspect that criminal proceedings against the suspect for a specific offence are intended, but that they will not be carried out for the time being if the suspect agrees to perform community service within a specified period and in a specified manner and to a specified extent, and possibly to remedy the consequences of the offence. The Public Prosecutor shall inform the suspect for the purposes of § 22k; he may also request a person experienced with social work to undertake this notification and information and to arrange the community service (article 24c of the Probation Assistance Act). The facility (paragraph 2) shall issue a confirmation of the service performed to the suspect or the social worker, and that confirmation shall be presented immediately.

5) After performance of the community service and any remediation of the consequences of the offence, the Public Prosecutor shall abandon the prosecution, unless the proceedings are subsequently to be commenced or continued in accordance with § 22h.

IV. Abandonment of prosecution after a probationary period

§ 22f

1) Under the conditions set out in § 22a, the Public Prosecutor may temporarily abandon prosecution of an offence and specify a probationary period of one to two years. The probationary period shall begin upon service of the notification of temporary abandonment of the prosecution.

2) To the extent possible and appropriate, abandonment of the prosecution shall furthermore be made contingent upon the suspect expressly agreeing to perform certain duties during the probationary period and to be supervised by a probation officer (§ 52 of the Criminal Code); these duties may be assigned as instructions (§ 51 of the Criminal Code). In particular, these duties may include compensating the damage incurred to the best of the suspect's ability or otherwise contributing to remediation of the consequences of the offence.

3) The Public Prosecutor shall notify the suspect that criminal proceedings against the suspect for a specific offence are temporarily not being carried out for the duration of the specified probationary period, and the Public Prosecutor shall inform the suspect for the purposes of § 22k. Where appropriate, the Public Prosecutor shall notify the suspect that this temporary abandonment of the prosecution requires that the suspect expressly agree to assume certain duties and to be supervised by a probation officer (paragraph 2). In this case, the Public Prosecutor may request a person experienced with social work to undertake this notification and information and to supervise the suspect in the performance of his duties (article 24c of the Probation Assistance Act).

4) Upon expiry of the probationary period and fulfilment of any duties, the Public Prosecutor shall abandon the prosecution entirely, unless the proceedings are subsequently to be initiated or continued in accordance with § 22h.

V. Abandonment of prosecution after out-of-court remediation

§ 22g

1) Under the conditions set out in § 22a, the Public Prosecutor may abandon prosecution of an offence if the suspect is willing to take responsibility for the offence and deal with the causes of the offence, if the suspect remedies any consequences of the offence in a manner appropriate to the circumstances, especially by compensating damages arising from the offence or otherwise contributes to remediation of the consequences of the offence, and, where necessary, if the suspect enters into obligations indicating his willingness to refrain from conduct in future that led to the offence.

2) If willing to do so, the injured party shall be included in efforts to achieve out-of-court remediation. Achievement of remediation shall depend on the injured party's consent, unless

the injured party does not grant consent for reasons that are irrelevant to the criminal proceedings. The injured party's interests must in any event be taken into account (§ 22i).

3) The Public Prosecutor may request a mediator to inform the injured party and the suspect of the possibility of out-of-court remediation as well as for the purposes of §§ 22i and 22k and to initiate and support efforts to achieve remediation (article 24b of the Probation Assistance Act).

4) The mediator must report to the Public Prosecutor on remediation agreements and their fulfilment. The mediator shall submit a final report when the suspect has met his obligations at least to the extent that, taking his other conduct into account, it can be assumed that he will continue to comply with the agreements or if achievement of remediation can no longer be expected.

VI. Subsequent initiation or continuation of criminal proceedings **§ 22h**

1) After abandonment of the prosecution of the suspect in accordance with this Title, where such abandonment is not merely temporary (§§ 22c(5), 22d(5), 22f(4), and 22g(1)), initiation or continuation of the proceedings shall be permissible only under the conditions of ordinary resumption. In any event, the criminal proceedings shall be initiated or continued before such abandonment if the suspect so requests.

2) If the Public Prosecutor has proposed that the suspect pay a sum of money (§ 22c(4)), perform community service (§ 22d(4)), or enter a probationary period or take on any duties (§ 22f(3)), or if the Public Prosecutor has temporarily abandoned prosecution of the offence (§§ 22d(1), 22f(1)), then the Public Prosecutor shall initiate or continue the criminal proceedings if

1. the suspect does not, in full and on time, pay the sum of money, including any compensation for damages, or perform the community service, including any remediation of consequences of the offence,

2. the suspect does not sufficiently fulfil the assumed duties or persistently evades the influence of the probation officer, or

3. criminal proceedings have been commenced against the suspect for another offence, before the sum of money, including any compensation for damages, is paid or before the community service is performed or before the probationary period is over. In this case, subsequent initiation or continuation of the proceedings is permissible as soon as charges are brought against the suspect for the new or additional offence, and it shall continue to be permissible for one month after such charges have been brought, even if the sum of money has been paid in the meantime, the community service has been performed, the remediation has been achieved, or the probationary period has come to an end. If the other conditions are met, the subsequently initiated or continued criminal proceedings shall be discontinued, however, in cases in which the new criminal proceedings are concluded other than with a conviction.

3) The Public Prosecutor may refrain from initiating or continuing the proceedings, however, if this appears reasonable on special grounds in the cases referred to in paragraph 2(1), or if this does not appear likely under the circumstances to prevent the suspect from committing offences in the cases referred to in paragraph 2(2) and (3). Otherwise, initiation or continuation of the proceedings shall be permissible in the cases referred to in paragraph 2 only if the suspect rejects the proposal of the Public Prosecutor mentioned in that provision.

4) If the suspect is unable to pay the sum of money in full or on time or is unable to fulfil the assumed obligations in full or on time, because this would constitute an undue burden in light of a significant change to the circumstances relevant to determining the sum of money or the type or scope of the obligations, then the Public Prosecutor may modify the sum of money or the obligation as appropriate.

5) Obligations assumed by the suspect and payments the suspect has agreed to make shall no longer be applicable upon subsequent initiation or continuation of the proceedings. Probation assistance shall come to an end, but § 144b shall remain unaffected. Services performed by the

suspect in this connection shall be taken into account during sentencing, where applicable. If the suspect is acquitted or otherwise exempted from prosecution, only sums of money paid in accordance with § 22c shall be reimbursed; other performances shall not be reimbursed.

VII. Rights and interests of the injured party

§ 22i

1) When proceeding according to this Title, the interests of the injured party must always be considered and, where justified, promoted to the greatest possible extent. In order to determine whether compensation for damages or other remediation of the consequences of the offence is possible or appropriate, the Public Prosecutor shall, where necessary, arrange enquiries to that effect. The injured party shall have the right to consult a person of confidence. In any event, the injured party shall be informed fully and as soon as possible about his rights and appropriate counselling opportunities. The injured party shall be heard before the prosecution is abandoned if this appears called for in view of his interests.

2) In any event, the injured party shall be notified if the suspect agrees to compensate damages arising from the offence or otherwise to contribute to remediation of the consequences of the offence. The same shall apply in the event the suspect assumes a duty that immediately affects the interests of the injured party.

VIII. Information provided to the suspect

§ 22k

1) When proceeding according to this Title, detailed information shall be provided to the suspect regarding his legal position, especially regarding the preconditions for abandonment of prosecution under this Title, the requirement that the suspect consent, the possibility for the suspect to demand initiation or continuation of the proceedings, and any other circumstances that might bring about initiation or continuation of the proceedings (§ 22h(2)), as well as regarding the need for a lump-sum contribution to costs (§ 305a).

IX. Joint provisions

§ 22l

1) In order to clarify the preconditions for proceeding under this Title, the Public Prosecutor or the court may request the head of the secretariat of the private association entrusted with probation assistance to enter into contact with the injured party, the suspect, and if applicable also with the facility where community service is to be performed or where attendance or a training session or course is envisaged and to comment on whether payment of a sum of money, performance of community service, determination of a probationary period, assumption of certain duties, supervision by a probation officer, or out-of-court remediation would be appropriate. For this purpose, the Public Prosecutor may also conduct enquiries himself and hear the injured party, the suspect, and other persons.

2) The probationary period referred to in § 22f(1) and the time periods for paying a sum of money, including any compensation for damages, and for performing community service, including any remediation of the consequences of the offence (§§ 22c(2) and (3), 22d(1) and (3)), shall not be included in the limitation period (§ 58(3) of the Criminal Code).

§ 22m

1) The Public Prosecutor may abandon prosecution in accordance with this Title as long as he has not brought charges. Afterwards, he must petition the court to have the proceedings discontinued (§ 22b).

2) Judicial rulings under this Title shall be issued by the investigating judge during the investigation, by the trial court during the trial, and otherwise by the chairman of the court. Before the court delivers a notification under §§ 22c(4), 22d(4), 22f(3) or a ruling discontinuing the proceedings or denying initiation of the proceedings, it shall hear the Public Prosecutor. Such a ruling shall be delivered to the suspect only once it has become legally binding vis-à-vis the Public Prosecutor.

3) Appeal to the Court of Appeal by way of a complaint within 14 days of service shall be available to the Public Prosecutor with regard to a ruling discontinuing criminal proceedings

under this Title or denying initiation of such proceedings (§§ 22c(5), 22d(1) and (5), 22f(1) and (4), 22g(1) in conjunction with § 22b), and to the suspect and the Public Prosecutor with regard to denial of a motion to discontinue the proceedings. Until such an appeal has been decided, it shall not be permissible to conduct a trial.

4) Appeal to the Court of Appeal by way of a complaint within 14 days of service shall be available to the suspect and the Public Prosecutor with regard to a ruling deciding on subsequent initiation or continuation of the criminal proceedings (§ 22h). The complaint against subsequent initiation or continuation of criminal proceedings shall have suspensive effect.

§ 32

1) Any person injured with respect to his rights by a crime or a misdemeanour to be prosecuted ex officio may, until the beginning of trial, declare that he will join the criminal proceedings as a civil claimant with regard to his claims under private law. The declaration may be withdrawn at any time. Unless evident, the entitlement to participate in the proceedings and the claims for damages or compensation must be justified. The declaration shall be denied by the court if it is evidently unjustified or was submitted too late.

2) The civil claimant shall have the following rights:

1. The civil claimant may supply anything to the Public Prosecutor that is conducive to convicting the accused or to justifying the claim for compensation, and he may petition for evidence to be taken (§ 23b).

2. The civil claimant may, to the extent his interests are affected, access the records; he may do so even during the investigation, unless there are special reasons to the contrary. Access to records may in any event be denied or limited to the extent it would threaten the purpose of the investigation or the uninfluenced testimony of witnesses.

3. The civil claimant shall be invited to the trial, with the proviso that the trial will nevertheless take place even if the civil claimant does not appear, in which case his pleadings shall be read from the record. He may address questions to the accused, to witnesses, and to experts, or he may receive permission to speak already during trial in order to make other remarks. At the end of the trial, he shall be given permission to speak immediately after the Public Prosecutor has delivered and justified his final pleadings, in order to present and justify his claims and make those pleadings he wishes to have considered as part of the final verdict.

3) Victims and civil claimants shall - unless they are represented by the Victims Assistance Office (§ 31a(2)) - be afforded legal aid in accordance with article 25(3) of the Victims Assistance Act.

3a) If the Public Prosecutor abandons the prosecution in accordance with Title IIIa, the civil claimant shall, however, not be entitled to bring or assume public charges.

4) Moreover, the civil claimant shall be entitled to bring public charges in accordance with § 173 as a subsidiary prosecutor in lieu of the Office of the Public Prosecutor, but even in this event the Office of the Public Prosecutor shall be at liberty to take up the prosecution again at any time; the subsidiary prosecutor shall then again be afforded the rights of a civil claimant.

§ 56

1) The Public Prosecutor is required to consider all reports he receives of offences subject to ex officio prosecution, as well as to investigate all clues relating to such offences that come to his attention. He shall also participate in the discovery of unknown perpetrators by examining grounds for suspicion in that regard.

2) If nameless reports or those originating from entirely unknown persons contain specific, credible circumstances describing the offence, then these circumstances must indeed be examined; however, this shall be done without drawing undue attention and without damaging the honour of the charged person to the extent possible.

3) If, by way of a report of an offence or other notification by a person, the Office of the Public Prosecutor gains knowledge of an offence that is subject to investigation not only at the

request of an involved person, then the Office of the Public Prosecutor is required to arrange questioning of that person, to trace the report or notification back to its origins with the participation of the National Police, and, to the extent possible, to convince itself whether these steps are able to substantiate any suspicion.

§ 357d

1) The Office of the Public Prosecutor may refrain from or abandon the prosecution of a legal person if, when considering the underlying offence, the consequences of the offence, the gravity of the organizational deficits, the conduct of the legal person after the offence, especially reparation for damages, the expected amount of the monetary penalty to be imposed on the legal person, and any legal disadvantages arising from the offence for the legal person or its property that have already occurred or that are immediately foreseeable and that make it appear dispensable to prosecute and punish the legal person.

2) Moreover, the Office of the Public Prosecutor may also refrain from or abandon the prosecution of a legal person if enquiries or applications for prosecution would entail considerable effort that is evidently disproportionate to the significance of the matter or to the penalties to be expected in the event of conviction.

3) However, the Office of the Public Prosecutor may not refrain from or abandon the prosecution if the prosecution appears called for:

1. because there is a danger emanating from the legal person that an offence with grave consequences might be committed, for which the legal person might be responsible,

2. in order to deter the commission of offences within the scope of activities of other legal persons, or

3. because of any other special public interest.

§ 357f

1) If, on the basis of a sufficiently clarified fact pattern, dropping charges in accordance with § 22 or proceeding in accordance with § 357d has been ruled out, and if the preconditions enumerated in § 22a apply, then the Office of the Public Prosecutor shall abandon the prosecution of a legal person due to responsibility of an underlying offence if the imposition of a monetary penalty on the legal person does not appear necessary to deter commission of underlying offences for which the legal person can be made responsible and commission of underlying offences within the scope of activities of other legal persons, in light of any of the following measures:

1. payment of a sum of money, to be fixed in the amount of up to 100 daily rates plus the costs of the proceedings to be reimbursed in the event of a conviction,

2. determination of a probationary period of up to three years, to the extent possible and appropriate in connection with the expressly declared willingness of the legal person to take technical, organizational, or personnel measures to prevent further offences for which the legal person is responsible, or

3. the explicit declaration of the legal person to provide specified community service for free within a period to be determined not exceeding six months. § 22e shall not apply.

2) Abandonment of the prosecution shall furthermore be made contingent upon the legal person compensating the damage arising from the offence within a period to be determined not exceeding six months and upon the legal person providing evidence thereof without delay, unless this requirement can be waived on special grounds.

3) Upon commencement of the investigation or submission of the application for punishment of the legal person for an underlying act to be prosecuted ex officio, the court shall apply paragraphs 1 and 2 mutatis mutandis and issue a ruling suspending proceedings against the legal person under the conditions applicable to the Office of the Public Prosecutor until the end of the trial.

(b) Observations on the implementation of the article

199. Liechtenstein confirmed that the Office of the Public Prosecutor will as a rule prosecute all offences brought to its knowledge. Although in theory, the Prince has the power to intervene in investigations and proceedings, this right has not been exercised in the last 40 years.
200. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 30(3) UNCAC.

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

201. Liechtenstein confirmed that it has fully adopted and implemented this provision of the Convention.
202. §§ 131(5), 138 to 140, and 142(4) of the Liechtenstein Criminal Procedure Code (CPC) provide instruments to this effect.

§ 131 CPC

5) The following less severe means may be applied:

1. the pledge not to flee, otherwise conceal oneself, or remove oneself from the place of abode without approval by the investigating judge until the legally effective conclusion of the criminal proceedings;
2. the pledge not to attempt to thwart the investigation;
 - 2a. in cases of domestic violence (article 24g(1) of the Police Act), the pledge to refrain from any contact with the endangered person and the instruction not to enter a specific dwelling and its immediate surroundings, or not to violate a prohibition of entry already imposed under article 24g(2) and (3) of the Police Act or a temporary injunction under article 277a of the Enforcement Act, along with surrender of all keys to the dwelling;
3. the instruction to live at a certain location, with a certain family, to avoid a certain dwelling, certain locations, or certain people, to refrain from alcoholic beverages or other intoxicants, or to pursue regular work;
4. the instruction to notify any change of place of abode or to report in regular intervals to the court or another authority or office;
 - 4a. with the consent of the accused, the instruction to undergo withdrawal treatment, other medical treatment, or psychotherapy (§ 51(3) of the Criminal Code) or health-related measures;
5. the temporary removal of travel documents;
6. the temporary removal of documents necessary to operate a motor vehicle;

7. the provision of a security in accordance with §§ 142 to 144;
8. the order of temporary probation assistance in accordance with § 144b.

IV. Provision of a security, maximum duration, and release from detention
§ 138 CPC

1) In return for bail or a guarantee or in return for the pledges enumerated in § 131(5)(1) and (2), the accused may be released or his detention pending trial may be lifted, unless the sole reason for detention is the danger of absconding (§ 131(2)(1)) or it cannot be ruled out (§ 131(7)); detention must be refrained from or lifted in return for the securities mentioned above if the offence carries a penalty of not more than five years imprisonment. The amount of the bail or guarantee shall be determined by the investigating judge, taking into account the gravity of the offence allegedly committed by the accused, the personal circumstances of the detainee, and the assets of the person posting the security.

2) The amount of the bail or guarantee shall be deposited with the court, either as cash or as negotiable instruments that may be used according to the existing laws for investing the money of minors or persons for whom a trustee has been appointed, calculated according to the market price on the day of deposit, or it shall be secured by providing a pledge on immovable property or through qualified guarantors (§ 1374 of the General Civil Code) who also undertake to serve as payers.

3) The accused and the Public Prosecutor may appeal the decision of the investigating judge to the Court of Appeal by way of a complaint within 14 days.

§ 139 CPC

1) If, after release has been granted, the accused makes arrangements to flee or if new circumstances arise that require his detention, he shall be arrested irrespective of the provision of security; if he is arrested in these cases, the bail or guarantee sum shall be released.

2) This shall also be the case as soon as the criminal proceedings have come to a legally effective end through discontinuation or final judgment; where the sentence is a term of imprisonment that is not suspended, however, this shall be the case only once the convicted person has begun his sentence.

3) The investigating judge shall decide on release of the bail or guarantee sum, but once the accused has been indicted with legal effect or a trial before an individual judge has been ordered, the chairman (individual judge) shall decide.

§ 140 CPC

1) The bail or guarantee sum shall be declared forfeit by the court if the accused escapes the investigation or, in the event of a sentence of imprisonment that is not suspended, if the accused escapes that punishment, especially by removing himself without permission from his place of residence or by not appearing in court within three days of service of a summons, which shall be served in accordance with article 8(2) of the Service of Documents Act if he cannot be found.

2) This verdict shall, once it is final, be enforceable just like any judgment. The forfeited amounts of the security shall be paid to the State; but the person injured by the offence shall have the right to demand that especially his compensation claims must be satisfied out of that amount.

§ 142 CPC

4) If, in the course of execution of the preceding provisions, an accused released from detention pending trial has to be detained again for the purpose of conducting the trial, this may happen for at most another six months.

(b) Observations on the implementation of the article

203. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 30(4) UNCAC.

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

204. Liechtenstein confirmed that it is fully in compliance with this provision of the Convention.

205. In accordance with § 46 of the Criminal Code, the timeframe for conditional (early) release from imprisonment in Liechtenstein is based on the specific sentence determined in the judgment. Accordingly, conditional release may be considered at the earliest after half the sentence has been served, if enforcement of the remainder of the sentence is not needed to prevent the offender from committing further offences (§ 46(1) of the Criminal Code). After serving two thirds of the sentence, conditional release may be denied only if particular reasons give rise to the fear that the offender would commit further offences if released (§ 46(2) of the Criminal Code). Conditional release from imprisonment for life is possible only after at least fifteen years have been served (§ 46(6) of the Criminal Code). Every decision on conditional release must take into account the personal qualities of the offender, his previous conduct, his prospects for an honest living, his behaviour during enforcement, and whether, for particular reasons, enforcement of the remainder of the sentence is needed to deter others from committing offences (§ 46(4) of the Criminal Code).

§ 46 CC

Conditional release from imprisonment

1) Where an offender has served half of the time-limited sentence of imprisonment imposed in the judgement or by way of a pardon, but at least three months thereof, then the remainder of the sentence shall be suspended and a probationary period determined, if it is likely that enforcement of the remainder of the sentence is not needed to prevent the offender from committing further offences.

2) Where an offender has served two thirds of the time-limited sentence of imprisonment imposed in the judgement or by way of a pardon, but at least three months thereof, then the remainder of the sentence shall be suspended and a probationary period determined, unless particular reasons give rise to the fear that the offender would commit further offences if released.

3) If the penalty of imprisonment has been imposed for an act committed before reaching the age of twenty-one, then the minimum time that must be served (paragraphs 1 and 2) shall be one month.

4) Every decision on conditional release must take into account the personal qualities of the offender, his previous conduct, his prospects for an honest living, his behaviour during enforcement, and whether, for particular reasons, enforcement of the remainder of the sentence is needed to deter others from committing offences. As necessary, conditional release shall be granted only in conjunction with other measures.

5) Where an offender is serving several sentences of imprisonment, their total duration shall be decisive, insofar as they are served immediately consecutively or are interrupted only by times when the offender is otherwise in custody pursuant to official orders. Parts of a sentence not

suspended in accordance with § 43a paragraphs 3 and 4 shall not be considered, however. Conditional release from such a part of a sentence shall be ruled out.

6) An offender sentenced to imprisonment for life may not be granted conditional release before he has served fifteen years. Where this condition applies, he shall nevertheless be granted conditional release only if, in light of his personal qualities, his previous conduct, his prospects for an honest living, and his behaviour during enforcement, it is likely that he will not commit any further offences if released and, despite the gravity of the act, no further enforcement is needed to deter others from committing offences.

(b) Observations on the implementation of the article

206. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 30(5) UNCAC.

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

207. Liechtenstein confirmed that it has fully established the procedures described above.

208. Liechtenstein has established these procedures in Article 54 SEA (State Employees Act), Articles 61 to 63 RDG (*Richterdienstgesetz*) and Article 51 StAG (*Staatsanwaltschaftsgesetz*).

Art. 54 SEA (State Employees Act)

Preliminary measures

1) The Government may release employees on a preliminary basis if:

a) there are sufficient indications of an important reason for dissolving the employment relationship;

b) criminal proceedings have commenced for a crime or misdemeanour; or

c) considerable public interests or proceedings for imposing measures under article 49 so require.

2) The employee's superiors are responsible for ordering urgent preliminary measures. The order must be submitted to the Government without delay for its approval.

3) The Government shall decide on continued payment, reduction, or discontinuation of the employee's pay.

4) Any decision on back-payment or repayment shall be made at the latest when the decision is made on continuing or discontinuing the employment relationship.

D. Suspension

Art. 61 of the Judicial Service Act (RDG)

Suspension without an oral hearing

1) The disciplinary tribunal may decree suspension of the accused from office without an oral hearing if doing so is in the official interest in light of the nature or gravity of the breach of

duty of which he is accused or if it appears necessary to maintain the reputation of the profession.

2) The ruling on suspension shall determine the accused judge's claim to pay for the duration of the suspension. The pay may be reduced by at most 30%.

3) The ruling on suspension shall be notified to the Government once it becomes final.

Art. 62

Lifting of the suspension

1) The disciplinary tribunal must lift the suspension immediately as soon as the reasons for the suspension no longer apply. The suspension shall end at the latest once the disciplinary proceedings have been concluded with legal effect.

2) If the disciplinary proceedings do not end with a conviction and if the judge's pay has been reduced, then the amounts by which his pay has been reduced shall be reimbursed to him.

Art. 63

Legal remedy against the suspension ruling

1) Within two weeks of service, the accused may appeal the ruling in the first instance with which the suspension was imposed to the disciplinary chamber of the Supreme Court by way of a complaint.

2) If the complaint is directed against a suspension ruling of the disciplinary chamber of the Supreme Court as the first instance, then the Judicial Selection Commission shall appoint three ad hoc judges as an appellate body.

3) The complaint shall not have suspensive effect.

Law on the Office of the Public Prosecutor Act

Art. 51

Basic Principle

1) The following articles of the Judicial Service Act shall apply mutatis mutandis to the disciplinary law governing prosecutors: articles 39 (imposition of disciplinary and administrative penalties), 40 (statute of limitation), 41 (administrative penalty), 42, paragraphs 1 to 4 (disciplinary penalties), 43, paragraphs 2 to 4 (disciplinary tribunal), 44 (investigating judge), 45 (exclusion and rejection of judicial persons), 46, paragraphs 1 and 2 (ruling imposing an administrative penalty), 47 (preliminary enquiries), 48 (disciplinary investigation), 49 (questioning and determination of facts), 50 (access to documents and further disciplinary investigations), 51 (closing and referral rulings), 52 (oral hearing), 53 (exclusion of the public and publication of findings), 54 (content and announcement of findings), 55, paragraphs 1 and 3 (appeal of the findings), 56 (decision on reimbursement of costs without oral hearing), 58 (closing of disciplinary proceedings due to death or resignation), 59 (suspension of disciplinary proceedings), 60, paragraphs 1 and 2 (cancellation of disciplinary penalty), 61 (suspension without oral hearing), 62 (cancellation of suspension), 63, paragraphs 1 and 3 (appeal of suspension ruling), 64 (resumption to the benefit of the judge), 65, paragraphs 1 and 2 (decision on application for resumption), 66 (effect of resumption), 67 (findings after resumption), 68 (replacement of lost salary), 69 (reinstatement), 70 (service of documents) and 71 (exemption from fees).

2) The following shall serve as the disciplinary tribunal:

a) the President of the Supreme Court for the Prosecutor General and the other prosecutors;

b) as the appellate body, a service senate of the Supreme Court consisting of three judges of the Supreme Court with legal training.

3) The findings of the disciplinary tribunal shall be notified to the Prosecutor General and to the Government once the judgment is final.

(b) Observations on the implementation of the article

209. Lichtenstein stated that the only examples where an official has been removed or suspended were minor cases like policemen.
210. The Judicial Service Act is valid for judges, who are the only elected officials. Pursuant Article 27 CC an official sentenced by a domestic court to an imprisonment of more than one year for one or more wilfully committed offences shall be stripped of his office.
211. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 30(6) UNCAC.

Subparagraph 7 (a)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office;

(a) Summary of information relevant to reviewing the implementation of the article

212. Liechtenstein confirmed that it has fully established the procedures described above (Article 27 CC).

§ 27 CC

Loss of office and other legal consequences of conviction

1) An official sentenced by a domestic court to a imprisonment of more than one year for one or more wilfully committed offences shall be stripped of his office.

2) Where a law provides that a criminal conviction has a legal consequence other than the legal consequence referred to in paragraph 1, the legal consequence shall end after five years, if not stipulated otherwise and to the extent it does not consist in the loss of special rights arising from an election, award, or appointment. The time period shall commence as soon as the sentence has been enforced and preventive measures have been executed or have ceased; if the sentence was served only by counting provisional detention, the time period shall commence once the judgement becomes final.

(b) Observations on the implementation of the article

213. Pursuant to § 27 CC, an official sentenced by a domestic court to an imprisonment of more than one year for one or more wilfully committed offences shall be stripped of his office. Also see the legal provisions according with disciplinary proceedings of the State Employees Act, Judicial Service Act and Law on the Office of the Public Prosecutor Act.
214. During the country visit, Liechtenstein indicated that a person who has been convicted for an offence will not be prevented from applying for a public office later.
215. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 30(7)(a) UNCAC.

Subparagraph 7 (b)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

216. Liechtenstein has indicated that it has partially established the procedures described above.

217. It cited Article 8 of the Law on the Control and Oversight of Public Enterprises (ÖUSG).

Article 8 ÖUSG Public Enterprises Oversight Act Dismissal of members of the strategic management level

1) The electoral body may on important grounds and at any time, irrespective of the length of the term of office, dismiss members of the strategic management level after informing the Audit Commission of Parliament. An important ground shall in particular be any circumstance that makes it intolerable for the State if the person concerned continues to serve at the strategic management level.

2) Before the dismissal, the person concerned shall be informed of the grounds for dismissal and shall be given sufficient time and opportunity to submit a written response.

3) The dismissal shall also be final even if it occurs without an important ground. In that case, the person concerned shall have the right to a judicial determination and a claim for damages.

4) The following shall be responsible for deciding whether there is an important ground:

a) the Administrative Court, if the dismissal is by way of a decree;

b) the Court of Justice in all other cases.

(b) Observations on the implementation of the article

218. The reviewing experts noted that the obligation to consider the establishment of the procedures laid down in this provision of the Convention has been fulfilled.

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

219. Liechtenstein confirmed that it is fully in compliance with this provision of the Convention.

220. Disciplinary law in Liechtenstein, which permits disciplinary proceedings irrespective of criminal prosecution, is governed by article 49 ff of the State Employees Act (SEA), §§ 39 ff of the Judicial Service Act (RDG), and article 51 of the Law on the Office of the Public Prosecutor (OPPA).

221. If legal obligations or obligations under employment law are violated, article 49 StPG provides for seizing the necessary measures to secure proper fulfilment of responsibilities. Measures may include: a warning, a written reprimand, reduction of wages by at most 30%

for at most three years, assignment of other duties, transfer, demotion, or termination of the employment relationship. Decisions and decrees of the competent office may be appealed to the Government within 14 days of service. Decisions and decrees of the Government may be contested by appearing before the Government or appealing to the Administrative Court (article 55 StPG).

222. A warning or written reprimand under article 49 para. 2(a) and (b) StPG is issued by a supervisor or responsible member of the Government. Measures such as reduction in pay, assignment of other duties, transfer or demotion, or termination of employment relationship are ordered by the Government after hearing the supervisor and the employee concerned. While a warning may also be issued orally, a reprimand must in all cases be in writing and after hearing the employee. The hearing may be orally or in writing. The further measures are issued in the form of a decree which may be appealed to the Administrative Court.

V. Measures for securing the fulfilment of tasks

Art. 49 State Employees Act (SEA)

Measures

1) If the performance or conduct of employees does not meet the demands or if legal or contractual obligations are breached, the measures necessary for securing proper performance of responsibilities shall be taken.

2) Possible measures include:

a) a warning;

b) a written reprimand;

c) reduction of pay by at most 30% for at most three years;

d) assignment of other responsibilities, transfer, or demotion;

e) termination of the employment relationship in accordance with Art. 21 in conjunction with 22 or in accordance with Art. 24.

3) The measures may be combined.

Art. 50

Competence and procedure

1) A warning or written reprimand in accordance with article 49(2)(a) and (b) is issued by the superior or the competent members of the Government. A written reprimand may be issued only after hearing the employee; the written reprimand shall be included in the personnel files together with any statement by the employee.

2) The measures referred to in article 49(2)(c) to (e) shall be ordered by the Government after hearing the superior and the employee, subject to a warning or a written reprimand being issued.

VI. Proceedings and legal protection

Art. 51

Basic principle

Unless otherwise determined by this Act, the proceedings shall be governed by the National Administration Act.

Art. 52

Disputes arising from the employment relationship

- 1) If disputes arising from the employment relationship are not resolved by mutual agreement, the competent authority shall issue a decree.
- 2) Other than in the case of wantonness, the proceedings in the first instance and the appellate proceedings before the Government shall not be subject to fees.
- 3) Before issuing a decree as referred to in paragraph 1, the competent authority may, in consultation with the parties involved in the proceedings, present the dispute arising from the employment relationship to the Personnel Commission. The Personnel Commission shall be composed of an equal number of employer and employee representatives of both genders.
- 4) The Personnel Commission shall attempt to achieve agreement among the parties to the proceedings. If it is not successful in doing so, it shall note this in writing and may make a recommendation to the competent authority.
- 5) The Government shall set out further details by ordinance.

Art. 53

Right to be heard

- 1) The employees shall be heard before a decree to their disadvantage is issued. If an immediate decision is necessary in the public interest, the hearing must be held subsequently as soon as possible.
- 2) The hearing may be oral or in writing. If the hearing is oral, employees may consult a person of their confidence.

Art. 54

Preliminary measures

- 1) The Government may release employees on a preliminary basis if:
 - a) there are sufficient indications of an important reason for dissolving the employment relationship;
 - b) criminal proceedings have been initiated for a crime or misdemeanour; or
 - c) considerable public interests or proceedings for imposing measures under article 49 so require.
- 2) The employee's superiors are responsible for ordering urgent preliminary measures. The order must be submitted to the Government without delay for its approval.
- 3) The Government shall decide on continued payment, reduction, or discontinuation of the employee's pay.
- 4) Any decision on back-payment or repayment shall be made at the latest when the decision is made on continuing or discontinuing the employment relationship.

Art. 55

Legal remedies

- 1) Decisions and decrees of the competent authority may be appealed to the Government by way of a complaint within 14 days of service.
- 2) Decisions and decrees of the Government may be appealed by way of presentation to the Government or by way of complaint to the Administrative Court within 14 days of service.
- 3) The complaint to the Administrative Court may be directed only against an unlawful approach or execution or against determinations of facts that are contrary to the records or incomplete.

Art. 56

Suspensive effect

Complaints against decrees imposing preliminary measures or against termination of the employment relationship shall not have suspensive effect.

III. Disciplinary law

A. Punishment of breaches of duty

Art. 39 of the Judicial Service Act (RDG)

Imposition of disciplinary and administrative penalties

1) A disciplinary penalty shall be imposed on judges who have culpably breached their professional or official duties, if the breach of duty constitutes a disciplinary offence in terms of the type of gravity of the misconduct, the repetition thereof, or other aggravating circumstances. If the disciplinary offence is minor (administrative offence), then an administrative penalty shall be imposed.

2) When determining the disciplinary or administrative penalty, the gravity of the disciplinary or administrative offence and the resulting disadvantages as well as the degree of culpability and the entire previous conduct of the judge should be taken into account.

3) Every disciplinary penalty shall be entered in the personnel files.

Art. 40

Statute of limitations

1) The statute of limitations shall prevent prosecution of the judge for breach of professional or official duties if no disciplinary proceedings have been initiated against him within the limitation periods, no administrative penalty has been imposed, and no disciplinary proceedings concluded with legal effect to his disadvantage have been resumed.

2) The limitation period for disciplinary offences shall be five years, and for administrative offences two years.

3) Breaches that are subject to prosecution in accordance with the criminal laws as crimes or - if they are committed wilfully and punishable by more than one year imprisonment - misdemeanours shall be subject to the statute of limitations set out in the Criminal Code.

4) The limitation period shall begin at the time the conduct in breach of duty has come to an end.

5) The limitation period shall be interrupted if the judge commits a new breach of duty - to be punished as a disciplinary or administrative offence - during the limitation period. The limitation period shall begin again at the time the new conduct in breach of duty has come to an end.

6) The limitation period shall be tolled for the duration of the criminal proceedings or the administrative criminal proceedings, if the breach of duty by the judge is the object of such proceedings.

Art. 41

Administrative penalty

1) The administrative penalty is the warning.

2) Before imposing an administrative penalty, opportunity must be given to the accused judge to comment orally or in writing.

3) An administrative penalty may be imposed only by the disciplinary tribunal.

Art. 42

Disciplinary penalties

1) Disciplinary penalties are:

a) a reprimand;

b) a reduction of pay;

c) dismissal.

2) A reduction of pay may not be imposed for more than three years. The pay may be reduced by at most 30%.

3) If the judge has obtained his position by fraud, the judge shall be dismissed by way of disciplinary proceedings.

4) Disciplinary penalties may be imposed only by a verdict of the disciplinary tribunal after prior oral hearing.

5) In the case of part-time judges, the only available disciplinary penalty shall be that of dismissal.

B. Disciplinary tribunal and parties

Art. 43

Disciplinary tribunal

1) The following shall be competent as the disciplinary tribunal:

a) the President of the Court of Appeal sitting as an individual judge, for the President of the Court of Justice and the Judges of the Court of Justice;

b) the President of the Supreme Court sitting as an individual judge, for the President of the Court of Appeal, the Judges of the Court of Appeal, and the Judges of the Supreme Court;

c) a disciplinary chamber of the Supreme Court composed of three legally trained Judges of the Supreme Court, for the President of the Supreme Court;

2) The members of the disciplinary chamber shall be determined within the framework of the allocation of duties of the Supreme Court. They may work neither as lawyers, nor as patent lawyers, nor as professional trustees or wealth managers in Liechtenstein.

3) Rulings of the disciplinary chamber shall be made with an absolute majority of the votes in accordance with the provisions of the Criminal Procedure Code. The rapporteur shall vote first, the chairman last.

4) A secretary shall be drawn upon for every meeting and every oral hearing of the disciplinary tribunal.

Art. 44

Examining judge

1) The preliminary enquiries and the disciplinary investigations shall be carried out by an examining judge who is appointed by the Judicial Selection Commission on the proposal of the disciplinary tribunal from the group of legally trained judges.

2) The Judicial Selection Commission may, on the proposal of the disciplinary tribunal, appoint an ad hoc judge as an examining judge.

Art. 45

Exclusion and challenge of members of the tribunal

The exclusion and challenge of members of the disciplinary tribunal, the examining judge, and the secretary shall be governed by the provisions of the Court Organisation Act.

C. Disciplinary proceedings

Art. 46

Ruling imposing an administrative penalty

1) The disciplinary tribunal may make a ruling imposing an administrative penalty without an oral hearing, if a breach of duty to be punished merely as an administrative offence is at issue. The ruling must be justified.

2) The accused may appeal a ruling of the disciplinary tribunal in the first instance made in accordance with paragraph 1 by way of a complaint to the disciplinary chamber of the Supreme Court.

3) If the complaint is directed against the imposition of an administrative penalty by the disciplinary chamber of the Supreme Court as the first instance, then the Judicial Selection Commission shall appoint three ad hoc judges as an appellate body.

Art. 47

Preliminary enquiries

1) Before ruling on the initiation or rejection of the disciplinary investigation, the disciplinary tribunal may mandate the examining judge to conduct preliminary enquiries.

2) When conducting these preliminary enquiries, the examining judge shall have the same rights and duties as in the disciplinary investigation.

Art. 48

Disciplinary investigation

1) The disciplinary investigation may be initiated only by a ruling of the disciplinary tribunal (initiation ruling). Before the ruling, the accused shall be heard by the chairman.

2) The initiation ruling shall enumerate the charges specifically.

3) During the disciplinary investigation, the accusation of a breach of duty levelled against the judge shall be examined, and the facts shall be clarified to the extent necessary to discontinue the disciplinary proceedings or to refer the matter to an oral hearing.

4) If the facts have been clarified sufficiently, the disciplinary tribunal may reject initiation of the disciplinary investigation or, after questioning the accused person, immediately refer the matter to an oral hearing instead of initiating the disciplinary investigation (referral ruling).

5) The disciplinary proceedings shall be deemed initiated with the ruling to initiate the disciplinary investigation or to immediately refer the matter to an oral hearing.

6) No ordinary legal remedies shall be available against the rulings referred to in paragraphs 1 and 4.

Art. 49

Questioning and determination of facts

1) If there has been a ruling to initiate the disciplinary investigation, the chairman of the disciplinary tribunal shall forward the records to the examining judge.

2) The examining judge shall question the accused person and, where necessary, witnesses and experts and shall examine all circumstances necessary to fully clarify the facts ex officio. Refusal of the accused person to appear when summoned or to comment on the charges shall not have an influence on the proceedings.

3) The provisions of the Criminal Procedure Code shall apply to questioning of the accused, the witnesses, and the experts.

Art. 50

Access to records and supplementation of the disciplinary investigation

1) The examining judge shall grant the accused and his counsel access to the records in accordance with the provisions of the Criminal Procedure Code.

2) If the accused applies for the disciplinary investigation to be supplemented, the examining judge shall do so; but if he has concerns about granting such an application, he shall obtain a ruling by the disciplinary tribunal.

3) The disciplinary tribunal may order that the disciplinary investigation be supplemented ex officio.

4) Upon conclusion or supplementation of the disciplinary investigation, the examining judge shall transmit the records to the disciplinary tribunal.

Art. 51

Initiation and referral ruling

1) If the disciplinary tribunal finds that there is no reason to continue the disciplinary proceedings, it shall rule that the proceedings be discontinued and, if an administrative offence under article 46 has occurred, it shall impose an administrative penalty.

2) Otherwise, the disciplinary tribunal shall rule that the matter be referred to an oral hearing (referral ruling).

3) The referral ruling shall enumerate the charges specifically.

4) The rulings referred to in paragraphs 1 and 2 shall be served on the accused.

5) No ordinary legal remedies shall be available against the referral ruling referred to in paragraph 2.

Art. 52

Oral hearing

1) The accused and his counsel shall be summoned to the oral hearing.

2) The provisions of Title XIV of the Criminal Procedure Code shall apply *mutatis mutandis* to the oral hearing.

3) The oral hearing shall begin by having the referral ruling read out.

Art. 53

Exclusion of the public and publication of the verdict

1) The oral hearing shall not be public. The accused person shall be at liberty, however, to request the presence of three persons of his confidence.

2) The disciplinary tribunal may make the verdict public if there is a public interest or if the accused person has an interest therein.

3) The decision on publication and on the form thereof shall be included in the disciplinary verdict.

Art. 54

Content and announcement of the verdict

1) The verdict of the disciplinary tribunal must either acquit the accused of the breach of duty of which he has been accused, or it must find him guilty. If the verdict is guilty and a sentence is imposed, the verdict shall also include the decision on the disciplinary or administrative penalty.

2) In the event of acquittal or imposition of an administrative penalty, the costs of the proceedings shall be borne by the State. If a disciplinary penalty is imposed on the accused, the verdict shall state whether and to what extent the accused must reimburse the costs of the proceedings, taking into account the outcome of the proceedings and the assets of the accused. The same shall apply if the guilty verdict does not include imposition of a disciplinary penalty. The accused must bear the costs of his defence.

3) The verdict together with the reasons for the decision shall be announced immediately upon conclusion of the oral hearing and shall be served on the accused within two weeks.

Art. 55

Legal remedies against the verdict

1) The accused person may appeal to the disciplinary chamber of the Supreme Court against the verdict of the disciplinary tribunal in the first instance in regard to the decision on guilt, the penalty, reimbursement of costs, and publication.

2) If the appeal is directed against a verdict of the disciplinary chamber of the Supreme Court as the first instance, then the Judicial Selection Commission shall appoint three ad hoc judges as an appellate body.

3) The provisions of Title XV of the Criminal Procedure Code shall apply to the grounds for appeal and the appellate proceedings.

Art. 56

Decision on reimbursement of costs without an oral hearing

If the appeal concerns only the decision on reimbursement of costs, the appellate body competent under article 55 shall decide without an oral hearing.

Art. 57

Notification of the verdict

1) The verdict shall be notified to the competent court president once it becomes final.

2) If the verdict includes a reduction of the accused's pay or his dismissal, the verdict shall also be notified to the Government.

Art. 58

Discontinuation of disciplinary proceedings due to death or resignation

The disciplinary proceedings shall be discontinued if the accused person dies or resigns before the verdict becomes final.

Art. 59

Suspension of the disciplinary proceedings

If criminal investigations are initiated against the judge for the breach of duty of which he is accused or if direct charges are brought, then the disciplinary proceedings shall be suspended from the time charges are brought until the criminal proceedings have come to an end.

Art. 60

Striking of the disciplinary penalty from the personnel files

1) On application of the convicted judge, a disciplinary penalty may be stricken from the personnel files by a ruling of the disciplinary tribunal that decided in the first instance, if three years have passed since the verdict became final, the disciplinary penalty has been served, and the judge's conduct was irreproachable for the three years preceding the ruling.

2) The judge may appeal a negative ruling of the individual judge serving as the disciplinary tribunal by way of a complaint to the disciplinary chamber of the Supreme Court.

3) If the complaint is directed against a negative ruling of the disciplinary chamber of the Supreme Court as the first instance, then the Judicial Selection Commission shall appoint three ad hoc judges as an appellate body.

Law on the Office of the Public Prosecutor Act

Art. 51

Basic Principle

1) The following articles of the Judicial Service Act shall apply mutatis mutandis to the disciplinary law governing prosecutors: articles 39 (imposition of disciplinary and administrative penalties), 40 (statute of limitation), 41 (administrative penalty), 42, paragraphs 1 to 4 (disciplinary penalties), 43, paragraphs 2 to 4 (disciplinary tribunal), 44 (investigating judge), 45 (exclusion and rejection of judicial persons), 46, paragraphs 1 and 2 (ruling imposing an administrative penalty), 47 (preliminary enquiries), 48 (disciplinary investigation), 49 (questioning and determination of facts), 50 (access to documents and further disciplinary investigations), 51 (closing and referral rulings), 52 (oral hearing), 53 (exclusion of the public and publication of findings), 54 (content and announcement of findings), 55, paragraphs 1 and 3 (appeal of the findings), 56 (decision on reimbursement of costs without oral hearing), 58 (closing of disciplinary proceedings due to death or resignation), 59 (suspension of disciplinary proceedings), 60, paragraphs 1 and 2 (cancellation of disciplinary penalty), 61 (suspension without oral hearing), 62 (cancellation of suspension), 63, paragraphs 1 and 3 (appeal of suspension ruling), 64 (resumption to the benefit of the

judge), 65, paragraphs 1 and 2 (decision on application for resumption), 66 (effect of resumption), 67 (findings after resumption), 68 (replacement of lost salary), 69 (reinstatement), 70 (service of documents) and 71 (exemption from fees).

2) The following shall serve as the disciplinary tribunal:

a) the President of the Supreme Court for the Prosecutor General and the other prosecutors;

b) as the appellate body, a service senate of the Supreme Court consisting of three judges of the Supreme Court with legal training.

3) The findings of the disciplinary tribunal shall be notified to the Prosecutor General and to the Government once the judgment is final.

(b) Observations on the implementation of the article

223. Liechtenstein further stated that disciplinary measures can be taken against a civil servant even where criminal charges have been brought against the person, because the right not to be tried or punished twice (Article 4 of the Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms) does not apply to disciplinary measures taken against a civil servant who has been criminally charged or convicted.

224. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 30(8) UNCAC.

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

225. Liechtenstein confirmed that it is fully in compliance with this provision of the Convention.

226. Reintegration efforts are a fundamental principle of the law and practice of enforcement of sentences in Liechtenstein.

227. Conditional (early) release from imprisonment may be considered at the earliest after half the sentence has been served, if enforcement of the remainder of the sentence is not needed to prevent the offender from committing further offences (§ 46(1) of the Criminal Code). After serving two thirds of the sentence, conditional release may be denied only if particular reasons give rise to the fear that the offender would commit further offences if released (§ 46(2) of the Criminal Code). Conditional release from imprisonment for life is possible only after at least fifteen years have been served (§ 46(6) of the Criminal Code). Every decision on conditional release must take into account the personal qualities of the offender, his previous conduct, his prospects for an honest living, his behaviour during enforcement, and whether, for particular reasons, enforcement of the remainder of the sentence is needed to deter others from committing offences (§ 46(4) of the Criminal Code).

228. To support reintegration, probation assistance may be ordered (§§ 50 and 51 of the Criminal Procedure Code, articles 16 to 24 of the Probation Assistance Act, BewHG).

229. Other reintegration measures are provided in articles 127 to 134 of the Enforcement of Sentences Act (StVG).

§ 46 CC

Conditional release from imprisonment

1) Where an offender has served half of the time-limited sentence of imprisonment imposed in the judgement or by way of a pardon, but at least three months thereof, then the remainder of the sentence shall be suspended and a probationary period determined, if it is likely that enforcement of the remainder of the sentence is not needed to prevent the offender from committing further offences.

2) Where an offender has served two thirds of the time-limited sentence of imprisonment imposed in the judgement or by way of a pardon, but at least three months thereof, then the remainder of the sentence shall be suspended and a probationary period determined, unless particular reasons give rise to the fear that the offender would commit further offences if released.

3) If the penalty of imprisonment has been imposed for an act committed before reaching the age of twenty-one, then the minimum time that must be served (paragraphs 1 and 2) shall be one month.

4) Every decision on conditional release must take into account the personal qualities of the offender, his previous conduct, his prospects for an honest living, his behaviour during enforcement, and whether, for particular reasons, enforcement of the remainder of the sentence is needed to deter others from committing offences. As necessary, conditional release shall be granted only in conjunction with other measures.

5) Where an offender is serving several sentences of imprisonment, their total duration shall be decisive, insofar as they are served immediately consecutively or are interrupted only by times when the offender is otherwise in custody pursuant to official orders. Parts of a sentence not suspended in accordance with § 43a paragraphs 3 and 4 shall not be considered, however. Conditional release from such a part of a sentence shall be ruled out.

6) An offender sentenced to imprisonment for life may not be granted conditional release before he has served fifteen years. Where this condition applies, he shall nevertheless be granted conditional release only if, in light of his personal qualities, his previous conduct, his prospects for an honest living, and his behaviour during enforcement, it is likely that he will not commit any further offences if released and, despite the gravity of the act, no further enforcement is needed to deter others from committing offences.

Another institution to support reintegration is the possibility of ordering probation assistance in accordance with §§ 50 and 52 of the Criminal Code in conjunction with articles 16 to 24 of the Probation Assistance Act (BewHG).

§ 50 CPC

Issuing of instructions and ordering of probation assistance

1) If an offender's sentence has been suspended or if he is granted conditional release from a term of imprisonment or a preventive measure involving deprivation of liberty, then the court shall issue instructions to him or order probation assistance, to the extent necessary or useful to prevent the offender from committing further acts carrying a penalty. Probation assistance shall always be ordered if a convicted person is granted conditional release from a term of imprisonment for an offence against sexual self-determination or other sexual offences. If an offender is granted conditional release for an act committed before reaching the age of twenty-one, probation assistance shall always be ordered, unless, in light of the kind of act, the personal qualities of the offender, and his previous conduct, it is likely that he will not commit any further offences even without such an order. Where the court orders probation assistance, the head of the secretariat shall appoint a probation officer and notify him to the court.

2) Paragraph 1 shall apply mutatis mutandis if the pronouncement of a sentence is subject to a probationary period (§ 8 of the Juvenile Court Act) or if enforcement of a sentence of imprisonment imposed for an act committed before reaching the age of twenty-one is deferred for a duration of more than three months in accordance with article 7, paragraph 3 of the Enforcement of Sentences Act or § 33 of the Juvenile Court Act.

3) Instructions as well as orders of probation assistance shall be valid for the duration of the time period determined by the court, but at the most until the end of the probationary period, to the extent they are not lifted or rendered moot beforehand.

§ 52 CPC Probation assistance

1) The probation officer shall endeavour with words and deeds to help the offender find his way to a conduct of life and attitude that are able to prevent him from committing acts carrying a penalty in future. To the extent necessary for that purpose, the probation officer shall assist him in an appropriate way in his efforts to meet essential daily needs, especially to find housing and work.

2) The probation officer shall report on his activities and observations to the court,

1. to the extent demanded by the court or to the extent necessary or useful to achieve the purpose of probation assistance,

2. if there are grounds to lift probation assistance,

3. in all cases, however, six months after probation assistance has been ordered and when it comes to an end,

4. during court supervision (§ 52a paragraph 2).

3) During the probationary period, the court shall also subsequently order probation assistance or lift it, to the extent doing so appears necessary pursuant to § 50.

III. Implementation of probation assistance

Art. 16 of Probation Assistance Act (BewHG)

Preparation of order of probation assistance

If the court is in doubt whether probation assistance should be ordered for an offender, it may obtain a statement from the head of the secretariat on whether such an order makes sense, after providing the results of the proceedings so far that are necessary to assess the case. The court may also obtain the opinion of the Office of Social Affairs for the purpose of assessing the case. The provisions of article 20(1) to (3) shall apply mutatis mutandis to the preparation of this statement.

Art. 17

Designation of the probation officer

The court shall deliver its decision ordering probation assistance, once it has become final, to the head of the secretariat and the Office of Social Affairs. The head of the secretariat shall designate the probation officer and notify the officer to the court immediately. The provisions of article 20(1) to (3) shall apply mutatis mutandis to the preparation of the decision by the head of the secretariat.

Art. 18

Selection of the probation officer

1) If several probation officers are available, the officer shall be chosen whose appointment appears best suited to serve the purpose of probation assistance, in light of the officer's knowledge and skills and in light of the character and personal circumstances of the offender on probation.

2) As a rule, a part-time probation officer should not be responsible for more than five offenders on probation, and a full-time probation officer should not be responsible for more than 30; this should be taken into account when making the selection.

Art. 19

Informing the offender about probation assistance

If the court orders probation assistance, it shall inform the offender about it.

Art. 20

Rights of the probation officer in the performance of his duties

1) The probation officer has the right to meet with the offender on probation. If the probation officer is otherwise not able to meet with the offender on probation, the court shall summon the offender on probation on application of the probation officer.

2) The probation officer shall be informed if the offender on probation is detained or if his detention is lifted. The probation officer shall have the same right to visit a detained offender on probation as the detainee's counsel.

3) All authorities and agencies shall furnish the probation officer with the necessary information about the offender on probation and shall grant him access to the files maintained about the offender on probation, unless there are serious concerns about doing so. The files of the penal authority in ongoing criminal proceedings shall be exempt from this right to access.

4) If required by the purpose of probation assistance, the legal guardian, the legal representative, the head of the school, the head of vocational training, and the employer shall furnish the probation office with information about the way of life and work performance of the offender on probation.

Art. 21

Duties of the probation officer in the performance of his duties

1) The probation officer shall perform his duties with due regard to the honour of the offender on probation and in accordance with the duty of confidentiality.

2) The probation officer shall report to the court on his activities and his observations:

a) if asked to do so by the court;

b) if it is necessary or useful to achieve the purpose of probation assistance;

c) if there is occasion to lift probation assistance;

d) but in any case six months after probation assistance has been ordered as well as when it comes to an end.

3) Written reports shall be transmitted via the head of the secretariat for probation assistance. The head of the secretariat shall have the reports supplemented or shall supplement them himself if he believes it to be necessary according to his own knowledge of the individual case and according to his knowledge and experience in the field of probation assistance; the supplements shall be marked as such. The probation officer shall record the essential content of oral reports in his files and bring it to the attention of the head of the secretariat.

4) The probation officer shall record the essential occurrences relating to his responsibilities for the offender on probation in a journal. The journal must at all times indicate the current status and upcoming objectives of probation assistance.

Art. 22

Change of probation officer

1) The head of the secretariat shall dismiss the probation officer assigned to an offender and replace him with a different probation officer:

a) if the probation officer resigns from his employment or contractual relationship;

b) if, due to his health or other reasons, the probation officer is unable to provide probation assistance to the offender on probation for a time period expected to exceed four weeks;

c) if the probation officer is no longer fit for that purpose on other grounds.

2) Dismissal of the previously assigned probation officer shall become effective only once the new probation officer is assigned. The court and the Office of Social Affairs shall be informed of the new assignment.

3) If probation assistance is lifted early (§ 52(3) of the Criminal Code), the court shall communicate this to the Office of Social Affairs and the head of the secretariat; the head of the secretariat shall dismiss the probation officer. If probation assistance comes to an end upon expiry of the probationary period or of the time period otherwise determined by the court

(§ 50(3) of the Criminal Code), then the probation officer shall be considered dismissed at that point in time.

Art. 22a

Competence

The official acts of the court referred to in the third § shall be the responsibility of the court that is also responsible for ordering probation assistance.

IV. Voluntary continued assistance

Art. 23

Order and termination

1) If continued assistance to persons appears necessary or useful to prevent them from committing offences, the head of the secretariat may order such continued assistance in the following cases, at the request or with the consent of the person concerned:

a) in the case of unconditional release from imprisonment or a preventive measure associated with the deprivation of liberty;

b) in the case of a suspended sentence, conditional leniency of a sentence of part of a sentence or of a preventive measure associated with the deprivation of liberty or conditional release, if the probationary period has expired.

2) The order shall be valid for the duration necessary under the circumstances, but at most for three years after unconditional release or expiry of the probationary period. The assignment shall also come to an end as soon as the same person has been assigned a probation officer by the court. If the assisted person expressly declares that he or she no longer wants further assistance, or if the person persistently evades the influence of the probation officer, then the head of the secretariat shall order discontinuation of the assistance.

3) § 52(1) of the Criminal Code and the provisions of this Act on the implementation of probation assistance shall apply mutatis mutandis to assistance referred to in paragraph 1.

V. Facilities for assistance to released convicts

Art. 24

1) The State may grant funds to the private association referred to in article 4 for the establishment and operation of offices to support persons after their release from a sentence of imprisonment or from preventive measures associated with the deprivation of liberty in their efforts to obtain further assistance in arranging housing and work as well as generally to reintegrate into life in freedom; this assistance may be with words and deeds, including care for such persons.

2) Any person applying for the grant of funds under paragraph 1 shall undertake to report annually to the State on the use of funds in accordance with the grant, to render account, and, for the purpose of supervising use of funds in accordance with the grant, to permit the Office of Social Affairs to monitor implementation by reviewing the books and records and through on-site visits and to provide the Office of Social Affairs with the necessary information. Moreover, the applicant shall undertake to repay the funds if they are not used in accordance with the grant or if the obligations enumerated above are not complied with.

The law governing the enforcement of sentences as such contains rules on reintegration: articles 127 to 129 of the Enforcement of Sentences Act (StVG) on preparation for release, and articles 133 and 134 StVG on preparation for conditional release.

2. Preparation for release

Art. 127 of the Execution of Sentences Act (StVG)

Pre-release detention

1) Prior to release, convicts shall increasingly be prepared for life in freedom through educational (article 52) and care measures.

2) To the extent possible given the facilities of the institution, convicts expected not to abuse relaxation shall be granted one or more of the relaxations enumerated in article 120 during pre-release detention.

Art. 128

Beginning of pre-release detention

1) Pre-release detention shall begin three to 12 months prior to expected release, depending on the extent of the sentence of imprisonment.

2) If the head of the institution believes that the convict will likely be released conditionally, then the time of the expected conditional release shall be determinative for purposes of paragraph 1. In the case of a convict who, in addition to a sentence of life imprisonment, has received a further sentence of imprisonment after the beginning of enforcement of his sentence, the time of expected conditional release may not be assumed to be earlier than the time at which the time requirements for conditional release from the additional sentence of imprisonment are met; in that case, the time served in prison after the additional sentence became final shall be used as the basis for calculation.

3) If relaxations have been granted in pre-release detention pursuant to article 127(2), they may not be revoked from the convict solely because his conditional release has been denied.

Art. 129

Preparation for release

1) The convicts shall be informed of the legal disadvantages arising from their conviction that persist after release and what legal possibilities they have to eliminate these disadvantages.

2) Where necessary, the convicts shall be urged to make timely arrangements so that they are able to find appropriate housing and honest work after their release and so that they have proper clothing upon release and the means for travelling to their future abode and for subsistence in the initial period after release. Sick, injured, or pregnant convicts shall be urged to make arrangements for medical care after their release. The efforts of convicts shall be supported in collaboration with the Office of Economic Affairs and the public and private welfare offices with words and with deeds.

3) When it can be expected to help promote reintegration into life in freedom, especially prospects for an honest livelihood, convicts may - within the scope of the principles of enforcement of sentences - be permitted to use facilities and participate in events that legal entities other than the State operate or organize for comparable purposes. If the costs for those purposes are not borne by another party, then the State may assume them to the extent that would have to be paid for comparable facilities or events of the State.

5. Preparation for conditional release

Art. 133

Decision on conditional release

1) The convict himself, the head of the institution, or the Office of the Public Prosecutor may apply for the conditional release of a convict. An application of a relative shall be deemed equivalent to an application of the convict. A decision must be made ex officio on the conditional release of a convict who will have met the time requirements for conditional release in accordance with § 46(2) of the Criminal Procedure Code in the month after the following month. The decision shall in any event be the responsibility of the court of enforcement (article 15(1)(k)).

2) Before every decision on conditional release, the court shall review the records of the criminal proceedings and the personal files of the convict. If conditional release is not ruled out already because the time requirements are not met, the court shall further obtain a statement by the convict, the head of the institution, and the Office of the Public Prosecutor. In his statement, the head of the institution shall in particular comment on the indications of the convict's conduct of life in freedom to be expected from the convict's personal qualities, his conduct in the institution, and the anticipated external circumstances at the time of release. It shall not be necessary to obtain statements to the extent that the convict, the head of the institution, or the Office of the Public Prosecutor has filed the application for release and justified it accordingly.

3) If placement of the convict in an institution for dangerous repeat offenders has been ordered, then the National Police shall also be given the opportunity to provide a statement before the decision on conditional release.

Art. 134

Hearing and complaint

1) Before deciding, the court shall hear the convict, unless such a hearing does not appear necessary given the circumstances of the case. If, for the purpose of a conditional release under the time requirements set out in § 46(2) and (6) of the Criminal Court, the convict himself applies for a hearing for the first time, then the hearing may only be omitted if the court approves the release. In the event of a hearing, the decision must where possible be announced to the convict orally as well. It shall be permissible for the court to hear the convict by way of technical facilities for audio and video transmission and to announce the ruling to him by the same means.

2) To the extent it appears useful to predict the future behaviour of the convict, the court shall hear appropriate persons who can provide information in this regard such as the head of the institution or a corrections officer specially designated by the head of the institution and other persons working in the enforcement of sentences of probation assistance, as well as where necessary also a medical or psychological specialist.

3) If, in the event of an oral announcement of the decision, the convict or the Office of the Public Prosecutor - provided that a representative of the Office of the Public Prosecutor was present at the announcement - files a complaint within three days of the announcement, then a copy of the complaint shall be served on the complainant and, upon request of the convict, the convict's counsel. In this event, the convict may provide further details in this complaint within fourteen days of service. If the Office of the Public Prosecutor and the convict waive legal remedies against the ruling or if they do not file legal remedies within the applicable time period, then the minutes of the questioning conducted in accordance with paragraphs 1 and 2 and the drawing up of the ruling may be replaced by a note signed by the chairman and the recording clerk; that note must then contain the names of the questioned persons and of those present during questioning, as well as in key words the circumstances relevant to the decision.

(b) Observations on the implementation of the article

230. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 30(10) UNCAC.

Article 31. Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

231. Liechtenstein confirmed that it has fully adopted and implemented this provision of the Convention.

232. Under Liechtenstein law, the instrument of deprivation of enrichment (§ 20 CC) is available. The deprivation as set out in § 20 CC also permits deprivation from third parties (§ 20 para. 4 CC) and legal successors (§ 20 para. 5 CC). At the same time, however, the law also permits the deprivation of assets made during the time connected with crimes committed continually or repeatedly and with membership of a criminal organisation (§ 278a StGB) or terrorist group (§ 278b StGB), if their lawful origin cannot be credibly shown (§ 20 paras. 2 and 3 CC). § 20b para. 1 CC also provides for the forfeiture of assets under the power of disposal of a criminal organisation (§ 278a CC) or terrorist group (§ 278b CC) or that have been made available or collected as funds for financing of terrorism (§ 278d CC), without having to prove that they originated from a criminal act. Assets are also subject to forfeiture if they are involved in a money laundering process (§ 20b para. 2 (1) StGB) or if they arise from a punishable act not subject to Liechtenstein jurisdiction (§§ 62-65 CC), provided that double criminality obtains (§ 20b para. 2 (2) CC).
233. According to § 20 CC, not necessarily the original proceeds are absorbed, but rather the person concerned is sentenced to payment of an amount of money equal to the wrongful enrichment; this "confiscation decision" may be executed with respect to the entire assets of the person concerned, not just the assets actually gained from the criminal act. To the extent that the amount of enrichment cannot be determined or only with disproportionate effort, the court must specify the amount to be absorbed at its discretion (§ 20 para. 1 last sentence CC).
234. § 20 CC provides for the possibility of confiscating the value of the gains from any person (including legal persons) who illegally profits from a criminal act of another person.
235. Deprivation of enrichment pursuant to § 20 CC can be regarded as a monetary sanction sui generis. § 20 CC contains general principles concerning the confiscation of illegal gains. It can be imposed whether the assets are still available or not. In other words confiscation in principle (i.e. if the particular case does not fall under one of the exemptions provided by § 20a CC) is not dependent on whether the assets are still available or not. If for example the assets are in possession of a bona fide third party or have been gambled away, the offender is still to be sentenced to pay an amount of money equivalent to the gained illegal profits. The extent of the enrichment is measured by the so-called "*Netto-Prinzip*" (after-deduction-principle) which means that the expenditures for gaining the proceeds are deducted.
236. § 20 para 2 and 3 CC provide for easing of the burden of proof, specifying the following cumulative conditions: proof of commission of several serious immediate offences (continued or repeated crimes within the meaning of § 17 CC), receipt by the perpetrator of illegal pecuniary benefits through these immediate offences or for their commission, and receipt by the perpetrator of additional pecuniary benefits during the time connected with the immediate offences where it is reasonable to assume that the advantages originate from additional crimes of this type. If this fact pattern applies, enrichment may also be absorbed even if it cannot be traced to the proven offences, but it is reasonable to assume that they originated from criminal acts of the same kind (§ 20 para 2(1) and (2) CC). § 20 para 3 CC provides that a perpetrator shall be sentenced to payment of an amount of money if the perpetrator received pecuniary benefits during the time connected with his membership in a criminal organisation or terrorist

group and it is reasonable to assume that the advantages originate from criminal acts and their lawful origin cannot be credibly shown.

237. According to § 20a CC, deprivation is not available to the extent that the enriched person satisfies civil claims arising from the offence or if he has contractually bound himself to do so in an enforceable manner, has been sentenced to do so, or is sentenced at the same time, or the enrichment is eliminated by other legal measures.

238. If there are sufficient reasons to assume that the preconditions for deprivation of enrichment (§ 20 CC) or forfeiture (§ 20b CC) exist, and no decision can be made in this regard in criminal proceedings or in proceedings aimed at placement in one of the institutions referred to in §§ 21 to 23 CC, then the Office of the Public Prosecutor may submit a separate application for issuance of such an order. The court then decides on an application for deprivation of enrichment or forfeiture (§ 356 CPC).

§ 20 CC Deprivation of enrichment

1) Anyone who

1. has committed an act carrying a penalty and has thereby gained assets, or
2. has received assets for the commission of an act carrying a penalty shall be sentenced to pay an amount of money equal to the unjust enrichment obtained thereby. To the extent that the amount of enrichment cannot be determined or only with disproportionate effort, the court shall specify the amount to be deprived at its discretion.

2) If

1. the perpetrator has continually or repeatedly committed crimes (§ 17) and obtained assets through or for their commission, and
2. he has received other assets during the time connected with the crimes committed, and it is reasonable to assume that such assets originate from other crimes of this kind, and their lawful origin cannot be credibly shown, then these assets shall also be taken into account when specifying the amount to be deprived.
- 3) A perpetrator who has gained assets during the time connected with his membership of a criminal organization (§ 278a) or a terrorist group (§ 278b) shall be sentenced to pay an amount of money specified at the court's discretion to be equal to the enrichment obtained, if it is reasonable to assume that such assets originate from offences and their lawful origin cannot be credibly shown.
- 4) Anyone who has been enriched directly and unjustly through the act carrying a penalty of another person or through an asset paid for the commission of such act shall be sentenced to pay an amount of money equal to that enrichment. If a legal person or partnership has been enriched, then it shall be sentenced to pay this amount.
- 5) If a directly enriched party is deceased or if a directly enriched legal person or partnership no longer exists, then the enrichment shall be deprived from the legal successor, to the extent that enrichment still existed at the time of legal succession.
- 6) Several enriched parties shall be sentenced according to their share in the enrichment. If this share cannot be determined, then the court shall specify it at its discretion.

§ 20a Exclusion of deprivation

- 1) Deprivation shall be excluded to the extent that the enriched party has satisfied civil claims arising from the act or has undertaken to do so in enforceable form, or the enriched party has been sentenced or is simultaneously being sentenced to do so, or the enrichment has been eliminated by other legal measures.
- 2) Deprivation shall be refrained from

1. to the extent that the amount to be deprived or the prospects for collection are disproportionate to the procedural efforts necessary for the deprivation or collection, or

2. to the extent that payment of the amount of money would disproportionately impede the livelihood of the enriched party or would represent undue hardship for the enriched party, in particular because the enrichment no longer exists at the time of the order; other disadvantageous consequences arising from a sentence shall be taken into account.

§ 20b Forfeiture

1) Assets subject to the power of disposal of a criminal organization (§ 278a) or a terrorist group (§ 278b) or that have been made available or collected as a means of terrorist financing (§ 278d) shall be declared forfeited.

2) Assets originating from an act carrying a penalty shall be declared forfeited to the extent that

1. they are involved in a money laundering process, or
2. the act which generated such assets,

a) carries a penalty also under the laws of the place where the act was committed, but is not subject to Liechtenstein criminal laws in accordance with §§ 62 to 65 and

b) does not constitute a fiscal offence, unless it is a misdemeanour as referred to in article 88 of the Value Added Tax Act associated with detriment to the budget of the European Communities.

§ 20c Exclusion of forfeiture

1) Forfeiture shall be excluded to the extent that

1. the assets concerned are subject to legal claims of persons who are not involved in the offence, the criminal organization, or the terrorist group, or

2. the purpose of forfeiture is attained by other legal measures, in particular to the extent that the unjust enrichment is deprived by foreign proceedings and the foreign decision can be enforced in Liechtenstein.

2) Forfeiture shall be refrained from if it would be disproportionate to the importance of the matter or the procedural efforts.

III. Proceedings for deprivation of enrichment, forfeiture, and confiscation

§ 353 CPC

1) The criminal judgement shall include a decision on the deprivation of enrichment, forfeiture, confiscation, and other financial orders under supplemental criminal legislation, to the extent this § or other laws do not provide otherwise.

2) If the results of the criminal proceedings do not suffice in themselves or upon conducting simple additional enquiries to form a reliable judgement on the financial orders referred to in paragraph 1, then this imposition may by ruling be reserved to a separate decision (§§ 356, 356a), and other than in that case such an order shall no longer be permissible regarding the assets or objects concerned.

3) The decision on financial orders shall, except in the case of § 356a, be equivalent to the imposition of the sentence and may be appealed to the advantage and to the disadvantage of the sentenced person or of other persons affected by the order (§ 354).

§ 354

1) Persons who have a right to the assets or objects threatened by forfeiture or confiscation or assert such a right, who are liable for monetary penalties or the costs of the criminal proceedings, or who, without being accused or indicted themselves, are threatened with deprivation of enrichment, forfeiture, or confiscation, shall be summoned to the trial. In the trial and in the subsequent proceedings, they shall have the rights of the accused, to the extent that the proceedings concern the decision on these financial orders. If a summons has been served upon the affected persons, the proceedings may be conducted and decided even in their absence. 2) If the persons referred to in paragraph 1 assert their right only after entry into effect of the decision on forfeiture or confiscation, they shall be at liberty to assert their claims to the object or its purchase price (§ 253) within thirty years after the decision vis-à-vis the State by way of civil proceedings.

§ 356

1) If there are sufficient grounds for the assumption that the preconditions for deprivation of enrichment (§ 20 CC), forfeiture (§ 20b CC), or confiscation (§ 26 CC) are given, without the

possibility of deciding thereon in criminal proceedings or in proceedings aimed at placement in one of the institutions referred to in §§ 21 to 23 CC, then the prosecutor shall file an independent application for the issue of such a financial order.

2) The court that had or would have jurisdiction with respect to the hearings and judgement concerning the offence giving rise to the order shall, in independent proceedings after public oral hearings, decide on an application for deprivation of enrichment or forfeiture by way of a judgement. If the Criminal Court rendered judgement with respect to the offence that would give rise to the order, or reserved the decision (§ 353 paragraph 2), then its chairman shall be competent sitting as a single judge.

3) The single judge shall, in independent proceedings after public oral hearings, decide on an application for confiscation, as a rule (§ 356a) by way of a judgement. The provisions on trials concerning punishable acts not punishable by a sentence of imprisonment of more than six months and § 354 shall apply *mutatis mutandis*.

4) In application of the title on legal remedies *mutatis mutandis*, the judgement may be appealed to the advantage and to the disadvantage of the affected person; § 354 paragraph 1, sentence 3 shall apply *mutatis mutandis*.

§ 356a

1) The single judge may decide on an application for confiscation in independent proceedings after hearing the prosecutor and the affected person (§ 354) by ruling, if the value of the object threatened by confiscation does not exceed 2,000 francs or if possession of such object is prohibited in general. If the location of the affected person is abroad or if the location cannot be determined without special procedural effort, the person need not be heard.

2) The affected person and the prosecutor may appeal a ruling under paragraph 1 to the Court of Appeal. The appeal must be communicated to the opposing party with the notice that he may submit a response within fourteen days.

§ 357

If the preconditions for the independent proceedings arise only during trial, then the decision may also be issued as part of a judgement in which the accused is acquitted or the application for placement in an institution is rejected.

§ 253a

1) In the case of offenses committed abroad, the Government may conclude an agreement with the State where the offense was committed with respect to the sharing of deprived, forfeited, or confiscated assets and may in particular include conditions in this agreement concerning the use of assets.

2) The Government shall be responsible for execution.

239. Liechtenstein provided the following statistics:

2010

Proceeds frozen		Proceeds confiscated	
Cases	Amount (in EUR)	Cases	Amount (in EUR)
34	104 Mio	9	194.35 Mio

2011

Proceeds frozen	Proceeds confiscated
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Cases	amount (in EUR)	Cases	amount (in EUR)
26	32.4 Mio	4	4.3 Mio

2012

Proceeds frozen		Proceeds confiscated	
cases	Amount (in EUR)	cases	Amount (in EUR)
21	75.9 Mio	6	4 Mio

2013

Proceeds frozen		Proceeds confiscated	
cases	Amount (in EUR)	cases	Amount (in EUR)
22	20.88 Mio	2	1.48 Mio

(b) Observations on the implementation of the article

240. Liechtenstein has adopted a value-based confiscation model for confiscating proceeds of crime.
241. The reviewing experts recommended to amend the law according to the draft, including a switch to the so-called “*Brutto-Prinzip*”, in order to bring Liechtenstein law fully in compliance with Art. 31(1)(a) UNCAC and to implement recommendations of GRECO.

Subparagraph 1 (b)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

242. Liechtenstein confirmed that it has fully adopted and implemented this provision of the Convention.

243. § 26 CC permits the confiscation of objects which the perpetrator used to commit the punishable act, or which he designated for use in the commission of the act, or which have arisen from this act, if these objects endanger the safety of persons, morality, or the public order. Confiscation shall be refrained from under Liechtenstein law if the particular nature of the objects has been eliminated (§ 26 para. 2 CC). Objects of third parties may be confiscated if the entitled person does not guarantee that the objects will not be used for the commission of punishable acts (§ 26 para. 2 last sentence CC).

§ 26 Preventive Confiscation

1) Objects which the perpetrator used to commit the act carrying a penalty, or which he designated for use in the commission of the act, or which have arisen from this act shall be confiscated if these objects endanger the safety of persons, morality, or the public order.

2) Confiscation shall be refrained from if the entitled party eliminates the particular nature of the objects, especially by removing components or markings that facilitate the commission of punishable acts or by rendering them unusable. Objects subject to legal claims of a person not involved in the punishable act may only be confiscated if the person concerned does not guarantee that the objects will not be used for the commission of punishable acts.

3) If the preconditions for confiscation are met, then the objects shall also be confiscated if no particular person can be prosecuted or sentenced for the punishable act.

(b) Observations on the implementation of the article

244. Liechtenstein has also adopted a property-based confiscation model for confiscating instrumentalities. However, instrumentalities will be confiscated only if they endanger the safety of persons, morality or the public order. This is a narrower application of the obligation contained in subparagraph (b) of this article. There is no such limitation in the provision of the subparagraph. Accordingly, there is only partial compliance with subparagraph (b).

245. During the country visit, the Liechtenstein authorities explained the draft amendments to the laws on confiscation, including the new § 19a (*Konfiskation*) and differences to the existing law.

(c) Challenges and recommendations

246. The reviewing experts recommended to amend the law according to the draft law, in order to bring Liechtenstein law fully in compliance with Art. 31(1)(b) UNCAC.

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

247. Liechtenstein confirmed that it has fully adopted and implemented this provision of the Convention.

248. The most important instruments serving investigation by the Liechtenstein law enforcement authorities include in particular the search of houses and persons (§§ 92 ff. CPC), which as a rule may only be carried out pursuant to a judicial warrant with reasons. Evidence and objects subject to confiscation (§ 26 CC) may be seized by judicial order (§ 96 CPC). If it is feared that collection of assets subject to deprivation of enrichment under § 20 CC or forfeiture under § 20b CC would be impossible or aggravated, the court may, upon application by the Office of the Public Prosecutor, issue freezing orders pursuant to § 97a CPC. These orders may also be issued if the amount of the assets to be secured has not yet been determined precisely.
249. Search of premises: The search of a house or other premises belonging to a home may, according to § 92 CPC, only be performed when there is a justified suspicion that a person suspected of a crime or misdemeanour is located therein or objects are located therein whose possession or examination may be of importance for a specific investigation. The search of a person or the person's clothing is only permissible if the person is, with a high degree of probability, in possession of such objects or is suspected of a crime or misdemeanour. As a rule, a judicial warrant is required for a house search. A search may be made without a judicial warrant in the event of danger or in premises open to the public. The judicial warrant must be served upon the persons involved immediately or at the latest within 24 hours (§ 93 CPC). The law enforcement authorities may also carry out a house search without such a warrant order if a subpoena or arrest warrant has been issued against the person or if the person is, under certain circumstances, suspected of having committed a punishable act. In such cases, the person must upon demand be presented immediately or within the next 24 hours with a certification of the performance of the house search and its reasons.
250. Seizure: § 96 CPC stipulates that objects found during a search that may be of importance to the investigation or that are subject to forfeiture or confiscation must be included in a register and taken into judicial custody or care or seized. Every person is obliged to surrender such objects on demand, especially also documents. If the owner refuses to hand over the objects and if the objects cannot be seized in a house search, then the owner may be forced to do so by imposing a coercive penalty of CHF 1,000 and, upon continued refusal in important cases, by imposing coercive detention of up to six weeks. If they are not themselves suspected of the offence, the persons required to hand over the object shall, upon application, be reimbursed for reasonable costs necessarily incurred by separation from documents or other evidentiary objects of others or by issuing photocopies (copies, reproductions). According to § 97 CPC, objects found during a search of premises or a person that indicate the commission of a punishable act other than the act for which the search was conducted shall be seized if the punishable act is subject to prosecution ex officio. However, this must immediately be notified to the public prosecutor. If the public prosecutor does not apply for initiation of criminal proceedings, the seized objects must be returned immediately.
251. Freezing of assets: Assets of which it must be assumed that they will be subject to deprivation of enrichment under § 20 StGB or to forfeiture under § 20b CC pursuant to § 97a CPC may be frozen until a final judicial decision has been made on confiscation. Under that provision, the court must issue the following orders upon application of the Office of the Public Prosecutor if it must be feared that collection of the assets would otherwise be

endangered or significantly hampered: 1. the restraint, custody, and legal administration of moveable physical objects, including the deposit of money, 2. the judicial prohibition of selling or pledging moveable physical objects, 3. the judicial prohibition of disposing of credit balances or of other assets, 4. the judicial prohibition of selling, mortgaging, or pledging real estate or rights entered in the Land Registry.

252. These orders may also be issued if the amount of the assets to be secured has not yet been determined precisely.

§ 92 CPC

1) A house search, i.e., the search of a dwelling or other premises belonging to a household, shall be permissible if there is a well-founded suspicion that a person suspected of committing a crime or misdemeanour is hiding therein or that objects or clues are located therein that may be of importance to the investigation or that have to be examined.

2) A search of a person, i.e., the search of the clothing of a person and the objects the person is carrying, shall be permissible if the person is arrested or caught in the act, is suspected of an offence, and on the basis of certain facts it must be assumed that the person has objects that are to be secured or clues in his or her possession, or if the person might have suffered injuries due to an offence or otherwise experienced changes to the person's body, the determination of which is necessary for the purposes of criminal proceedings.

II. Seizure

§ 96

1) If objects are found that might be of importance to the investigation or that are subject to forfeiture or confiscation, they shall be listed in a register and taken under judicial custody or care or shall be seized (§ 60).

1a) The seizure of objects for reasons of evidence shall not be permissible and must be lifted in any event at the request of the person concerned, to the extent that and as soon as the purpose of the evidence can be fulfilled through video, audio, or other recording or through copies of written records or automatically processed data and if it is not to be assumed that the objects themselves or the originals of the seized information will be inspected during trial. Where available, the seizure shall be limited to the recordings and copies.

2) Every person shall be obliged (§ 9 paragraph 4) to surrender objects subject to seizure on request, especially also documents, or to permit the seizure in another way. If a person refuses to surrender an object the possession of which has been admitted or has been otherwise proven, and if such surrender cannot be effected by a search of premises, the possessor may, unless he is suspected of having committed the punishable act himself or is dispensed from the duty to testify as a witness, be forced to effect such surrender by a coercive penalty of up to 10,000 francs and, if the refusal continues and in important cases, also by coercive detention for a term of up to six weeks (§ 9 paragraphs 5 and 6).

2a) Where information saved on data carriers is to be seized, every person shall grant access to that information and on request hand over an electronic data carrier in a commonly used file format or have such a data carrier produced. Moreover, the person shall permit the production of a backup copy of the information saved on the data carriers.

3) The person required to surrender the object, unless he is suspected of having committed the offense himself, shall on his application be reimbursed for reasonable costs necessarily incurred by separation from documents or other evidentiary objects by others or by issuing photocopies (copies, reproductions).

4) The seizure shall be lifted as soon as its preconditions have lapsed. The seizure shall be lifted by returning the seized objects or by destroying the recordings and copies.

§ 96a

1) Even if there is no imminent danger (§ 10 paragraph 1), the National Police shall be entitled to itself seize objects

1. if those objects

- a) are not at anyone's disposal,
 - b) were taken from the injured party through the offence,
 - c) 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
 - d) are of little value or can easily be replaced on a temporary basis,
2. the possession of which is generally prohibited (§ 356a paragraph 1), or
3. found on a person arrested on grounds of § 127 paragraph 1, subparagraph 1 or found in a search the National Police is permitted to carry out on its own accord (§ 93 paragraph 4).
- 2) § 96 shall apply mutatis mutandis to the securing of such object.

§ 97

If objects are found during a search of premises or persons that indicate the commission of a punishable act other than the act for which the search was conducted, then such objects shall be seized if the act is subject to prosecution ex officio; however, a separate record must be compiled on such seizure and immediately communicated to the Public Prosecutor. If the Public Prosecutor does not apply for initiation of criminal proceedings, the seized objects shall be returned immediately.

§ 97a

1) If the suspicion of unjust enrichment arises and it must be assumed that this enrichment will be subject to deprivation of enrichment under § 20 CC, or if the suspicion arises that assets are subject to the disposal of a criminal organization or terrorist group (§§ 278a and 278b StGB), are made available or have been collected as means of terrorist financing (§ 278d CC), or originate from an act entailing a penalty, and if it must be assumed that these assets will be subject to forfeiture under § 20b CC, then the court shall, on application of the Office of the Public Prosecutor, order the following measures in particular, for purposes of securing the deprivation of the enrichment or the forfeiture, if it must be feared that collection would otherwise be endangered or significantly hampered:

- 1. the distraint, custody, and legal administration of moveable physical objects, including the deposit of money,
 - 2. the judicial prohibition of selling or pledging moveable physical objects,
 - 3. the judicial prohibition of disposing of credit balances or of other assets,
 - 4. the judicial prohibition of selling, mortgaging, or pledging real estate or rights entered in the Land Register. Through the prohibition under point 3, the State shall acquire a lien on the credit balances and other assets.
- 2) The order may also be issued if the amount of the sum to be secured under paragraph 1 has not yet been determined precisely.
- 3) The order may specify an amount of money, the deposit of which prevents execution of the order. Once the deposit has been made, the order shall be lifted in this respect on application of the affected person. The amount of money shall be determined so that it covers the expected deprivation of enrichment or the expected forfeiture.
- 4) The court shall limit the duration for which the order is issued. This deadline may be extended upon application. If two years have passed since the order was first issued, without an indictment being made or an application submitted in the independent in rem proceedings under § 356, then further extensions of the deadline for one additional year each shall be permissible only with the approval of the Court of Appeal.
- 5) The order shall be lifted as soon as the conditions for its issue have lapsed, especially also if it must be assumed that the deprivation of enrichment or the forfeiture will not occur or if the deadline under paragraph 4 has expired.
- 6) A ruling on the issuing or lifting of the order may be appealed to the Court of Appeal by the Office of the Public Prosecutor, the accused, and other persons affected by the order (§ 354).

III. Search and seizure of documents

§ 98

1) When searching documents, it must be ensured that unauthorized persons do not gain knowledge of their content.

2) Documents that have been taken under judicial custody and that cannot be recorded immediately must be put into an envelope to be closed with the seal of the court. Any affected persons present during the search shall also be allowed to add their seal. When the seals are broken, the affected person shall be summoned to attend. If he does not respond to such a summons or if the summons cannot be sent due to his absence, the seals shall nevertheless be broken.

§ 98a

1) To the extent it appears necessary for solving a case of money laundering within the meaning of the Criminal Code, a predicate offence of money laundering, or an offence in connection with organized crime, banks, investment firms, insurance companies, asset management companies, and management companies under the UCITS Act and the Investment Undertakings Act (hereinafter "institutions") shall be required by judicial ruling

1. to disclose the name, other data known to them concerning the identity of a holder of a business relationship, and the address of such person,

2. provide information on whether a suspect maintains a business relationship with this institution, is a beneficial owner or authorized person of such a business relationship, and, to the extent this is the case, provide all information necessary to precisely determine this business relationship and all documents concerning the identity of the holder of the business relationship and his powers of disposal,

3. all documents and other materials concerning the type and scope of the business relationship and associated business processes and other business transactions in a specific past or future time period.

The same shall apply if, on the basis of particular facts, it must be assumed that the business relationship has been or continues to be used for transacting a pecuniary advantage that was obtained through punishable acts or received for such acts (§ 20 StGB) or is subject to the power of disposal of a criminal organization or terrorist group or has been made available or collected as means of terrorist financing (§ 20b CC).

1a) Under the conditions mentioned in paragraph 1, persons working for institutions must testify as witnesses regarding facts that have been entrusted or made available to them pursuant to the business relationship.

2) Instead of the originals of documents and other materials, photocopies may also be handed over if their correspondence with the originals is beyond doubt. If data carriers are used, the institution must surrender permanent reproductions that are readable without any additional aids or must have such reproductions produced; if automated data processing is used to administer the business relationship, then an electronic data carrier in a commonly used file format may be transmitted. § 96 paragraph 3 shall apply *mutatis mutandis*.

3) A ruling under paragraph 1 shall in all cases be served upon the institution. Service upon other persons with powers of disposal that arise from the business relationship and have become known may be deferred if service would endanger the purpose of the investigation. The institution shall be notified of this and must maintain secrecy for the time being with respect to all facts and processes associated with the judicial order *vis-à-vis* clients and third parties. Under these conditions, persons working for the institution may also not inform the contracting party or third parties about ongoing investigations.

4) If the institution does not want to cede certain documents or other materials or does not want to divulge certain information, then §§ 96 et seq. shall apply *mutatis mutandis*. The prohibition against providing information under paragraph 3 shall not be affected thereby.

(b) Observations on the implementation of the article

253. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 31(2) UNCAC.

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property

covered in paragraphs 1 and 2 of this article.

(a) **Summary of information relevant to reviewing the implementation of the article**

254. Liechtenstein confirmed that it has partially adopted and implemented this provision of the Convention.

255. There is no legislative provision for the management of frozen assets. For further investment of the frozen assets (especially in the event of changes), the account holder requires approval by the court; in practice, only investments that preserve value and are as risk-free as possible will receive approval.

256. With respect to the investment of assets at banks, Liechtenstein relies on the recommendation on the management of frozen assets that Switzerland developed in the Commission on Organized Crime and Economic Crime of the Conference of Cantonal Directors of Justice and Police. In March 1999, the Swiss Bankers Association forwarded this recommendation to its members. The investment objective in general is to preserve capital and achieve regular income.

Code of Criminal Procedure (CPC):

§ 253

1) If the forfeiture or confiscation of assets or objects has been ordered and if such assets or objects are not yet under the custody of the court, then the sentenced person or other affected persons (§ 354) shall be called upon in writing by the Criminal Court to comply with the order within fourteen days or to transfer power of disposal to the court, or else coercive measures would be taken. If the person with power of disposal does not comply with this demand, the objects and assets shall be taken from him by way of an enforcement procedure.

2) Repealed

3) The court shall transfer forfeited or confiscated objects that are of scientific or historic interest or of interest for teaching, experimental, research, or other professional activities to the State institutions and collections existing in Liechtenstein for this purpose, after informing the Government. Objects that can be drawn on directly to cover the costs of justice shall be used for this purpose, while other objects shall be sold in accordance with the provisions set out in the enforcement procedure. Objects that can neither be sold nor otherwise utilized shall be destroyed.

§ 253a

1) In the case of offenses committed abroad, the Government may conclude an agreement with the State where the offense was committed with respect to the sharing of deprived, forfeited, or confiscated assets and may in particular include conditions in this agreement concerning the use of assets.

2) The Government shall be responsible for execution.

§ 97a

1) If the suspicion of unjust enrichment arises and it must be assumed that this enrichment will be subject to deprivation of enrichment under § 20 CC, or if the suspicion arises that assets are subject to the disposal of a criminal organization or terrorist group (§§ 278a and 278b StGB), are made available or have been collected as means of terrorist financing (§ 278d CC), or originate from an act entailing a penalty, and if it must be assumed that these assets will be subject to forfeiture under § 20b CC, then the court shall, on application of the Office of the Public Prosecutor, order the following measures in particular, for purposes of securing the deprivation of the enrichment or the forfeiture, if it must be feared that collection would otherwise be endangered or significantly hampered:

1. the distraint, custody, and legal administration of moveable physical objects, including the deposit of money,
2. the judicial prohibition of selling or pledging moveable physical objects,
3. the judicial prohibition of disposing of credit balances or of other assets,
4. the judicial prohibition of selling, mortgaging, or pledging real estate or rights entered in the Land Register.

Through the prohibition under point 3, the State shall acquire a lien on the credit balances and other assets.

...

(b) Observations on the implementation of the article

257. Liechtenstein clarified that almost no frozen assets are subject to judicial custody (see Article 97a paragraph 1 no. 3 CPC).

258. The reviewing experts concluded that Liechtenstein has adequately implemented Art. 31(3) UNCAC.

Paragraph 4

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

259. Liechtenstein confirmed that it is fully in compliance with this provision of the Convention.

260. Anyone who has committed an act carrying a penalty and has thereby gained assets (point 1) or who has received assets for the commission of an act carrying a penalty (point 2) shall, according to §20(1) of the Criminal Code, be sentenced to pay an amount of money equal to the unjust enrichment obtained thereby. Unlike in rem forfeiture in accordance with §20b of the Criminal Code, deprivation of enrichment is personal; i.e., it does not target certain incriminated assets, but rather generally the entire assets of the perpetrator.

261. Conversely, forfeiture - as mentioned - is strictly *in rem* and affects the specific incriminated assets, but also surrogates, if an uninterrupted chain of exchanges can be proven.

(b) Observations on the implementation of the article

262. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 31(4) UNCAC.

Paragraph 5

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such

property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

263. Liechtenstein confirmed that it is fully in compliance with this provision of the Convention.

264. Intermingling of assets does not prevent deprivation of enrichment in accordance with § 20 of the Criminal Code. § 20(1), last sentence, of the Criminal Code even provides that the court may specify the amount to be deprived "at its discretion" if the amount of enrichment cannot be determined or only with disproportionate effort.

265. While forfeiture is strictly *in rem* and affects the specific incriminated assets, but also surrogates, if an uninterrupted chain of exchanges can be proven. According to the case law of the Supreme Court, intermingling of incriminated assets with non-incriminated assets does not prevent this proof even in the case of forfeiture.

§ 20 Criminal Code (CC) Deprivation of enrichment

1) Anyone who

1. has committed an act carrying a penalty and has thereby gained assets, or 2. has received assets for the commission of an act carrying a penalty shall be sentenced to pay an amount of money equal to the unjust enrichment obtained thereby. To the extent that the amount of enrichment cannot be determined or only with disproportionate effort, the court shall specify the amount to be deprived at its discretion.

(b) Observations on the implementation of the article

266. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 31(2) UNCAC.

Paragraph 6

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

267. Liechtenstein confirmed that it is fully in compliance with this provision of the Convention.

268. According to § 20 of the Criminal Code, not necessarily the original proceeds are deprived, but rather the affected person is sentenced to pay an amount of money equal to the unjust enrichment obtained, and this decision may be enforced with regard to the entire assets of the affected person and not merely the assets obtained from the criminal act. To the extent that the amount of enrichment cannot be determined or only with disproportionate effort, the

court shall specify the amount to be deprived at its discretion (§ 20(1), last sentence, of the Criminal Code).

§ 20 CC Deprivation of enrichment

1) Anyone who

1. has committed an act carrying a penalty and has thereby gained assets, or 2. has received assets for the commission of an act carrying a penalty shall be sentenced to pay an amount of money equal to the unjust enrichment obtained thereby. To the extent that the amount of enrichment cannot be determined or only with disproportionate effort, the court shall specify the amount to be deprived at its discretion.

(b) Observations on the implementation of the article

269. Liechtenstein explained that intermingling of assets does not prevent deprivation of enrichment pursuant to Article 20 CC. If the amount of enrichment cannot be determined or only with disproportionate effort, the court may specify the amount to be deprived at its discretion. Forfeiture pursuant Article 20b CC affects surrogates, too, if an uninterrupted chain of exchanges can be proven. For example if money deriving from a bank robbery was used to buy a car, the car can be forfeited.

270. According to the case law of the Supreme Court intermingling of incriminated assets with non-incriminated assets does not prevent this proof in forfeiture cases.

271. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 31(2) UNCAC.

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

272. Liechtenstein confirmed that has fully adopted and implemented these measures.

273. The obligation to maintain banking secrecy does not apply vis-à-vis the criminal court in connection with initiated judicial criminal proceedings (article 14(2) of the Banking Act). Banks required to maintain banking secrecy are forced to provide information and surrender documents in criminal proceedings. § 98a of the Criminal Procedure Code sets out an obligation to disclose certain data and to surrender business documents pursuant to a court order. If the institution does not want to cede certain documents or other materials or does not want to divulge certain information, then §§ 96 et seq. CPC shall apply mutatis mutandis.

274. According to § 98a CPC, banks and other institutions must, to the extent it appears necessary to solve cases of money laundering, predicate offences for money laundering, or organised crime shall be required by judicial ruling to disclose the name, other data known to the bank concerning the identity of the owner of a business relationship, and the person's

address provide information on whether a suspected person maintains a business relationship with the institution or is a beneficial owner or authorised party of such a relationship, and, where this is the case, to provide all necessary data to precisely identify this business relationship as well as all documents concerning the identity of the owner of the business relationship and his powers of disposal, all documents and other records concerning the type and scope of the business relationship and transactions related to that relationship and other business transactions in a specified past or future time period. The same shall apply, if, on the basis of specific facts, it must be assumed that a business relationship was or is used for the transaction of an asset obtained by criminal acts or received for the commission thereof (§ 20 CC) or which is subject to the power of disposal of a criminal organisation or terrorist group or has been provided or collected as funds for the financing of terrorism (§ 20b CC). Persons working for banks and investment firms must testify as witnesses concerning facts that have been entrusted or made available to them pursuant to the business relationship. Instead of the originals of documents and other records, photocopies may be handed over, to the extent there is no doubt concerning their correspondence with the originals. Where data carriers are used, the institutions must provide permanent reproductions that can be read without any additional aids; if automatic data processing is used to administer the business relationship, an electronic data carrier in a commonly used file format may be transmitted. § 96 para. 3 CPC applies mutatis mutandis. A judicial decision must be served upon the institutions. Service upon other known persons with power of disposal arising from the business relationship may be delayed if the purpose of the investigation would be endangered thereby. The institutions must be informed thereof and must for the time being keep all facts and processes associated with the judicial order confidential vis-à-vis clients and third parties. Under these conditions, persons working for them must likewise refrain from notifying the contracting parties or third parties about ongoing investigations.

275. For the legislative text of §§ 92, 96, and 98a of the Criminal Procedure Code (CPC), see above.

***Banking Act Art. 14
Banking Secrecy***

- 1) The members of the governing bodies of banks and their employees as well as any persons otherwise working for such banks shall keep secret all facts that they are entrusted with or that become accessible by them as a result of the business relations with clients. The obligation of secrecy shall apply without any time limit.
- 2) Paragraph 1 is without prejudice to the legal provisions on the obligation to give testimony or information to the criminal courts and to supervisory bodies as well as the provisions on cooperation with other supervisory authorities.
- 3) The provisions of paragraphs 1 and 2 shall apply mutatis mutandis to the members of the governing bodies of investment firms and their employees as well as to any persons working for such investment firms.

(b) Observations on the implementation of the article

276. During the country visit, the Liechtenstein authorities explained that in order to access documents, a court order was needed. However, according to § 14(2) Banking Act, banking secrecy is no valid ground to refuse testimony before a criminal court. Therefore, no lifting of bank secrecy is needed.

277. Liechtenstein does not have a central register of bank accounts. However, due to the small number of banks in the country (16), it was relatively easy to send a court order to all of them. A request for information by a court cannot be challenged before it is executed. The court can impose a time limit for compliance with the request, usually not more than two weeks. There are effective sanctions for non-compliance with the court order.

278. Like in many other jurisdictions, freezing, seizure and confiscation requires a judicial procedure in Liechtenstein. The FIU, as an administrative type of FIU, is not part of law enforcement and hence not empowered in that sense. However, as made clear by the representatives of the FIU during the country visit, the FIU can ask for any information held by any reporting entity that has filed an SAR/STR or is connected to one. Banking secrecy provisions do not hamper the enforceability of this practice and are not applicable when the FIU makes use of its powers to ask for additional information from reporting entities.

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

279. Liechtenstein has confirmed that it has partially adopted and implemented these measures.

280. § 20(2) and (3) of the Criminal Code provide the possibilities of "expanded deprivation": when there is a time connection with continued or repeated crimes or a time connection with membership in a criminal organization or terrorist group, deprivation of enrichment is possible if it is reasonable to assume that the assets originate from other crimes and their lawful origin cannot be credibly shown.

§ 20 CC Deprivation of enrichment

2) If

1. the perpetrator has continually or repeatedly committed crimes (§ 17) and obtained assets through or for their commission, and

2. he has received other assets during the time connected with the crimes committed, and it is reasonable to assume that such assets originate from other crimes of this kind, and their lawful origin cannot be credibly shown,

then these assets shall also be taken into account when specifying the amount to be deprived.

3) A perpetrator who has gained assets during the time connected with his membership of a criminal organization (§ 278a) or a terrorist group (§ 278b) shall be sentenced to pay an amount of money specified at the court's discretion to be equal to the enrichment obtained, if it is reasonable to assume that such assets originate from offences and their lawful origin cannot be credibly shown.

(b) Observations on the implementation of the article

281. Liechtenstein's CC allows deprivation of assets where there is a connection with continued criminal activity or with membership in a criminal organization and the lawful origin of the advantage cannot be demonstrated. The IMF suggested to consider extending the principle of the sharing or reversal of proof (now provided in Article 20, paragraph 2 and 3 CC), to all serious offenses or crimes in all circumstances in the context of an *in rem* procedure.
282. The reviewing experts concluded that Liechtenstein has fulfilled its obligation to consider the reversal of proof foreseen in Art. 31(8) UNCAC.

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

283. Liechtenstein has confirmed that it is fully in compliance with this provision.
284. § 20(4) of the Criminal Code provides for deprivation of enrichment of a third parties only if that person has been enriched directly and unjustly.
285. § 20c(1)(1) of the Criminal Code (exclusion of forfeiture if the assets are subject to legal claims of uninvolved third parties) and § 26(2) of the Criminal Code (confiscation of objects of uninvolved third parties only if no guarantee exists that the objects will not be used for the commission of offences) likewise take sufficient account of this idea.
286. Moreover, § 354 of the Criminal Procedure Code contains provisions on the rights of uninvolved third parties in criminal proceedings to the extent they are affected by deprivation, forfeiture, or confiscation.

§ 20 CC Deprivation of enrichment

4) Anyone who has been enriched directly and unjustly through the act carrying a penalty of another person or through a pecuniary advantage paid for the commission of such act shall be sentenced to pay an amount of money equal to that enrichment. If a legal person or partnership has been enriched, then it shall be sentenced to pay this amount.

§ 20a Exclusion of deprivation

1) Deprivation shall be excluded to the extent that the enriched party has satisfied civil claims arising from the act or has undertaken to do so in enforceable form, or the enriched party has been sentenced or is simultaneously being sentenced to do so, or the enrichment has been eliminated by other legal measures.

§ 20c Exclusion of forfeiture

1) Forfeiture shall be excluded to the extent that

1. the assets concerned are subject to legal claims of persons who are not involved in the offence, the criminal organization, or the terrorist group, or
2. the purpose of forfeiture is attained by other legal measures, in particular to the extent that the unjust enrichment is deprived by foreign proceedings and the foreign decision can be enforced in Liechtenstein.

§ 26 Confiscation

2) Confiscation shall be refrained from if the entitled party eliminates the particular nature of the objects, especially by removing components or markings that facilitate the commission of punishable acts or by rendering them unusable. Objects subject to legal claims of a person not involved in the punishable act may only be confiscated if the person concerned does not guarantee that the objects will not be used for the commission of punishable acts.

§ 354 CPC

1) Persons who have a right to the assets or objects threatened by forfeiture or confiscation or assert such a right, who are liable for monetary penalties or the costs of the criminal proceedings, or who, without being accused or indicted themselves, are threatened with deprivation of enrichment, forfeiture, or confiscation, shall be summoned to the trial. In the trial and in the subsequent proceedings, they shall have the rights of the accused, to the extent that the proceedings concern the decision on these financial orders. If a summons has been served upon the affected persons, the proceedings may be conducted and decided even in their absence. 2) If the persons referred to in paragraph 1 assert their right only after entry into effect of the decision on forfeiture or confiscation, they shall be at liberty to assert their claims to the object or its purchase price (§ 253) within thirty years after the decision vis-à-vis the State by way of civil proceedings.

(b) Observations on the implementation of the article

287. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 31(9) UNCAC.

Article 32. Protection of witnesses, experts and victims

Paragraph 1

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

288. Liechtenstein has confirmed that it has fully adopted and implemented these measures.

289. Liechtenstein law not only provides judicial protection of witnesses. Apart from the right to refuse testimony, this includes especially measures to keep the identity of witnesses partially or completely confidential in proceedings (§ 119a of the Criminal Procedure Code) and questioning using communication technologies (§ 115a(2) of the Criminal Procedure Code). There now are also provisions on the extrajudicial protection of witnesses, i.e., protection of witnesses outside the actual proceedings and after their conclusion, existing in law since 1 July 2014. Examples of such extrajudicial witness protection are measures such as behavioural advice, provision of aids such as new mobile phone numbers or an emergency number, personal security, temporary housing at a secure location, and also specific measures such as data blocks, the establishment of a new identity, relocation to a new place of residence, finding a new job, and securing a livelihood (Articles 2(p) and (q), 30d to 30g of the Police Act).

National Police Act Art. 2(1)(p) and (q)

p) it shall protect persons who are involved in solving a serious offence through criminal proceedings and are therefore especially at risk, as well as any relatives of these persons (§ 72 of the Criminal Code) who are at risk (witness protection);

q) it shall carry out assignments from offices of the National Administration, administrative authorities, and courts, to the extent police participation is provided in laws or ordinances or is indispensable for the execution of laws and ordinances.

Art. 30d

Admission

The National Police may apply to the Government to admit a person to witness protection in accordance with article 2(1)(p).

Art. 30e

Establishment of a new identity

1) To the extent necessary to protect persons in accordance with article 2(1)(p), the National Police may request offices of the National Administration, administrative authorities, and courts or private persons to create or modify documents in order to establish or maintain a temporary new identity; public documents may be issued only at the request of the member of the Government responsible for the National Police in accordance with the allocation of duties.

2) The documents referred to in paragraph 1 may be used in legal transactions only to the extent necessary to fulfil the purposes mentioned in paragraph 1. The member of the Government responsible for the National Police in accordance with the allocation of duties shall determine the purpose of the issue and the scope of application of the documents in legal transactions in a mission statement.

3) The National Police shall document the use of the documents in legal transactions and confiscate them in the event of abuse or as soon as they are no longer required to fulfil their purpose.

4) Before furnishing the persons concerned with the key, the National Police shall instruct them regarding use of the documents and inform them that they will be confiscated immediately in the event of abuse.

5) The establishment of a temporary new identity shall also be available for employees of the National Police during the required period if they are mandated to protect a person in accordance with article 2(1)(p). Paragraphs 1 and 4 shall apply mutatis mutandis.

Art. 30f

Blocking of data disclosure; notification and surrender obligation

The National Police may demand of offices of the National Administration, administrative authorities, and courts as well as private persons that they:

a) do not disclosure certain data of persons covered by article 2(1)(p) to the extent the existing technical possibilities allow; these offices and person shall, when processing data, ensure that the protection of witnesses is not adversely affected. Article 24(2) of the Data Protection Act shall not apply;

b) immediately notify the National Police of requests for information about persons covered by article 2(1)(p);

c) on request, surrender extracts of query protocols of automatic information systems documenting queries of persons covered by article 2(1)(p).

Art. 30g

Involvement of third parties

When implementing the protection of persons and objects, the National Police may involve private security firms where necessary.

290. Due to the fact that the new law is only in force since July 2014, no information is available so far on the number of witnesses or experts and their relatives or other persons close to them who have required protection and how long they needed it.

(b) Observations on the implementation of the article

291. During the country visit, Liechtenstein pointed out that an amendment of the National Police Act (NPA) about witness protection (Articles 2/1/p, 30d, 30e, 30f, 30g and 35a) is in force since 1 July 2014. Now, the witness protection also covers relatives and other persons close to witnesses (Article 2/1/p NPA) and situations outside of judicial proceedings (Articles 30e and 30f NPA).

292. Given this new information, the reviewing experts concluded that Liechtenstein law is in compliance with Art. 32(1) UNCAC.

Subparagraph 2 (a)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(a) Summary of information relevant to reviewing the implementation of the article

293. Liechtenstein has confirmed that it has fully adopted and implemented these measures.

294. Protection measures for witnesses include: physical protection, a new place of residence, and an undercover identity, in order to ensure the witnesses safety during their testimony. Such measures are extended also to their relatives. Witness protection is provided for by the articles of the Police Act described above. These rules apply to all types of crime and not, specifically, to corruption related offences.

Art. 30e

Establishment of a new identity

1) To the extent necessary to protect persons in accordance with article 2(1)(p), the National Police may request offices of the National Administration, administrative authorities, and courts or private persons to create or modify documents in order to establish or maintain a temporary new identity; public documents may be issued only at the request of the member of the Government responsible for the National Police in accordance with the allocation of duties.

2) The documents referred to in paragraph 1 may be used in legal transactions only to the extent necessary to fulfil the purposes mentioned in paragraph 1. The member of the Government responsible for the National Police in accordance with the allocation of duties shall determine the purpose of the issue and the scope of application of the documents in legal transactions in a mission statement.

3) The National Police shall document the use of the documents in legal transactions and confiscate them in the event of abuse or as soon as they are no longer required to fulfil their purpose.

4) Before furnishing the persons concerned with the key, the National Police shall instruct them regarding use of the documents and inform them that they will be confiscated immediately in the event of abuse.

5) The establishment of a temporary new identity shall also be available for employees of the National Police during the required period if they are mandated to protect a person in accordance with article 2(1)(p). Paragraphs 1 and 4 shall apply mutatis mutandis.

Art. 30f

Blocking of data disclosure; notification and surrender obligation

The National Police may demand of offices of the National Administration, administrative authorities, and courts as well as private persons that they:

a) do not disclosure certain data of persons covered by article 2(1)(p) to the extent the existing technical possibilities allow; these offices and person shall, when processing data, ensure that the protection of witnesses is not adversely affected. Article 24(2) of the Data Protection Act shall not apply;

b) immediately notify the National Police of requests for information about persons covered by article 21(1)(p);

c) on request, surrender extracts of query protocols of automatic information systems documenting queries of persons covered by article 2(1)(p).

(b) Observations on the implementation of the article

295. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 32(2)(a) UNCAC.

Subparagraph 2 (b)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

296. Liechtenstein has confirmed that it has fully adopted and implemented these measures.

297. Apart from the right to refuse testimony, judicial witness protection includes especially measures to keep the identity of witnesses partially or completely confidential in proceedings (§ 119a of the Criminal Procedure Code) and questioning using communication technologies (§ 115a(2) of the Criminal Procedure Code).

§ 115 CPC

1) As a rule, every witness shall be questioned individually in the absence of the prosecutor, the civil claimant, the accused, their representatives, or other witnesses.

2) At the request of the witness, however, the presence of a person of confidence may be permitted during questioning. This right and the entitlement to advice, assistance, and representation by the Victims Assistance Office (§ 31a(2)) shall be indicated in the summons. Persons of confidence may be excluded who are suspected of participation in the offence, who have been or are to be questioned as a witness, and who otherwise are involved in the proceedings, or who give rise to the fear that their presence might influence the witness in providing free and complete testimony. Persons of confidence shall be required to maintain confidentiality with respect to what they learn during the questioning (§ 301(2) of the Criminal Code).

3) A person under the age of eighteen or a mentally ill or mentally disabled person shall, if it serves the interest of the person, always be questioned in the presence of a person of confidence.

§ 115a

1) If it is feared that the questioning of a witness should not be possible in the trial for factual or legal reasons, then the investigating judge shall give the prosecutor, the civil claimant, and the accused as well as their representatives the opportunity to participate in the questioning and to address questions to the witness. §§ 186 and 197(1) and (2) shall apply *mutatis mutandis*. The investigating judge may effect audio or video recordings of the questioning. In this case, a written summary of the content of the questioning may be compiled instead of a record, which shall be signed by the judge and included in the files. To the extent necessary for adjudication of the matter, the testimony shall be reproduced verbatim in the summary.

2) In the interest of the witness, especially with respect to his low age or his mental condition or health, or in the interest of ascertaining the truth, the investigating judge may restrict the opportunity to participate in such a way that the parties and their representatives may follow the questioning of the witness, where necessary with the use of technical means for conveying words and images, and that they may exercise the right to ask questions without being present during questioning. The investigating judge may assign an expert to undertake such questioning, especially if the witness has not yet reached the age of eighteen. In all cases, care should be taken that an encounter between the witness and the accused be prevented to the extent possible.

3) A witness who has not yet reached the age of eighteen and may have been violated in his or her sexual sphere by the offence with which the accused has been charged shall in any event be questioned by the court in the manner described in paragraph 2; the other witnesses referred to in § 107(1) shall be questioned in this manner if they or the Office of the Public Prosecutor so request.

4) Prior to questioning, the investigating judge shall inform the witness of his rights under paragraph 3 and of the fact that the record will be read out in the trial and that audio or video recordings of the questioning may be presented, even if he should refuse to testify in the further course of the proceedings. This information and the declarations made in this regard shall be included in the record; the information may also be conveyed by an expert (paragraph 2). The age and the condition of the witness shall be taken into account in all cases when conveying the information.

§ 119a

If, on the basis of certain facts, it must be feared that the witness would expose himself or a third party to a serious endangerment of life, health, physical integrity, or liberty by disclosing a name and other personal information (§ 119(1)) or by answering questions that would allow such name or information to be deduced, then the witness may be permitted not to answer such questions. In that case it shall also be permissible for the witness to change his appearance in such a way that he cannot be recognized. However, he shall not be permitted to cover his face in such a way that his facial expressions cannot be observed to the extent indispensable for assessing the credibility of his statement.

§ 197

1) The chairman shall be authorized to have the accused leave the meeting room on an exceptional basis when a witness or co-accused is being heard. However, once the chairman

has questioned the accused upon his reappearance about the matter discussed during his absence, the chairman must inform him about everything that occurred in his absence, especially about statements that have been made in the meantime.

2) If this notification is omitted, it must in any event be included before the end of the evidentiary proceedings, otherwise the evidence shall be deemed void.

3) When questioning witnesses, the chairman shall apply § 115a(1), sentences 3 to 5, and §115a(2) to (4) mutatis mutandis. When doing so, he must also give members of the court who were not present during questioning the opportunity to follow the questioning of the witness and to question the witness themselves.

(b) Observations on the implementation of the article

298. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 32(2)(b) UNCAC.

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

299. Liechtenstein has confirmed that it has partially adopted and implemented these measures.

300. Article 18 of the Treaty between the Principality of Liechtenstein, the Swiss Confederation, and the Republic of Austria on Cross-Border Police Cooperation provides rules governing cross-border protection of witnesses and victims. This important amendment to the treaty has already been approved by the Liechtenstein Parliament, but it will not enter into force until all three countries have ratified it, which is expected to be the case in 2015.

Article 18
Protection of witnesses and victims

(1) The security services of the States Parties shall work together in the protection of witnesses and their relatives as well as of victims (hereinafter: "persons to be protected") in accordance with national law.

(2) Cooperation shall in particular encompass the exchange of information and the acceptance of persons to be protected, including administrative, technical, and logistical support.

(3) For the purpose of setting out the modalities of cooperation, including costs involved in the acceptance of persons to be protected, the competent authorities shall conclude a special agreement in accordance with article 57 in each individual case.

(4) The persons to be protected who are admitted to the protection programme of the requesting State Party shall not be admitted to the protection programme of the requested State Party. When carrying out cooperation in connection with the protection of those persons, the law of the requested State Party shall apply accordingly.

(5) The requesting State Party shall bear the costs of living of the person to be protected and the costs for measures that State Party has requested to be implemented. The requested State

Party shall bear the costs for the personnel and material costs involved in the protection of those persons.

(6) The requested State Party may, where serious reasons apply, terminate cooperation after prior notification of the requesting State Party. In such cases, the requesting State Party shall be obliged to take back the person to be protected.

(b) Observations on the implementation of the article

301. The reviewing experts concluded that Liechtenstein has fulfilled its obligation to consider entering into agreements in compliance with Art. 32(3) UNCAC.

Paragraph 4

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

302. Liechtenstein has confirmed that in their legal system, the provisions of this article also apply to victims insofar as they are witnesses.

303. With LGBI. 2012 No. 26, articles 31a and 31b of the Criminal Procedure Code explicitly reference the term "victim", drawing on the definition set out in article 1 of the Victims Protection Act (OHG). For purposes of the Criminal Procedure Code, a victim is a person whose physical, mental, or sexual integrity has been directly and adversely affected.

304. The victims role in criminal proceedings in Liechtenstein, as far declarations are concerned and regardless of the offence being investigated or prosecuted, is that of a witness. In this respect, the ordinary guarantees of the rights of the defence apply (i.e., no anonymous witnesses allowed, right of direct cross examination, right to contest the credibility of the witness where necessary through the acquisition of documents relating to their position or to prior convictions, etc.).

§ 31a

1) Independently of their position as civil claimants, victims (article 1 of the Victims Protection Act) shall have the right:

1. to have themselves represented (§ 34),
2. to access the records (§ 32(2)(2)),
3. to be informed of the object of the proceedings and of their essential rights prior to questioning,
4. to be notified of the continuation of the proceedings (§§ 22i, 65(1), 141(7)),
5. to receive translation assistance, for which § 23a shall apply mutatis mutandis,
6. to participate in the contradictory questioning of witnesses (§ 115a) and charged persons (§ 147(3)) and in a reconstruction of the offence (§ 69(2)),
7. to be present during trial and to question the accused, witnesses, and experts and to be heard regarding their claims.

2) Victims shall be entitled, in accordance with articles 12 to 14 of the Victims Assistance Act, to have the Victims Assistance Office advise and assist them, accompany them to questions during the investigation proceedings and trial, and to represent them in the exercise of their rights under this Act.

§ 31b

1) All authorities involved in the criminal proceedings shall be required to inform victims and civil claimants of their rights in the criminal proceedings. This may be omitted only for as long as doing so would endanger the purpose of the enquiries.

2) At the latest before their first questioning, victims must be informed of the preconditions for assistance by the Victims Protection Office.

3) At the latest before their first question, victims whose sexual integrity may have been violated shall also be informed of the following rights to which they are entitled:

1. to refuse to answer questions regarding highly personal circumstances of their life or regarding details of the offence they believe would be unreasonable to describe (§ 108(2)(2)),

2. to demand sensitive questioning in the investigating proceedings and at trial (§§ 115a, 197(3)),

3. to demand that the public be excluded from the trial (§ 181a(2)).

§ 32

1) Any person injured with respect to his rights by a crime or a misdemeanour to be prosecuted ex officio may, until the beginning of trial, declare that he will join the criminal proceedings as a civil claimant with regard to his claims under private law. The declaration may be withdrawn at any time. Unless evident, the entitlement to participate in the proceedings and the claims for damages or compensation must be justified. The declaration shall be denied by the court if it is evidently unjustified or was submitted too late.

2) The civil claimant shall have the following rights:

1. The civil claimant may supply anything to the Public Prosecutor that is conducive to convicting the accused or to justifying the claim for compensation, and he may petition for evidence to be taken (§ 23b).

2. The civil claimant may, to the extent his interests are affected, access the records; he may do so even during the investigation, unless there are special reasons to the contrary. Access to records may in any event be denied or limited to the extent it would threaten the purpose of the investigation or the uninfluenced testimony of witnesses.

3. The civil claimant shall be invited to the trial, with the proviso that the trial will nevertheless take place even if the civil claimant does not appear, in which case his pleadings shall be read from the record. He may address questions to the accused, to witnesses, and to experts, or he may receive permission to speak already during trial in order to make other remarks. At the end of the trial, he shall be given permission to speak immediately after the Public Prosecutor has delivered and justified his final pleadings, in order to present and justify his claims and make those pleadings he wishes to have considered as part of the final verdict.

3) Victims and civil claimants shall - unless they are represented by the Victims Assistance Office (§ 31a(2)) - be afforded legal aid in accordance with article 25(3) of the Victims Assistance Act.

3a) If the Public Prosecutor abandons the prosecution in accordance with Title IIIa, the civil claimant shall, however, not be entitled to bring or assume public charges.

4) Moreover, the civil claimant shall be entitled to bring public charges in accordance with § 173 as a subsidiary prosecutor in lieu of the Office of the Public Prosecutor, but even in this event the Office of the Public Prosecutor shall be at liberty to take up the prosecution again at any time; the subsidiary prosecutor shall then again be afforded the rights of a civil claimant.

§ 173

1) To the extent that the criminal proceedings were not initiated or were discontinued due to abandonment or application to discontinue by the Public Prosecutor, the civil claimant (§ 32) shall have the right to continue the prosecution in lieu of the Public Prosecutor as a subsidiary prosecutor by filing an application for initiation or continuation of the proceedings or by filing an indictment (§ 163) within fourteen days of his notification by the Court of Justice.

2) These subsidiary prosecution rights of the civil claimant shall not apply in all cases in which the court has terminated criminal proceedings in accordance with § 42 of the Criminal Code.

3) The Court of Appeal shall decide on the admissibility of initiation or continuation of the criminal proceedings pursuant to a subsidiary application of the civil claimant, to the exclusion of any further legal remedies.

§ 320

The person whose rights have been injured by an offence subject to ex officio prosecution shall be at liberty to join the criminal proceedings. If the Public Prosecutor refuses to prosecute, then the civil claimant may file an application for punishment according to the law (§§ 319(1) and 326(2)), unless prosecution was terminated in accordance with Title IIIa.

1. The civil claimant may supply anything to the Public Prosecutor that is conducive to convicting the accused or to justifying the claim for compensation, and he may petition for evidence to be taken (§ 23b).

2. The civil claimant may, to the extent his interests are affected, access the records; he may do so even during the investigation, unless there are special reasons to the contrary. Access to records may in any event be denied or limited to the extent it would threaten the purpose of the investigation or the uninfluenced testimony of witnesses.

3. The civil claimant shall be invited to the trial, with the proviso that the trial will nevertheless take place even if the civil claimant does not appear, in which case his pleadings shall be read from the record. He may address questions to the accused, to witnesses, and to experts, or he may receive permission to speak already during trial in order to make other remarks. At the end of the trial, he shall be given permission to speak immediately after the Public Prosecutor has delivered and justified his final pleadings, in order to present and justify his claims and make those pleadings he wishes to have considered as part of the final verdict.

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4) Moreover, the civil claimant shall be entitled to bring public charges in accordance with § 173 as a subsidiary prosecutor in lieu of the Office of the Public Prosecutor, but even in this event the Office of the Public Prosecutor shall be at liberty to take up the prosecution again at any time; the subsidiary prosecutor shall then again be afforded the rights of a civil claimant.

(b) Observations on the implementation of the article

305. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 32(4) UNCAC.

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented

and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

306. Liechtenstein has confirmed that it is fully in compliance with this provision.
307. The victims' role in criminal proceedings in Liechtenstein, as far declarations are concerned and regardless of the offence being investigated or prosecuted is that of a witness. In this respect, the ordinary guarantees of the rights of the defence apply (i.e., no anonymous witnesses allowed, right of direct cross examination, right to contest the credibility of the witness where necessary through the acquisition of documents relating to their position or to prior convictions, etc.).
308. See articles 31a, 31b, 32, 173 and 320 of the Criminal Procedure Code (CPC) (Paragraph 4 of article 32 UNCAC).
309. The number of victims who have presented their views and concerns at any stage of criminal justice proceedings against offenders is not available. But it can be assured that all authorities involved in criminal proceedings (Nat. Police, Office of the Public Pros., Court of Justice) meet the obligation set out in § 31b(1) of the CPC to inform victims and civil claimants of their rights in the criminal proceedings.

(b) Observations on the implementation of the article

310. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 32(5) UNCAC.

Article 33. Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

311. Liechtenstein has confirmed that it has fully adopted and implemented these measures.
312. Pursuant to a recommendation by GRECO, it is planned to introduce a "whistleblower" provision (Consultation report on amendment of the State Employees Act, SEA), which is intended to encourage employees in the public sector to notify the criminal justice organs directly of any suspicion of corruption, including by introducing hotlines and protective measures against unjustified retaliation measures. Moreover, it is planned to make appropriate possibilities available to contest a decision by which a public servant's superiors prohibit the public servant from testifying as a witness. Finally, it is planned to introduce rules or guidelines for situations in which officials switch to the private sector.

Ongoing parliamentary process on the amendment of the State Employees Act (SEA)

Art. 38(3) to (7) SEA

3) Employees may speak as parties, witnesses, and court experts on official matters subject to confidentiality only if they have been authorized to do so by the head of office.

4) Refusal of authorization under paragraph 3 shall require the consent of the Government. By way of an ordinance, the Government may provide exceptions for certain cases in which consent is not necessary.

5) Authorization to testify as a party or witness may be refused only if the testimony were to cause substantial disadvantages to the welfare of the country or if fulfilment of public duties were seriously threatened or made substantially more difficult.

6) Official secrecy shall not defeat the duty to notify set out in article 38a and in accordance with § 53 of the Criminal Procedure Code.

7) The Government shall provide further details by ordinance.

Art. 38a SEA

Duty to notify

1) If, in the performance of duties, an employee gains knowledge of a well-founded suspicion of an offence subject to *ex officio* judicial prosecution that concerns the legal scope of responsibilities of the office to which the employee belongs, then that employee shall - irrespective of § 53 of the Criminal Procedure Code - immediately notify that suspicion to the head of office, the competent member of the Government, the National Police, or the Office of the Public Prosecutor. The head of office and the competent member of the Government shall treat the information confidentially, subject to the duty to notify set out in § 53 of the Criminal Procedure Code.

2) Anyone who in good faith makes a notification under paragraph 1 or a report under § 53 of the Criminal Procedure Code or who testifies as a witness shall not be disadvantaged in terms of professional status for that reason.

3) By ordinance, the Government may designate contact offices external to the National Administration to which an employee may turn for advice before filing a report. The contact offices shall be subject to confidentiality.

Art. 39a SEA

Independence

1) A prohibition of future activity for a different employer or client may be agreed for a limited period of time in relation to employees in offices who make or prepare supervision, assessment, or award decisions or decisions of comparable scope.

2) In the event of violation of the prohibition, contract penalties in the amount of up to one year of gross salary may be agreed.

3) The Government shall provide further details by ordinance.

(b) Observations on the implementation of the article

313. Liechtenstein clarified that the wording “offence that concerns the legal scope of responsibilities of the office” means that the obligation to report is limited to the areas of the judiciary and government administration, but covers offences outside the office, too; only the private sector is not covered.

314. Indeed, there does not seem to be any whistleblower protection in the private sector (labour law).

315. During the country visit, Liechtenstein told the reviewing experts about the planned introduction of a whistleblower website that will be accessible to all citizens, modelled on a system also used in Austria and Germany (BKMS). The system will be managed by the National Police. The same system will be implemented at the Financial Market Authority (FMA) for their supervisory mandate. Concerning the protection of whistleblowers it was pointed out that the system allows anonymous reporting. As soon as a whistleblower's identity becomes known, he would be a witness and could benefit from witness protection.

(c) Challenges and recommendations

316. The reviewing experts encouraged Liechtenstein to consider the introduction of whistleblower protection in the private sector (labour law).

Article 34. Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

317. Liechtenstein has confirmed that it has fully adopted and implemented these measures.

318. According to § 879(1) of the General Civil Code (ABGB), contracts or contract clauses governing corrupt acts are considered under existing law to be null and void due to their violation of a law. The strict consequence of the annulment of contracts will occur primarily in the case of violations of laws serving to protect the general public as well as public order and security. In these cases, no special challenge is necessary. To the extent that a corrupt act during the conclusion of the contract led to a lack of will, and accordingly the focus is on protection of a specific contracting party, the contract in question may then be subject to challenge on grounds of bad faith, threat, or error (§§ 870 and 871 ABGB). The person in error may, instead of demanding cancellation of the contract, also demand its modification (§ 872 ABGB). This applies analogously also to the case of bad faith or threat. The right to challenge a contract on the grounds of error or threat is subject to a limitation period of three years from conclusion of the contract or elimination of the threat (§ 1487 ABGB), and on the grounds of bad faith 30 years from the conclusion of the contract (§ 1479 ABGB). In the latter case, the deceived or threatened person has a claim to damages, irrespective of whether that person lets the contract remain valid (§ 874 ABGB). The deceived person then has the choice to merely challenge the contract or to additionally demand compensation for further disadvantages or only to demand damages. Since, according to § 1323 ABGB, restitutions must be made primarily in kind, this path may also be chosen to achieve elimination or modification of the treaty. This is of practical relevance in that claims for damages are subject to a limitation period of 3 years after gaining knowledge of the injury, not 3 years after conclusion of the contract (§ 1487).

319. In the sphere of public law, article 106 of the National Administration Act permits an administrative act or a decree to be declared null and void. The "grounds for annulment" referred to in article 106(1) include a substantial violation of public rights or interests that must necessarily be observed in accordance with the mandatory legal provisions governing the administrative procedure or otherwise in accordance with the Constitution, the laws, or ordinances in force (article 106(1)(a)) and if the administrative act was obtained fraudulently through incorrect information (article 106(1)(d)). Another ground for annulment that may arise in connection with corruption is, according to article 106(1)(c), the case in which the preconditions for issuing a decree or decision were entirely lacking or in which discretion was blatantly exceeded or abused. Revocation may be achieved on application to the Administrative Court acting as the supervisory authority or also by the body that issued the decree itself (Article 106(5) of the National Administration Act).

General Civil Code (ABGB)

§ 870

- 1) Anyone who was induced by the other party through bad faith or unjust and well-founded fear to conclude a contract shall not be bound by it.
- 2) Whether the fear was well-founded must be determined in accordance with the magnitude and probability of the danger and the physical and emotional makeup of the threatened person.

§ 871

If a party was in error concerning the content of the declaration he provided or the declaration received by the other party, and if that error concerns the main issue or a significant characteristic of that main issue in regard to which the intent was primarily directed and declared, then the party shall not be bound, provided that the error was caused by the other party or the error should have been evident to the other party under the circumstances or the error was clarified in a timely manner.

§ 872

But if the error does not concern the main issue or a significant characteristic of that issue, but rather an incidental circumstance, then the contract shall remain valid, provided that both parties agreed to the main issue and did not declare the incidental circumstance to be the primary intent; the author of the error shall be liable only for appropriate compensation to the misled party.

§ 874

In any event, the party who effected a contract through bad faith or unjust fear shall grant satisfaction for adverse consequences.

§ 879

- 1) A contract in violation of a legal prohibition or good morals shall be void.
- 2) In particular, the following contracts shall be void:
 1. if something is stipulated for the negotiation of a marriage contract;
 2. if an attorney claims, in whole or in part, the award of a legal dispute entrusted to him or obtains the promise of a certain part of the amount awarded to the party;
 3. if an inheritance or bequest one hopes to obtain from a third party is sold while that third party is still alive;
 4. if someone exploits the carelessness, plight, weakness of mind, inexperience, or mental agitation of another person by obtaining the promise of consideration for himself or a third party in return for a service or by accepting such consideration, where the value thereof is strikingly disproportionate to the value of the service provided.

3) A clause contained in pre-formulated terms of business that does not define one of the main reciprocal performances shall in any event be void if, taking account of all circumstances of the case, it leads to a considerable disproportion of the contractual rights and duties to the detriment of one of the contracting parties.

§ 1323

1) In order to compensate damage caused, everything must be restored to its previous state or, if this is not feasible, the estimated value must be reimbursed. If the compensation concerns only the damage suffered, it shall be referred to as indemnification, but if it also extends to loss profit and repayment for insults caused, it shall be referred to as full satisfaction.

2) This provision shall be subject to § 35 of the Final Part of the Law on Persons and Companies (PGR).

§ 1479

All rights against a third party, whether incorporated into public books or not, shall therefore as a rule expire at the latest after thirty years of disuse or tacit consent.

§ 1487

The following rights must be asserted within three years: to contest a last will and testament; to demand the legal share or to supplement it; to revoke a donation due to ingratitude of the donee or to assert a claim against the donee due to reduction of the legal share; to cancel half of a contract for pecuniary interest due to breach or to contest the division of common property; to assert a claim due to fear or error in the conclusion of a contract, provided the other contracting party was not guilty of bad faith. After three years, these rights shall expire.

D. Annulment

Art. 106 of the National Administration Act

1) The Administrative Court acting as the supervisory authority shall, on application of a party, pursuant to a supervisory complaint, or pursuant to official information, declare a decree or decision null and void, whether such decree or decision would be suitable to have legal effects (voidability) or not (nullity), by way of a revision ex officio (article 105) or where applicable upon application of a party (report) in complaint proceedings (articles 90, 96, 98, 100, and 102):

a) for the purpose of eliminating a substantial violation of public rights or interests that must necessarily be observed in accordance with the mandatory legal provisions governing the administrative procedure or otherwise in accordance with the Constitution, the laws, or ordinances in force; or to preserve the rights and interests of a party that must be taken into account under mandatory public law;

b) due to lack of subject matter or territorial competence of the authority (official) that issued the decision or decree; unless there is an exception under article 90(7);

c) if the decree or decision orders something that is factually or legally impossible, i.e., especially where it violates a mandatory precept or prohibition under law; if the preconditions for issuing a decree or decision were entirely lacking or discretion was blatantly exceeded or abused, or finally

d) if the administrative act was obtained fraudulently through incorrect information.

2) A decision, decree, or administrative order may be annulled due to substantial violation of public rights or interests only if public law requires that such rights or interests be taken into account and they have not been taken into account at all in the present case. In this case, however, annulment in the mere interest of a party may occur only if the legal position of third parties in good faith, other than the person in need of redress, is not violated and the legal finality of the administrative decision does not defeat the annulment.

3) Without prejudice to discontinuation (article 107), the Administrative Court may, depending on the situation in the matter at hand:

a) repeal the administrative act in whole or in part with effect from the day of the annulment or retroactively to the day it was issued, to the extent partial repeal is possible, and in the latter case it shall precisely designate the parts repealed;

b) after repeal (elimination), order the lower instance to carry out a new deliberation and decision on the basis of new findings, where appropriate.

4) If the lower instance is ordered to make a new decision on the basis of the old facts, then the lower instance shall be bound by the legal view of the Administrative Court.

5) If the Government receives a report or presentation regarding nullity of a decision or decree issued by itself or another official, or if it identifies a ground for annulment ex officio, then it shall withdraw the administrative act in accordance with the preceding provisions and those governing presentation, or it shall issue a replacement depending on the matter at hand.

6) Those involved shall be heard before a new decision is issued, and they shall be informed of that new decision and of the repeal.

7) Those involved may, by way of a complaint, appeal decisions made by the lower instance.

320. With regard to the rights of third parties acquired in good faith, see for example the following provisions of the General Civil Code (ABGB):

Statutory period for adverse possession

Ordinary period

§ 1466 ABGB

A person shall acquire moveable property belonging to a third party by adverse possession by having the property in his or her possession without interruption and challenge for a period of five years in good faith (Article 196 of the Law on Property).

Art. 3 Law on Property

II. Good faith

1) Where the law makes a legal effect dependent on the good faith of a person, good faith shall be presumed.

2) A person may not invoke good faith if the person was unable to exercise good faith in terms of the attention demanded under the circumstances.

Art. 172 Law on Property

1. Transfer of possession

1) A transfer of ownership of chattels shall require the succession of possession to the acquirer.

2) Anyone who in good faith receives movable property into his or her ownership shall, even if the transferor is not entitled to transfer the ownership, be deemed the owner of the property as soon as he or she is protected with regard to possession of the property in accordance with the rules of possession.

(b) Observations on the implementation of the article

321. Liechtenstein has not signed the CoE Civil Law Convention.

322. Concerning procurement, there is no debarment or blacklisting procedure but a bidder has to submit information on his criminal record (natural persons).

323. Having said this, the reviewing experts concluded that Liechtenstein law is nevertheless in compliance with Art. 34 UNCAC.

Article 35. Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

324. Liechtenstein has confirmed that it has fully adopted and implemented these measures.

325. In Liechtenstein all victims - natural and legal persons -, who have suffered damage as a result of a crime have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation. This right can be asserted both in criminal and civil proceedings. This principle works for all offenses, including those related to corruption. According to § 32 CPC, victims of offences may make claims for compensation in criminal proceedings and may join criminal proceedings as private participants. In the interest of the victim but also for the purpose of concentrating proceedings and avoiding civil proceedings after the conclusion of criminal proceedings, § 32a(2) CPC permits a civil settlement between the victim and the person accused before the criminal court. When criminal proceedings have started before the criminal court the victim, i.e. the person (physical or legal) who has suffered damage as a result of that crime, can sue for damages in the criminal court. Consequently, the judge in addition to the sentence decides the amount of damages in case the plaintiff is entitled to receive compensation. The victim can also decide differently to sue to recover damages caused by the offender in civil court (§ 1295 ABGB).

§ 32(1) Criminal Procedure Code (CPC)

Any person injured with respect to his rights by a crime or a misdemeanour to be prosecuted ex officio may, until the beginning of trial, declare that he will join the criminal proceedings as a civil claimant with regard to his claims under private law. The declaration may be withdrawn at any time. Unless evident, the entitlement to participate in the proceedings and the claims for damages or compensation must be justified. The declaration shall be denied by the court if it is evidently unjustified or was submitted too late.

§ 32a(2) CPC

2) At trial, the court shall at all times record any settlement on claims under private law. It may also, either on application or ex officio, summon the civil claimant and the charged person to attempt a settlement, and it may prepare a proposal for a settlement. If a settlement is reached, then the civil claimant, the Office of the Public Prosecutor, and the charged person shall be furnished with copies of the settlement.

§ 1295 ABGB

1) Everyone shall be entitled to demand compensation from an injuring party for damages the injuring party has culpably caused to the claimant; the damage may have been caused by breach of a contractual duty or without any relationship to a contract.

2) Also, anyone who intentionally causes damage in a manner contrary to good morals shall be responsible for that damage, but if this occurred in the exercise of a right, then only if the exercise of the right evidently had the purpose of injuring the other person.

3) If a contractual obligation of omission has been breached by the obligor and if the obligor persists in the conduct in breach of the contract despite having agreed not to, then the obligee may sue for elimination of the unlawful conduct (cessation) and omission of future unlawful conduct, and where the conduct is culpable, the obligee may sue for damages.

§ 1311 ABGB

A sheer coincidence shall be deemed to affect those in relation to whose property or person the coincidence occurs. But if someone has culpably brought about the coincidence, or if he breaks a law intended to prevent the coincidental damage, or if he has unnecessarily interfered in the affairs of others, then he shall be liable for all disadvantages that otherwise would not have occurred.

326. The Office of Justice does not know whether any damages have been paid in Liechtenstein in the context of corruption offences. In light of the fact that no major domestic corruption proceedings have been carried out in Liechtenstein, the probability that damages have been paid in these proceedings is rather small.

(b) Observations on the implementation of the article

327. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 35 UNCAC.

Article 36. Specialized authorities

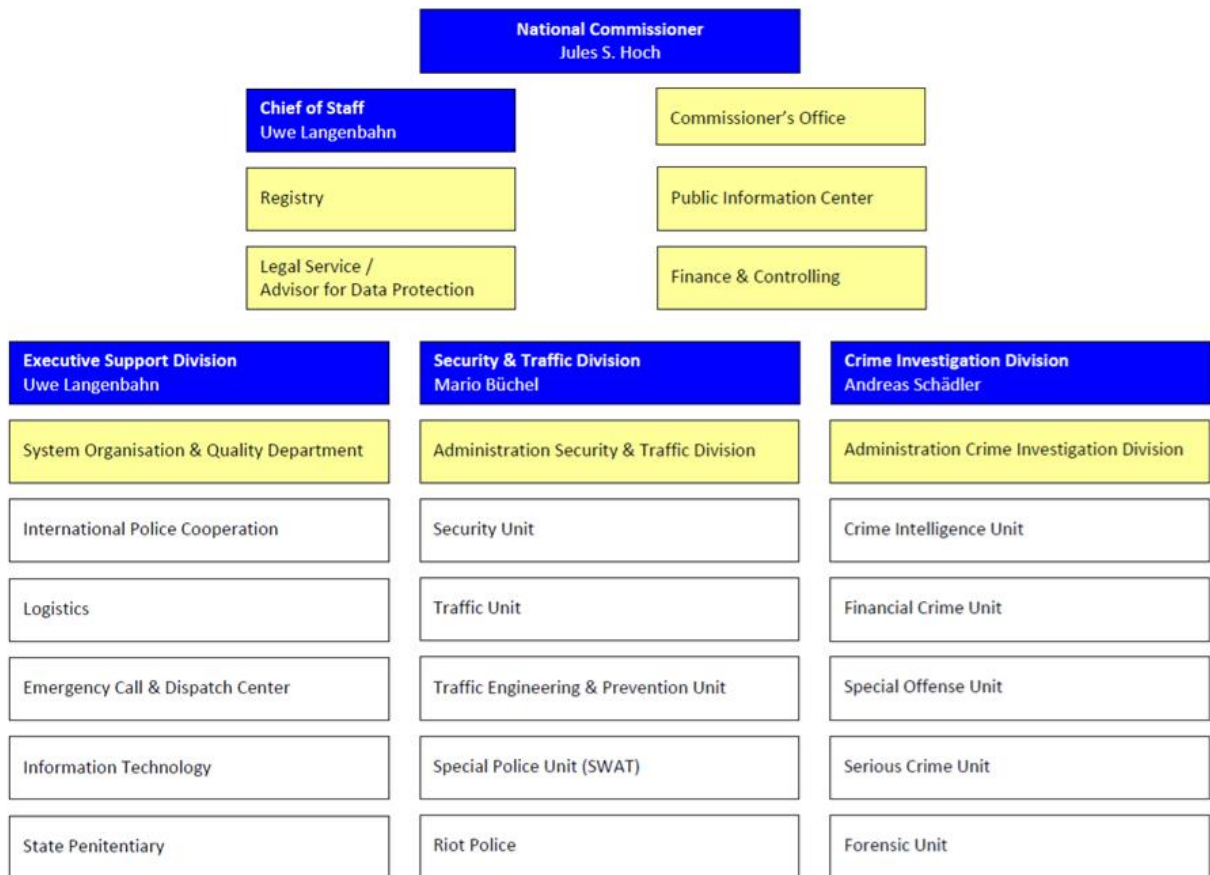
Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

328. Liechtenstein has confirmed that it has fully adopted and implemented these measures.

329. By Government Instruction RA 2007/3367 of 4 December 2007 on the implementation of the fight against corruption in Liechtenstein, the Government designated the National Police as the authority responsible for investigating corruption and instructed it to appoint and train specialized corruption investigators within the criminal police.

330. The specialized corruption investigators, who are also responsible for internal investigations against police officers, consists of the Chief of the Criminal Police, the Head of the Financial Crime Unit and his deputy, in total three senior investigators. The Financial Crime Unit is part of the Crime Investigation Division (CID), which has 9 staff members. They are supervised by the Chief of the Criminal Police.



331. The specialized corruption investigators regularly take part in events on the topic in Switzerland and maintain contact with the Federal Bureau of Anti-Corruption (BAK) in Austria, with which exchange of experience (best practice) is also carried out.
332. During the period from January 2011 to November 2013, the corruption investigators conducted or dealt with a total of 13 proceedings/cases involving breaches of official duties (6 cases for breach of official secrecy, 6 cases for abuse of official powers, and 1 case for negligent violation of the freedom of the person or residence). The planned whistleblower website (see Art. 33 UNCAC) will be managed by the National Police.
333. The Liechtenstein National Police has been a member of Interpol since 1960; it is also an associate member of Europol and the SIRENE (Supplementary Information Request at the National Entry) network. There is close police-to-police cooperation with Austria and Switzerland.
334. The corruption investigators are authorized by the Government to communicate directly with the Office of the Public Prosecutor in corruption cases. They do not have to follow the usual official channels of communication. Senior police bodies do not have to be informed of ongoing corruption investigations. The specialized corruption investigators interact directly with the Office of the Public Prosecutor. (See RA 2007/3367 on cooperation with the justice authorities.)
335. The status of prosecutors is laid down in the Act on the Office of the Public Prosecutor (*Staatsanwaltschaftsgesetz*). According to this act, prosecutors cannot be instructed to drop

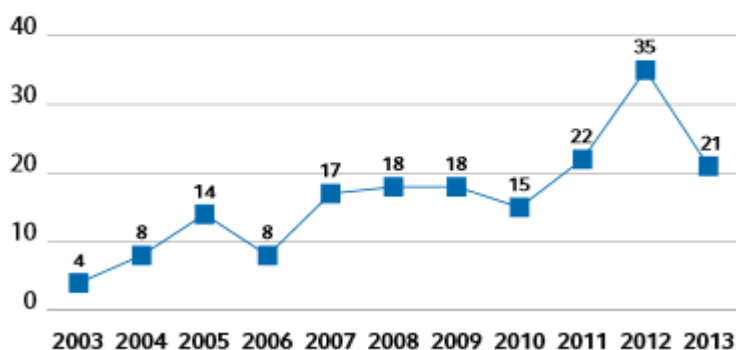
prosecution. An instruction is only possible in order to prosecute. Every three months, prosecutors have to report about their main activities. However, no approval required for prosecution of sensitive cases. In criminal cases, closing the file requires approval from a second prosecutor.

336. The prosecution service comprises 7 prosecutors. There are no dedicated anti-corruption prosecutors.

337. The Liechtenstein Court of Justice (first instance) has 14 judges. 4 judges work as investigating judges and oversee investigations until they are finished and handed over to the prosecution. The Court of Justice is also responsible for MLA. There are no specialised anti-corruption judges.

338. The Financial Intelligence Unit (FIU) is an administrative type FIU; it does not investigate cases. It was established in 2001 and is a member of the Egmont Group. The FIU has 10 staff members. Pursuant to the Due Diligence Act (§ 18(2)), subsequent to a suspicious activity report (STR), persons subject to due diligence shall refrain from all actions that might obstruct or interfere with any order by the court at most until the conclusion of five business days from receipt by the FIU of the STR, unless such actions have been approved in writing by the FIU. Since 2003, a total of 180 STRs with a probable connection to corruption offences have been reported.

Corruption offences



(b) Observations on the implementation of the article

339. The reviewing experts concluded that Liechtenstein has implemented Art. 36 UNCAC.

(c) Successes and good practices

340. The creation of a specialised unit within the criminal police despite the tiny size of the country was considered a good practice by the reviewers.

Article 37. Cooperation with law enforcement authorities

Paragraph 1

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

341. Liechtenstein has confirmed that it has partially adopted and implemented these measures.
342. In addition to judicial protection of witnesses (witnesses' rights of refusal, especially confidentiality of the identity of witnesses in accordance with § 119a of the Criminal Procedure Code (CPC) or questioning using communication technologies in accordance with § 115a(2) of the Criminal Procedure Code), comprehensive extrajudicial witness protection rules were introduced in the Police Act (PA) and the Criminal Code (CC) in March 2014. These include measures such as behavioural advice, provision of aids such as new mobile phone numbers or an emergency number, personal security, temporary housing at a secure location, and also specific measures such as data blocks, the establishment of a new identity, relocation to a new place of residence, finding a new job, and securing a livelihood.
343. New provisions in the Police Act: Article 2(1)(p): Protects persons who are involved in solving a serious offence through criminal proceedings and are therefore especially at risk, as well as any relatives of these persons; Article 30d: Witness protection; Article 30e: Establishment of a new identity; Article 30f: Blocking of data disclosure; notification and surrender obligation; Article 30g: Involvement of third parties.
344. New provisions in the Criminal Code (CC): § 41a Extraordinary mitigation of sentences for cooperation with law enforcement authorities: In connection with the expansion of rules protecting witnesses, the institution of extraordinary mitigation of sentences (see § 41 of the Criminal Code) was also expanded by introducing a "minor leniency rule", which increases the incentive for members of criminal groups to leave the organization and cooperate with law enforcement authorities. This gives the court the option to reduce the sentence below the minimum penalty required by law if the conditions are met.

§ 41a of the Criminal Code (new)

Extraordinary mitigation of sentences for cooperation with law enforcement authorities

1) If the perpetrator of an offence referred to in §§ 277, 278, 278a, or 278b or an offence connected with such a conspiracy, group, or organization discloses his knowledge of facts to a law enforcement authority, and the knowledge of such facts contributes significantly to

1. eliminating or substantially reducing the danger resulting from the conspiracy, group, or organization,
2. helping solve such an offence beyond his own contribution to the offence, or
3. determining a person who participated in such a conspiracy or played a leading role in such a group or organization, then the minimum penalty provided by law may be reduced in

accordance with § 41, provided this corresponds to the importance of the disclosed facts in proportion to the culpability of the perpetrator. § 41(3) shall apply mutatis mutandis.

2) If the knowledge of the perpetrator relates to offences not covered by Liechtenstein criminal laws, paragraph 1 shall nevertheless apply, to the extent the provision of mutual legal assistance would be permissible.

345. In addition to these developments and in an advanced stage is the public consultation procedure regarding a revision of the State Employees Act (SEA) for the implementation of new provisions concerning i.a. the protection of “whistleblowers” and “witnesses”.

(b) Observations on the implementation of the article

346. Liechtenstein encourages perpetrators of offences to cooperate with law enforcement by offering mitigation of sentences. Cooperation with the law enforcement by an accused who contributes to helping solve an offence can result in mitigation of sentencing. It is planned that the police will soon operate a whistleblower website (see Art. 33 UNCAC). All citizens are entitled to report offences to the police (§ 55 CPC).

347. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 37(1) UNCAC.

Paragraph 2

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

348. Liechtenstein has confirmed that it has fully adopted and implemented these measures.

349. § 41 in conjunction with § 34(1)(15) to (17) of the Criminal Code (CC) provides for mitigation of sentences for cooperative suspects - also for corruption offences.

§ 41

Extraordinary mitigation of sentences

1) If the mitigating causes considerably outweigh the aggravating causes and if there is a well-founded prospect that the perpetrator will not commit any further offences even if a penalty less than the minimum penalty of imprisonment provided by law is imposed, then the following penalties may be imposed:

1. if the act carries a penalty of imprisonment for life or a penalty of imprisonment of ten to twenty years or for life, a penalty of imprisonment of not less than one year;

2. if the act does not carry a penalty of imprisonment for life, but it does carry a penalty of imprisonment of at least ten years, a penalty of imprisonment of not less than six months;

3. if the act carries a penalty of imprisonment of at least five years, a penalty of imprisonment of not less than three months;

4. if the act carries a penalty of imprisonment of at least one year, a penalty of imprisonment of not less than one month;

5. if the act carries a lesser penalty of imprisonment, a penalty of imprisonment of at least one day.

2) Under the conditions set out in paragraph 1(3) and (4), the penalty imposed must nevertheless be imprisonment of at least six months if the act resulted in the death of a person (§ 7(2)), even where that circumstance determines the penalty provided.

§ 34

Special mitigating causes

1) It shall in particular be a mitigating cause if the perpetrator: ...

15. seriously endeavoured to rectify the damage caused or to prevent other negative consequences;

16. turned himself in, although he easily could have escaped or it was probable that he would remain undiscovered;

17. made a remorseful confession or, though his statement, contributed substantially to establishing the truth;

350. In the case of corruption connected with organized crime or corruption crimes (see also § 41a of the Criminal Code (new) on extrajudicial protection of witnesses), the minimum sentence provided by law for the offence may be reduced for perpetrators who cooperate with the law enforcement authorities.

§ 41a of the Criminal Code (new)

Extraordinary mitigation of sentences for cooperation with law enforcement authorities

1) If the perpetrator of an offence referred to in §§ 277, 278, 278a, or 278b or an offence connected with such a conspiracy, group, or organization discloses his knowledge of facts to a law enforcement authority, and the knowledge of such facts contributes significantly to

1. eliminating or substantially reducing the danger resulting from the conspiracy, group, or organization,

2. helping solve such an offence beyond his own contribution to the offence, or

3. determining a person who participated in such a conspiracy or played a leading role in such a group or organization, then the minimum penalty provided by law may be reduced in accordance with § 41, provided this corresponds to the importance of the disclosed facts in proportion to the culpability of the perpetrator. § 41(3) shall apply *mutatis mutandis*.

2) If the knowledge of the perpetrator relates to offences not covered by Liechtenstein criminal laws, paragraph 1 shall nevertheless apply, to the extent the provision of mutual legal assistance would be permissible.

(b) Observations on the implementation of the article

351. During the country visit, the Liechtenstein authorities pointed out that while there was no plea bargaining in Liechtenstein, according to § 22a to 22n CC, the prosecution can drop charges and e.g. only impose a fine in return for cooperation (*Diversio*). This could be used in practice as an incentive for an offender to cooperate with the prosecution service.

352. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 37(2) UNCAC.

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with the fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

353. Liechtenstein has confirmed that it has not adopted or implemented these measures.

354. A full immunity is not provided for in Liechtenstein due to the specific design of the principle of legality and the requirement of equal treatment.

(b) Observations on the implementation of the article

355. Liechtenstein has not implemented this paragraph. However, since § 41a CC was introduced to offer immunity for some offences (*kleine Kronzeugenregelung*), the obligation to consider is fulfilled.

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

356. Liechtenstein has confirmed that it is in compliance with this provision.

357. In addition to judicial protection of witnesses (witnesses' rights of refusal, especially confidentiality of the identity of witnesses in accordance with § 119a of the Criminal Procedure Code (CPC) or questioning using communication technologies in accordance with § 115a(2) of the Criminal Procedure Code), comprehensive extrajudicial witness protection rules were introduced in the Police Act (PA) and the Criminal Code (CC) in July 2014. These include measures such as behavioural advice, provision of aids such as new mobile phone numbers or an emergency number, personal security, temporary housing at a secure location, and also specific measures such as data blocks, the establishment of a new identity, relocation to a new place of residence, finding a new job, and securing a livelihood.

See: new provisions in the Police Act

Article 2(1)(p): Protects persons who are involved in solving a serious offence through criminal proceedings and are therefore especially at risk, as well as any relatives of these persons.

Article 30d: Witness protection

Article 30e: Establishment of a new identity

Article 30f: Blocking of data disclosure; notification and surrender obligation

Article 30g: Involvement of third parties

See: new provisions in the Criminal Code (CC)

§ 41a Extraordinary mitigation of sentences for cooperation with law enforcement authorities

358. In connection with the expansion of rules protecting witnesses, the institution of extraordinary mitigation of sentences (see § 41a of the Criminal Code) was also expanded by introducing a "minor leniency rule", which increases the incentive for members of criminal groups to leave the organization and cooperate with law enforcement authorities. This gives the court the option to reduce the sentence below the minimum penalty required by law if the conditions are met.
359. The new provisions in the Police Law and the Criminal Code have just been incorporated at the beginning of 2014. No examples of cases nor numbers available so far.

(b) Observations on the implementation of the article

360. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 37(4) UNCAC.

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

361. Liechtenstein has confirmed that it has fully adopted and implemented these measures.
362. The UNCAC treaty itself is the relevant legal basis. No other agreements have been concluded.
363. Liechtenstein has indicated that so far, there have not been such cases.

(b) Observations on the implementation of the article

364. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 37(5) UNCAC.

Article 38. Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

365. Liechtenstein has confirmed that it is in full compliance with this article.

366. Liechtenstein cited the following applicable measures

§ 8 Criminal Procedure Code (CPC)

1) The courts, the Office of the Public Prosecutor, and the National Police shall be required to provide reciprocal administrative assistance for the performance of duties under this law, and they shall be entitled to request support from all authorities of the State and the municipalities. These authorities shall execute such requests without unnecessary delay or shall immediately indicate any obstacles to their execution.

2) Requests as referred to in paragraph 1 that refer to offences committed by a specific person may, with reference to existing legal obligations to maintain secrecy or to the fact that data in question is automatically processed personal data, be refused only if these obligations are expressly imposed also vis-à-vis the court or if responding to the request would violate preponderant public interests, which must be indicated and justified in detail.

3) The courts, the Office of the Public Prosecutor, and the National Police shall be entitled to provide information regarding personal data obtained in accordance with this law for the purpose of security administration, administration of justice, and supervision of the lawfulness of the actions by the abovementioned bodies. Apart from that, the transmission of data to authorities other than the National Police, the Office of the Public Prosecutor, and the court shall be permissible only if covered by an explicit authorization by law.

4) If a request is refused or if the request is complied with only incompletely or with a delay, the court, the Office of the Public Prosecutor, or the National Police shall report this fact to the competent authority so that a remedy can be found in the appropriate way. If this duty is neglected, the prosecution authorities may not assert the delays caused by another authority as a justification for delaying the proceedings. If, however, a request by the Office of the Public Prosecutor for administrative or legal assistance is not or not fully complied with by a requested court, then the Court of Appeal shall, on application of the Office of the Public Prosecutor and without prior oral hearing, decide on the lawfulness of the omitted administrative or legal assistance or on any other subject of the difference of opinion.

367. § 53 ff of the Criminal Procedure Code govern cooperation between domestic authorities and officials on the one side and the authorities responsible for the investigation and prosecution of offences on the other side, stipulating an obligation to report.

368. Article 25(1) of the National Administration Act also sets out a mutual obligation of assistance for administrative authorities and courts.

§ 53 CPC

1) If an authority, within its legal scope of activities, gains knowledge of a suspicion of an offence subject to ex officio prosecution, it is required to report the suspicion to the Office of the Public Prosecutor or the National Police.

2) There is no reporting obligation under paragraph 1:

1. if the report would adversely affect an official activity whose effectiveness requires a personal relationship of trust, or

2. if and as long as there are sufficient grounds to assume that the punishability of the offence will be eliminated in the near future pursuant to measures to remedy the damage.

3) The authority must in any event do everything necessary to protect the injured party or other persons from danger; where necessary, reports must also be filed in cases covered by paragraph 2.

4) The reporting obligation of the National Police and the courts as well as reporting obligations set out in other laws shall remain unaffected.

§ 54 CPC

1) The obligation to file a report specified in detail in § 53 shall in particular also apply to the courts.

2) The courts shall be obligated to provide all necessary clarifications to the Office of the Public Prosecutor and the Criminal Court (§ 12) and to transmit the records they require as originals or certified copies.

§ 55 CPC

1) Anyone who gains knowledge of an offence shall be entitled to report it. Not only the Office of the Public Prosecutor shall be obligated to receive the report, but also the investigating judge and the National Police. They shall forward the report to the Office of the Public Prosecutor.

2) If there are sufficient reasons to assume that a person is committing an act subject to judicial penalty, has just committed such act, or is being sought for such act, then everyone shall be entitled to arrest that person in an appropriate manner. However, the arrest must be notified immediately to the next reachable organ of the National Police.

§ 56 CPC

1) The Public Prosecutor is required to consider all reports he receives of offences subject to ex officio prosecution, as well as to investigate all clues relating to such offences that come to his attention. He shall also participate in the discovery of unknown perpetrators by examining grounds for suspicion in that regard.

2) If nameless reports or those originating from entirely unknown persons contain specific, credible circumstances describing the offence, then these circumstances must indeed be examined; however, this shall be done without drawing undue attention and without damaging the honour of the charged person to the extent possible.

3) If, by way of a report of an offence or other notification by a person, the Office of the Public Prosecutor gains knowledge of an offence that is subject to investigation not only at the request of an involved person, then the Office of the Public Prosecutor is required to arrange questioning of that person, to trace the report or notification back to its origins with the

participation of the National Police, and, to the extent possible, to convince itself whether these steps are able to substantiate any suspicion.

4) Repealed

§ 57 CPC

1) As long as there has been no application by the Public Prosecutor, the investigating judge shall conduct only those investigative acts that cannot be delayed without endangering the purpose or without missing a legal deadline. The investigating judge shall inform the Public Prosecutor of those acts carried out and shall then wait for the Public Prosecutor's applications.

2) The investigating judge shall communicate the records prepared on investigative acts referred to in paragraph 1 to the Public Prosecutor as quickly as possible so that the Public Prosecutor may file applications accordingly.

§ 58 CPC

Provided that the report contains specific circumstances that credibly refer to an offence, a report filed anonymously or by an unknown person shall also be used as a basis for examining such circumstances.

Art. 25 of the National Administration Act

Administrative assistance

1) The administrative authorities (officials) and organs of the State and the municipalities as well as the courts shall provide mutual assistance to each other when carrying out or implementing administrative acts (administrative assistance, official assistance), whether such assistance is otherwise stipulated by law or not.

369. Information events for heads of offices of the National Administration (28.11.2013) on the reporting obligation and cooperation with specialized corruption investigators (awareness raising).
370. Officials are also under a general obligation to report to the Office of the Public Prosecutor or the National Police when they gain knowledge of corruption offences. Corruption training for all full-time and part-time police officers in April 2011.
371. Liechtenstein has set up a AML/CFT Working Group ("PROTEGE") that is responsible to coordinate all AML/CFT related activities. It is also mandate to coordinate operational activities, including such related to corruption. The AML/CFT Working Group is chaired by the Director of the FIU and meets 4-6 times a year. The WG Chair reports to the Prime Minister and to the Minister of Foreign Affairs every 3 months on the activities of the Working Group.
372. In addition, the Prosecutor General, the Director FIU, the CEO of the FMA, the Head of the Criminal Police, and the Directors of the Foreign Office, the Tax Administration and the Office for International Financial Affairs meet on a quarterly basis, to inform each other on current developments (ERFAG-Group).
373. Due to the smallness of the country, all relevant decision takers meet regularly, sometimes weekly, to discuss operational matters.
374. The FIU and the Office of the Public Prosecutor has quarterly meetings to review the disseminated cases and to allow documentation of follow up.

375. Art. 25 LVG, Art. 36 DDA, Art. 9 FIU Act, §10 StPO (Criminal Procedure Ordinance), § 53 StPO, all provide for sufficient legal ground to exchange information between authorities.

376. As already explained in regard to article 36 (Examples of implementation), corruption investigators carried out a total of 13 proceedings on breaches of official duties between January 2011 and November 2013. One case resulted in judicial proceedings in October 2012; the suspect was sentenced to a suspended monetary penalty of 150 daily rates at CHF 200.00 (total of CHF 30,000.00) for breach of official secrecy (probationary period of 3 years). No other court judgments are known.

(b) Observations on the implementation of the article

377. There are a combination of obligations and rights to report or notify law enforcement of suspected commissions of offences.

378. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 38 UNCAC.

Article 39. Cooperation between national authorities and the private sector

Paragraph 1 of article 39

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

379. Liechtenstein has confirmed that it has fully adopted and implemented these measures.

380. All relevant associations have quarterly meetings with the Financial Markets Authority (FMA) as well as the Financial Intelligence Unit (FIU). The FMA was founded in 2007 as an independent supervisory authority. It has around 80 staff members. Furthermore, there are regular discussions with the management of different financial institutions and Designated Non-Financial Businesses and Professions (DNFBP) and the FMA/FIU. All relevant associations participate actively in legislative processes. According to Art. 28 (3) Due Diligence Act (DDA) the FMA may issue instructions interpreting the provisions of the DDA and Due Diligence Ordinance (DDO) on recommendation of the industry.

Article 28 DDA Supervisory measures

3) On recommendation of the business associations, the FMA may, after hearing the views of the Financial Intelligence Unit, issue instructions interpreting the provisions of this Act and the implementing ordinances as appropriate to each industry.

Information of the Office of the Public Prosecutor:

Pursuant to § 53 CPC every authority which, within its legal scope of activities, gains knowledge of a suspicion of an act subject to ex officio prosecution, is required to report the suspicion to the Office of the Public Prosecutor or the National Police. The reporting obligation does not apply if it would adversely affect an official activity whose effectiveness requires a personal relationship of trust. Moreover, the reporting obligation is waived if there are sufficient grounds to assume that the punishability of the act will be eliminated in the near future pursuant to measures to remedy the damage. But a report has to be made in such cases, if it is required for protection of the injured party.

The reporting obligation in particular also applies to the courts (§ 54 CPC).

Additionally, the administrative authorities, the organs of the State and the municipalities, and the courts of the country are required to provide mutual help in accordance with article 25 LVG.

Also in regard to article 39 UNCAC, please refer to the right of everyone to report and the obligation to report under § 55 of the Criminal Procedure Code. This provision sets out the right for a private person to file a report. Also see Report and Application 2013/95 on the "minor leniency rule".

§ 53

1) If an authority, within its legal scope of activities, gains knowledge of a suspicion of an offence subject to ex officio prosecution, it is required to report the suspicion to the Office of the Public Prosecutor or the National Police.

2) There is no reporting obligation under paragraph 1:

1. if the report would adversely affect an official activity whose effectiveness requires a personal relationship of trust, or

2. if and as long as there are sufficient grounds to assume that the punishability of the offence will be eliminated in the near future pursuant to measures to remedy the damage.

3) The authority must in any event do everything necessary to protect the injured party or other persons from danger; where necessary, reports must also be filed in cases covered by paragraph 2.

4) The reporting obligation of the National Police and the courts as well as reporting obligations set out in other laws shall remain unaffected.

§ 54 CPC

1) The obligation to file a report specified in detail in § 53 shall in particular also apply to the courts.

2) The courts shall be obligated to provide all necessary clarifications to the Office of the Public Prosecutor and the Criminal Court (§ 12) and to transmit the records they require as originals or certified copies.

§ 55 CPC

1) Anyone who gains knowledge of an offence shall be entitled to report it. Not only the Office of the Public Prosecutor shall be obligated to receive the report, but also the investigating judge and the National Police. They shall forward the report to the Office of the Public Prosecutor.

2) If there are sufficient reasons to assume that a person is committing an act subject to judicial penalty, has just committed such act, or is being sought for such act, then everyone shall be entitled to arrest that person in an appropriate manner. However, the arrest must be notified immediately to the next reachable organ of the National Police.

381. Currently there are different working groups for example on the implementation of the new FATF standard in which the relevant associations participate.

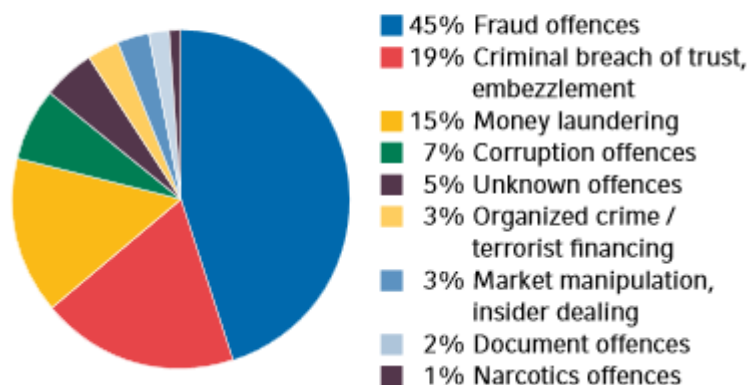
(b) Observations on the implementation of the article

382. All relevant financial institutions meet regularly with the Financial Market Authority as well as the Financial Intelligence Unit. The CPC requires that every authority which gains knowledge of a suspicion of an offence report this suspicion to the Office of the Public Prosecutor.

The SARs pursuant to the DDA received by the FIU in the years 2011 to 2013 came from the following sectors:

Sector	2011	2012	2013
Banks	126	199	185
Professional trustees	67	76	51
Payment service providers (PSPs)	n/a	n/a	21
Insurances/insurance intermediaries	37	29	16
Public authorities	21	3	10
Lawyers	5	2	7
Asset management	1	3	1
Dealers in goods	1	1	1
Investment undertakings	0	0	1
Auditors/audit companies	31	5	0
Total:	289	318	293

Predicate offences



383. With regard to the work of the FIU, reference is also made to the answer on Art. 36 UNCAC above.

384. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 39(1) UNCAC.

Paragraph 2 of article 39

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

385. Liechtenstein has confirmed that it has fully adopted and implemented these measures.

386. In a directive to the National Police in December 2007, the Government ordered the creation of an investigation unit within the National Police specialising in corruption offences. The members of this unit receive specialised training and are responsible for investigating such offences. In contrast to the official chain of command, the corruption investigators must immediately inform the Office of the Public Prosecutor when they gain knowledge of a corruption offence. The executive staff of the National Police implemented this Government directive internally and appointed the special investigators for corruption offences within the Criminal Police.

§ 55 Code of Criminal Procedure (CPC)

1) Anyone who gains knowledge of an offence shall be entitled to report it. Not only the Office of the Public Prosecutor shall be obligated to receive the report, but also the investigating judge and the National Police. They shall forward the report to the Office of the Public Prosecutor.

2) If there are sufficient reasons to assume that a person is committing an act subject to judicial penalty, has just committed such act, or is being sought for such act, then everyone shall be entitled to arrest that person in an appropriate manner. However, the arrest must be notified immediately to the next reachable organ of the National Police.

(b) Observations on the implementation of the article

387. There is no reporting obligation – but a reporting right – for citizens.

388. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 39(2) UNCAC.

Article 40. Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

389. Liechtenstein has confirmed that it has fully implemented this provision.
390. According to Art. 14 Paragraph 2 Banking Act, banking secrecy does not apply to cases of criminal or supervisory investigations. Art. 28 (4) DDA grants the FMA access to any information held by persons subject to due diligence that it may need to carry out its supervisory functions for purposes of the DDA.

Art. 14 Banking Act Banking Secrecy:

- 1) The members of the governing bodies of banks and their employees as well as any persons otherwise working for such banks shall keep secret all facts that they are entrusted with or that become accessible by them as a result of the business relations with clients. The obligation of secrecy shall apply without any time limit.
- 2) Paragraph 1 is without prejudice to the legal provisions on the obligation to give testimony or information to the criminal courts and to supervisory bodies as well as the provisions on cooperation with other supervisory authorities.

Article 28 DDA Supervisory measures

- 4) The FMA may demand from the persons subject to due diligence as well as from those mandated to inspect pursuant to article 24, paragraph 5 or 6 all information and records it requires to fulfil its supervisory activities for the purposes of this Act. The FIU shall obtain information necessary for its functions.

Article 17 DDA Obligation to report to the FIU

- 1) 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). Likewise, all offices of the National Administration and the FMA are subject to the obligation to report to the FIU. By ordinance, the Government shall specify the procedure for submitting reports.

Article 26 DDO Report to the FIU

- 2) The Financial Intelligence Unit confirms the date of the receipt of the suspicious transaction report in written form. It [The FIU] can request additional necessary information in relation to the suspicious transaction report from the reporting entity as well as from other parties concerned, after the receipt of the suspicious transaction report. The requested information shall be submitted without undue delay; if necessary the Financial Intelligence Unit can set a deadline for its submission.

Art. 98a Criminal Procedure Code permits the criminal court to order banks, finance companies, asset management companies, insurance undertakings, and investment undertakings to provide any information that is required to solve a criminal case involving ML/FT, organized crime or a predicate offence.

Article 98a Criminal Procedure Code

- 1) To the extent it appears necessary for solving a case of money laundering within the meaning of the Criminal Code, a predicate offence of money laundering, or an offence in connection with organized crime, banks, investment firms, insurance companies, asset management companies, and management companies under the UCITS Act and the Investment Undertakings Act shall be required by judicial ruling:
 1. to disclose the name, other data known to them concerning the identity of a holder of a business relationship, and the address of such person.
 2. provide information on whether a suspect maintains a business relationship with this institution, is a beneficial owner or authorized person of such a business relationship, and, to the extent this is the case, provide all information necessary to precisely determine this business relationship and all documents concerning the identity of the holder of the business relationship and his powers of disposal,

3. all documents and other materials concerning the type and scope of the business relationship and associated business processes and other business transactions in a specific past or future time period.

The same shall apply if, on the basis of particular facts, it must be assumed that the business relationship has been or continues to be used for transacting a pecuniary advantage that was obtained through punishable acts or received for such acts (§20 Criminal Code) or is subject to the power of disposal of a criminal organization or terrorist group or has been made available or collected as means of terrorist financing (§ 20b Criminal Code).

1a) Under the conditions mentioned in paragraph 1, persons working for institutions must testify as witnesses regarding facts that have been entrusted or made available to them pursuant to the business relationship.

(b) Observations on the implementation of the article

391. During the country visit, the Liechtenstein authorities explained that in order to access documents in a criminal case, a court order was needed. However, according to § 14(2) Banking Act, banking secrecy is no valid ground to refuse testimony before a criminal court. Therefore, no lifting of bank secrecy is needed.

392. Liechtenstein does not have a central register of bank accounts. However, due to the small number of banks in the country (16), it was relatively easy to send a court order to all of them. A request for information by a court cannot be challenged before it is executed. The court can impose a time limit for compliance with the request, usually not more than two weeks. There are effective sanctions for non-compliance with the court order.

393. The reviewers concluded that Liechtenstein law is in compliance with Art. 40 UNCAC.

Article 41. Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

394. Liechtenstein has confirmed that it has fully adopted and implemented these measures.

395. Any previous conviction in Liechtenstein or abroad, even outside the EU/EEA, may be taken into account by the competent court when sentencing. For this purpose criminal records may be obtained from other states used in domestic criminal proceedings.

§ 33 Criminal Code Special aggravating causes

It shall in particular be an aggravating cause if the perpetrator: ...

2. has already been convicted of an act arising from the same harmful inclination;

(b) Observations on the implementation of the article

396. During the country visit, Liechtenstein confirmed that § 33 CC is not limited to national convictions.

397. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 41 UNCAC.

Article 42. Jurisdiction

Subparagraph 1 (a) of article 42

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

398. Liechtenstein has confirmed that it is in full compliance with this article.

399. Jurisdiction for offences committed on Liechtenstein territory arises in principle from § 62 CC.

§ 62 CC Offences in Liechtenstein

The Liechtenstein criminal laws shall apply to all acts committed in Liechtenstein.

(b) Observations on the implementation of the article

400. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 42(1)(a) UNCAC.

Subparagraph 1 (b) of article 42

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

...

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

401. Liechtenstein has confirmed that it is in full compliance with this article.

402. If one of the relevant offences is committed on board a Liechtenstein vessel, § 63 of the Criminal Code provides that Liechtenstein criminal law would apply. But Liechtenstein does not maintain a shipping register, i.e., it is not a "flag State".

403. A corresponding rule is also found in § 63 of the Criminal Code for aircraft. But Liechtenstein likewise does not maintain an aircraft register. Switzerland is responsible for supervision of civilian aviation: Exchange of notes of 27 January 2003 between Switzerland and Liechtenstein on the cooperation of Swiss and Liechtenstein authorities in the field of aviation (LGBl. 2003 No. 40, LR 0.748.091.011).

§ 63 CC

Offences on board Liechtenstein ships or aircraft

The Liechtenstein criminal laws shall also apply to acts committed on a Liechtenstein ship or aircraft, irrespective of where the ship or aircraft is located.

(b) Observations on the implementation of the article

404. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 42(1)(b) UNCAC.

Subparagraph 2 (a) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

405. Liechtenstein has confirmed that it has adopted measures to establish its jurisdiction as described above.

406. According to § 64 CC, the national criminal laws apply irrespective of the criminal laws of the place where the offence is committed also in the case of punishable acts committed against a Liechtenstein official during or because of execution of his tasks and punishable acts committed as a Liechtenstein official (§ 64 para. 1(2) StGB), but also in the case of punishable acts that a Liechtenstein citizen commits against another Liechtenstein citizen if both have their residence or habitual abode in Liechtenstein (§ 64 para 1(7) StGB). This rule also applies to participation

407. The Liechtenstein criminal laws also apply irrespective of the criminal laws of the place where the act is committed in the case of participation (§ 12 CC) in a punishable act committed by the immediate perpetrator in Liechtenstein, as well as receiving stolen goods (§ 164 CC) and money laundering (§ 165) with respect to a (predicate) offence committed in Liechtenstein (§ 64 para. 1(9) CC). Moreover, § 64 para. 1(6) CC provides that Liechtenstein jurisdiction applies with respect to other punishable acts which Liechtenstein is required to prosecute. Accordingly, after entry into force of the CoE Criminal Law Convention on Corruption of 27 January 1999 (see 2.1), all offences within the scope of that Convention committed by Liechtenstein citizens abroad will be deemed subject to Liechtenstein criminal laws in accordance with § 64 para. 1(6) CC. If the criminal laws referred to in § 64 para. 1 CC cannot be applied solely because the offence constitutes an act subject to stricter punishment,

then the offence committed abroad must nevertheless be punished in accordance with Liechtenstein criminal laws irrespective of the criminal laws of the place where the crime is committed. (See § 64 CC - Offences abroad that are punished irrespective of the laws of the place where they are committed)

(b) Observations on the implementation of the article

408. Liechtenstein partially applies the passive personality principle (acts against Liechtenstein officials; acts by Liechtensteiners against Liechtensteiners).
409. The passive personality jurisdiction is also applicable to legal persons (§ 74g(1) refers to the general criminal laws).
410. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 42(2)(a) UNCAC.

Subparagraph 2 (b) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

411. Liechtenstein has confirmed that it has adopted measures to establish its jurisdiction as described above.
412. For offences other than those referred to in § 64(1)(7) CC that are committed abroad, § 65 CC stipulates that the Liechtenstein criminal laws shall apply, provided that the offences are also punishable according to the laws of the place where they are committed, (1) if the perpetrator was a Liechtenstein citizen at the time of the offense or acquired Liechtenstein citizenship later and still has it at the time the criminal proceedings are initiated; (2) if the perpetrator was a foreign citizen at the time of the offense, is caught/apprehend in Liechtenstein, and cannot be extradited abroad for reasons other than the type or nature of his offence. The offence shall not be punished, however, (1) if the offense is no longer punishable under the laws of the place where it is committed; (2) if the perpetrator has been acquitted by a final judgment or the prosecution has otherwise been dropped before a court of the State in which the crime is committed; or (3) if the perpetrator has been convicted by a final judgment before a foreign court and the sentence has been enforced in its entirety or, to the extent it has not been enforced, the perpetrator has been released or enforcement of the sentence has become time-barred under the law of the foreign State.

(b) Observations on the implementation of the article

413. Liechtenstein applies the active personality principle.
414. The active personality jurisdiction is also applicable to legal persons (§ 74g(1) refers to the general criminal laws).
415. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 42(2)(b) UNCAC.

Subparagraph 2 (c) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

416. Liechtenstein has adopted measures to establish its jurisdiction as described above.
417. See § 64 para. 1 (9) CC.

§ 64

Offences abroad that are punished irrespective of the laws of the place where they are committed

1) The Liechtenstein criminal laws shall apply to the following acts committed abroad, irrespective of the criminal laws of the place where the act is committed:

...

9. participation (§ 12) in an offence committed by the immediate perpetrator in Liechtenstein, as well as handling stolen goods (§ 164) and money laundering (§ 165) with respect to a (predicate) offence committed in Liechtenstein;

2) If the criminal laws enumerated in paragraph 1 cannot be applied merely because the act is an act punishable with a more severe penalty, then the act committed abroad shall nevertheless be punished in accordance with Liechtenstein criminal laws, irrespective of the criminal laws of the place where the act is committed.

§ 67

Time and place of the act

1) The perpetrator shall be deemed to have committed an act carrying a penalty at the time he acted or should have acted; it shall be irrelevant when the result occurs.

2) The perpetrator shall be deemed to have committed an act carrying a penalty at the place where he acted or should have acted or where a result corresponding to the elements of the offence occurred in whole or in part or, as conceived by the perpetrator, should have occurred.

(b) Observations on the implementation of the article

418. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 42(2)(c) UNCAC.

Subparagraph 2 (d) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

419. Liechtenstein has adopted measures to establish its jurisdiction as described above.

420. See § 64 para. 1 (1), (3), (4), (5), (9), (10) and (11) CC - Offences abroad that are punished irrespective of the laws of the place where they are committed. There is jurisdiction, if the act violates Liechtenstein interests

(b) Observations on the implementation of the article

421. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 42(2)(d) UNCAC.

Paragraph 3 of article 42

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

422. Liechtenstein has confirmed that it is in full compliance with this article.

423. The introduction of jurisdiction for offences within the scope of the Convention is important especially for those cases in which a request for extradition of a suspect is not granted and national proceedings are to be initiated instead. Article 42(3) UNCAC justifies this obligation solely with reference to the refusal to extradite one's own nationals. This obligation to prosecute in the event of non-extradition ("*aut dedere aut iudicare*") is reaffirmed separately in article 44(11) UNCAC.

424. According to article 12(1) of the Mutual Legal Assistance Act (MLAA), Liechtenstein extradites its own nationals only if they give their express consent. The prosecution of Liechtenstein's own nationals follows from § 64(1)(6) of the Criminal Code.

425. See also § 65 para. 1 (2) CC -Offences abroad that are punished only if they carry a penalty under the laws of the place where they are committed.

(b) Observations on the implementation of the article

426. It was noted that § 65(1) CC requires dual criminality; however the legality principle requires prosecution in LIE.

427. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 42(3) UNCAC.

Paragraph 4 of article 42

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

428. Liechtenstein has confirmed that it has adopted and implemented these measures.

429. This gives States Parties the option of introducing their own jurisdiction if a suspect cannot be extradited for other reasons - e.g., the possibility of the death penalty in the requesting State.

430. Article 20(1) MLAA specifies that extradition for prosecution of an offence punishable by the death penalty under the law of the requesting State is permissible only if it is guaranteed that the death penalty is not imposed.

431. See § 65 para. 1 (2) CC.

(b) Observations on the implementation of the article

432. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 42(4) UNCAC.

Paragraph 5 of article 42

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

433. Liechtenstein has confirmed that it is in compliance with this provision.

434. Liechtenstein has implemented this provision of the Convention even without an explicit provision in the domestic legislation because the Convention is directly applicable in Liechtenstein.
435. Liechtenstein can spontaneously share information with other countries (Article 54a MLA) and let them take over the proceedings (Article 74 MLA); the competent foreign judge, public prosecutor and other persons involved as well as their legal representatives shall 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 (Article 59 MLA).
436. In several cases the requesting State Party asked to coordinate legal assistance actions (especially searches of premises); in these cases the judge and the police coordinated the legal assistance actions (for example searches of premises at the same time in two or more countries).

Article 54a

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 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 a punishable act 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, paragraph 3 shall be applied mutatis mutandis.

Article 74

Obtaining of Assumption of Prosecution

1) The Ministry of Justice may request another State to institute criminal proceedings against a person due to a punishable act subject to Liechtenstein jurisdiction if jurisdiction of this State seems to be justified and

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 punishable act 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 Ministry of Justice accordingly and transmit the necessary documents.
- 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 punishable act 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 shall 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.

Article 59 MLA

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 shall 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 Ministry of Justice.

(b) Observations on the implementation of the article

437. The reviewing experts concluded that Liechtenstein law is in compliance with Art. 42(5) UNCAC.

IV. International cooperation

Article 44. Extradition

Paragraph 1 of article 44

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

438. Liechtenstein has confirmed that it has fully adopted and implemented these measures.

439. The general extradition rules are laid down in Chapter II of the Mutual Legal Assistance Act of 15 September 2000 (MLAA) insofar international conventions do not stipulate otherwise (Article 1 MLA). All rules apply equally to cases involving corruption offences. Article 11 of the MLAA sets out the general rule for the provision of extradition which applies to all types of criminal proceedings, including those relating to offences covered by this convention. Extradition can be granted for the prosecution of wilfully committed acts that are punishable under the law of the requesting State by a deprivation of liberty of more than one year or by a preventive measure of the same duration, and that are subject to a deprivation of liberty of more than one year under Liechtenstein law. Extradition is also allowed in cases where the deprivation of liberty or the preventive measure has been imposed for one or more offences as qualified above, when a remaining period of at least four months still needs to be executed.

440. Exceptions to the general rule are provided for:

- the person whose extradition is sought is a Liechtenstein national (Article 12, para 1 of the MLAA);
- political offenses (Article 14, para 1 of the MLAA) and offenses of an exclusive military and fiscal nature (Article 15);
- other punishable acts that are based on political motives or aims, unless the criminal nature of the act outweighs its political nature (Article 14, para 2 of the MLAA);
- with some exceptions, punishable acts that are subject to Liechtenstein jurisdiction (Article 16 MLAA);
- the person who has been acquitted by a court of the State in which the offense was committed or has otherwise been exempted from prosecution (Article 17 no. 1 MLAA);
- the person who has been convicted by a court in a third country, and the punishment has been fully served or waived in whole or in part for the portion of the sentence remaining to be enforced, or if the enforceability of the punishment comes under the statute of limitation pursuant to the law of this third country (Article 17 no. 2 MLAA);
- prosecution or execution that come under the Liechtenstein statute of limitation (Article 18 of the MLAA);
- criminal proceedings in the requesting State that do not or did not comply with the principles of article 6 (right to a fair trial) of the Human Rights Convention (Article 19, para 1 MLA);
- punishment or preventive measure imposed by or to be expected in the requesting State

that would be enforced in a manner that is not consistent with the requirements of Article 3 (prohibition of torture, inhuman or degrading treatment or punishment) of the Human Rights Convention (Article 19, para 2 MLAA);

- the extraditable person who would be subject to persecution in the requesting State because of his/her origin, race, religion, affiliation to a specific ethnic or social group, nationality, or political opinions, or would have to expect other serious prejudices for any of these reasons (extradition asylum; (Article 19, para 3 MLAA);

- execution of the death penalty or other punishments or preventive measures that do not comply with the requirements of Article 3 of the Human rights convention mentioned above (Article 20 MLAA);

- the extraditable person who was without criminal responsibility at the time of the punishable act (Article 21 of the MLAA);

- the extraditable person who would be exposed to hardship, i.e. to obvious disproportionately severe conditions when considering the severity of the punishable act with which he or she is charged, his or her young age, the long period of his or her residence in Liechtenstein, or other serious reasons based on his or her personal circumstances (Article 22 of the MLAA).

441. A further limitation to extradition is laid down in Article 15 no. 2 of the MLAA, providing that a request for extradition is inadmissible for acts that constitute a violation of stipulations relating to taxes, monopolies or customs duties, or foreign exchange regulations, or of stipulations relating to the control of or foreign trade in goods.

Mutual Legal Assistance Act (MLAA)

Article 1

Priority of International Agreements

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

Article 11

Punishable Acts 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 a punishable act 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 punishable acts 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 punishable acts 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 1) or the extent of the sentence or the measure (paragraph 2).

Article 12

Extradition of Liechtenstein Citizens

1) A Liechtenstein citizen 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 shall 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 citizen who is provisionally surrendered to the Liechtenstein authorities by another State.

Article 14

Punishable Acts of a Political Nature Extradition is impermissible

1. for political punishable acts,
2. for other punishable acts 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 offense outweighs its political character.

Article 15

Military and Fiscal Punishable acts Extradition for punishable acts, 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 punishable acts 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, paragraph 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 offense 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 forced 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 a punishable act 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 paragraph 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 offense 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 punishable act he/she is charged with due to his/her adolescence (§ 2(2) of the Juvenile Court Act).

442. After having checked the data base of the Office of Justice for the time period of the last five years there never occurred a problem on dual criminality issues.

(b) Observations on the implementation of the article

443. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

(c) Successes and good practices

444. The comprehensive and coherent legal framework on international cooperation in criminal matters, which regulates in a detailed manner all forms of international cooperation used by the Liechtenstein authorities.

Paragraph 2 of article 44

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

445. Liechtenstein has confirmed that it does not grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

446. Authorities met by the reviewing experts during the country visit confirmed that there was no exception to this rule in the bilateral treaties to which Liechtenstein is party.

(b) Observations on the implementation of the article

447. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 3 of article 44

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

448. Liechtenstein has confirmed that it has fully adopted and implemented these measures.

449. This provision could be applied according to art. 1 MLA. See text above.

(b) Observations on the implementation of the article

450. The reviewing experts noted also the applicability of Article 11 (3) of the law on mutual legal assistance as it expressly stipulates the provision contained in the Convention and concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 4 of article 44

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

451. Liechtenstein has confirmed that it is in full compliance with these measures.

452. The conducts provided for as an offence by the present convention are considered as an offence also in Liechtenstein which does not include them among political offences. Therefore they are considered as extraditable offences in all the international agreements already concluded.

453. During the country visit, authorities also invoked the direct applicability of UNCAC in Liechtenstein.

(b) Observations on the implementation of the article

454. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 5 of article 44

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

455. Liechtenstein has confirmed that it does not make extradition conditional on the existence of a treaty. Extradition can also be granted with promise of reciprocity. In case of an extradition request to or from an UNCAC member State, the Convention is the legal basis for dealing with such a request.

(b) Observations on the implementation of the article

456. The reviewing experts concluded that the provision under review is not applicable to Liechtenstein since it does not make extradition conditional on the existence of a treaty.

Paragraph 6 of article 44

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

457. Liechtenstein has confirmed that they do not make extradition conditional on the existence of a treaty.

(b) Observations on the implementation of the article

458. The reviewing experts concluded that the provision under review is not applicable to Liechtenstein since it does not make extradition conditional on the existence of a treaty.

Paragraph 7 of article 44

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

459. Liechtenstein has confirmed that it is in full compliance with this provision (see answer to 173).

460. Authorities met during the country visit confirmed that all UNCAC offenses fulfil the minimum penalty threshold for extradition stated in Article 11 of the MLAA (one year imprisonment) except for embezzlement when the value of the embezzled good does not exceed 5,000 francs (§ 133 CC), and Criminal breach of trust when the damage brought through the offence does not exceed 5,000 francs (§ 153 CC).

(b) Observations on the implementation of the article

461. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 8 of article 44

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

462. Liechtenstein has confirmed that it is in full compliance with this provision. Under Chapter II of the MLA extradition can be granted insofar international conventions do not stipulate otherwise.

463. In the years 2009 till 2012, 13 extradition requests were addressed to Liechtenstein. A few of them were executed through the simplified procedure. But there was no extradition based on offences covered by this Convention.

(b) Observations on the implementation of the article

464. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 9 of article 44

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

465. Liechtenstein has confirmed that it is in full compliance with this provision
466. Simplified extradition procedures are possible according to art. 32 MLAA. In case of the consent of the extraditable person the extradition can be executed within a few days.

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 handed over without carrying through the formal extradition proceedings, the Judge of the Court of Justice must transmit the documents directly to the Ministry 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, paragraph 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.

1a) If consent to simplified extradition has been given, no formal extradition request is required.

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, paragraph 1 or in accordance with corresponding provisions contained in international agreements, and that he/she may only revoke his/her agreement until his/her hand-over 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.

467. Liechtenstein further explained that although Art. 32 MLAA requires the consent of the person to be extradited, nevertheless the system of simplified extradition will provide effective possibilities to speed up the whole procedure. In regard to evidentiary requirements there are no high hurdles. An arrest warrant or a final court decision and a specific request of the requesting authority will always be required in case of an extradition request.
468. In the years 2009 till 2012/13 extradition requests were addressed to Liechtenstein. A few of them were executed through the simplified procedure. But there was no extradition based on offences covered by this Convention.

(b) Observations on the implementation of the article

469. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 10 of article 44

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

470. Liechtenstein has confirmed that it is in full compliance with this provision. In order to make sure that the person sought does not avoid surrender, the national police has the right to arrest the person sought, in urgent cases (§§ 129, 127 CPC). Precautionary measures also apply in extradition proceedings.

§ 127 CPC

- 1) Even without prior summons, the investigating judge may order the arrest of a person suspected of a crime or misdemeanour,
 1. if the suspect has been caught in the act or has been credibly accused of being a perpetrator immediately after a crime or misdemeanour has been committed or is found with weapons or other objects originating from a crime or misdemeanour or otherwise indicating that he participated in the offence;
 2. if he is fugitive or otherwise is keeping concealed or if, on the basis of certain facts, there is a danger that he will keep away from the criminal proceedings, especially by removing himself without permission from his place of residence or by failing to respond to a summons to trial, or if he flees or keeps himself concealed in view of the magnitude of the penalty he may expect or for other reasons;
 3. if he has attempted to influence witnesses, experts, or co-defendants, eliminate traces of the offence, or otherwise make ascertainment of the truth difficult or if, on the basis of certain facts, there is a danger that he will attempt to do so; or
 4. if, on the basis of certain facts, it must be assumed that he will commit an offence directed against the same legal good as that with which he has been charged, or that he will carry out the offence with which he has been charged or the attempted or threatened offence.
- 2) If the crime is subject to a penalty by law of at least ten years imprisonment, the arrest of the suspect must be ordered, unless on the basis of certain facts, it must be assumed that all of the grounds for detention enumerated in paragraph 1(2) to (4) can be ruled out.
- 3) Ordering an arrest under paragraphs 1 and 2 shall not be permissible to the extent that detention is disproportionate to the significance of the matter.

§ 129 CPC

- 1) On an exceptional basis, the suspect may be arrested by the National Police without a written order for the purpose of presentation to the investigating judge:
 1. in the case of § 127(1)(1);
 2. in the cases of § 127(1)(2) to (4) and § 127(2), provided that it is not feasible to obtain the order of the investigating judge due to imminent danger.
- 2) The arrested person shall be questioned immediately on the matter and on the preconditions of arrest, and if it turns out that there is no more reason for his detention, he shall be released immediately. If release is not a possibility, then the Public Prosecutor must be informed immediately; if the Public Prosecutor declares that he will not file an application for ordering detention pending trial, the arrested person must be released immediately. Otherwise, the Office of the Public Prosecutor must inform the court immediately regarding the detention of the charged person (§ 128(3), first sentence) and, without delay but at the latest within 48 hours of arrest, file an application for detention pending trial.
- 3) Detention must be lifted if its purpose cannot be achieved through less severe means in accordance with § 131(5)(1) to (4) and (5) to (7). In that case, the National Police shall, if the Office of the Public Prosecutor gives its consent, issue the required instructions without delay, obtain the pledges from the suspect or take the papers from the suspect referred to in § 131(5)(5) and (6), and release the suspect. The results of the enquiries including the records of instructions issued and pledges made as well as the papers taken shall be transmitted to the Office of the Public Prosecutor with the results of the enquiries within 48 hours of the arrest. The investigating judge shall decide on maintaining less severe means by way of a ruling.

4) Arrest and continuation of detention under paragraphs 1 and 2 shall not be permissible to the extent they are disproportionate to the significance of the matter.

Furthermore an important provision relating to detention pending extradition is:

Article 29 MLAA 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 punishable act. 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 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 shall 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 shall 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 is also to 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 punishable act 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).

5) If detention pending extradition is imposed on a person not represented by a defence counsel, the person shall simultaneously be assigned a defence counsel (§ 26, paragraph 3 of the Code of Criminal Procedure).

(b) Observations on the implementation of the article

471. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 11 of article 44

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) **Summary of information relevant to reviewing the implementation of the article**

472. Liechtenstein has confirmed that it is in full compliance with this provision

473. The principle “*aut dedere, aut iudicare*” is a cornerstone of our system and it is corroborated in the international conventions signed and ratified by Liechtenstein, including the present Convention. Art. 65 para 1 CC states that prosecution of offences committed abroad is applicable under the conditions met in this provision.

§ 65 CC

Offences abroad that are punished only if they carry a penalty under the laws of the place where they are committed

1) For acts other than those referred to in §§ 63 and 64 that are committed abroad, the Liechtenstein criminal laws shall apply, provided that the acts also carry a penalty under the laws of the place where they are committed, if:

1. the perpetrator was a Liechtenstein citizen at the time of the act or acquired Liechtenstein citizenship later and still has it at the time the criminal proceedings are initiated;
2. the perpetrator was a foreigner at the time of the act, is caught in Liechtenstein, and cannot be extradited abroad for reasons other than the type or nature of his act.

(b) **Observations on the implementation of the article**

474. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 12 of article 44

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) **Summary of information relevant to reviewing the implementation of the article**

475. Liechtenstein has confirmed that it is in full compliance with this provision

476. Extradition of Liechtenstein nationals is not admissible pursuant art. 12, para 1 of the MCAA, except if the person has given his/her express consent after being informed of the consequences of his decision. In case of consent of the person to be extradited such conditions as mentioned in para 12 can be linked to the extradition. See texts above.

477. Authorities met during the country visit further explained that the extradition of a Liechtenstein national pursuant to his/her express consent is not conditional on his/her return to serve the sentence in Liechtenstein. The general rule is that the extradited person will serve the sentence imposed as a result of the trial or proceedings for which the extradition was

sought in the requesting State unless he/she has been transferred back to Liechtenstein pursuant to a transfer of sentenced persons' procedure.

478. Authorities also explained that the extradition of a person, whether a Liechtenstein national or not, is not possible in the absence of dual criminality and despite his/her consent.

(b) Observations on the implementation of the article

479. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 13 of article 44

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

480. Liechtenstein has confirmed that it is in full compliance with this provision

481. Art. 64 MLAA provides the basis for the enforcement of foreign court decisions.

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,

3. the decision was not taken due to a punishable act 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 offense, 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 citizen and has his/her residence or abode in Liechtenstein.

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 fine, absorption of enrichment, forfeiture or confiscation are provided and a corresponding domestic order has not been issued yet.

5) Enforcement of the decision taken by a foreign court in connection with which a fine or absorption of enrichment 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.

6) Enforcement of the decision taken by a foreign court in connection with which forfeiture or confiscation 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.

7) Fines, absorbed amounts of money, forfeited assets and confiscated objects devolve upon the State.

(b) Observations on the implementation of the article

482. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 14 of article 44

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

483. Liechtenstein has confirmed that it is in full compliance with this provision

484. Liechtenstein is a member State to the Convention for the Protection of Human Rights and Fundamental Freedoms. Article 6 provides a detailed right to a fair trial, including the right to a public hearing before an independent and impartial tribunal within reasonable time, the presumption of innocence, and other minimum rights for those charged with a criminal offence (adequate time and facilities to prepare their defence, access to legal representation, right to examine witnesses against them or have them examined, right to the free assistance of an interpreter).

Constitution

Article 32

1) Personal liberty, the immunity of the home and the inviolability of letters and documents shall be guaranteed.

2) Except in the cases specified by law and in the manner prescribed by law, no person may be arrested or kept in custody, no houses, persons, letters or documents may be searched, and no letters or documents may be seized.

3) Persons arrested unlawfully and persons arrested or convicted and shown to be innocent shall be entitled to full compensation from the State as determined by the Courts. Whether and to what extent the State has a right of recourse against third parties in such cases shall be determined by the laws.

Article 33

1) Nobody may be deprived of his ordinary Judge; special courts may not be instituted.

2) Penalties may only be threatened or imposed in accordance with the law.

3) An accused person shall be guaranteed the right of defence in all criminal matters.

Article 34

1) The inviolability of private property shall be guaranteed; confiscations may only take place in such cases as determined by law.

Article 43 (1st sentence)

The right of complaint shall be guaranteed.

485. Authorities met during the country visit further explained that all procedural rights are applicable during the extradition process and referred to the following articles:

Article 9

Application of the Code of Criminal Procedure

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

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, paragraph 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 punishable act 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 handed over without carrying through the formal extradition proceedings, the Judge of the Court of Justice must transmit the documents directly to the Ministry 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, paragraph 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.

1a) If consent to simplified extradition has been given, no formal extradition request is required.

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, paragraph 1 or in accordance with corresponding provisions contained in international agreements, and that he/she may only revoke his/her agreement until his/her hand-over 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 shall 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 shall 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 shall 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 Ministry of Justice together with all documents after it has become final and absolute.

(b) Observations on the implementation of the article

486. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 15 of article 44

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

487. Liechtenstein has confirmed that it is in full compliance with this provision

488. Art. 19 para 3 states that extradition is impermissible if the conditions of this provision are met.

Art. 19 para 3 MLA

Safeguarding of Constitutional Principles; Extradition Asylum

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).

(b) Observations on the implementation of the article

489. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 16 of article 44

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

490. Liechtenstein has confirmed that it is in full compliance with this provision

491. Although there is limitation to extradition laid down in art. 15 no. 2 of the MLA Liechtenstein will grant extradition even when the request of extradition is not solely related on fiscal offenses. That means in case of several offences - both common and fiscal offences- extradition will be granted for the common offences.

492. Authorities met during the country visit further explained that with regard to these cases, the requesting State will not be allowed to prosecute the extradited person for fiscal offences. This reservation will be declared in the correspondence when executing the request.

(b) Observations on the implementation of the article

493. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 17 of article 44

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

494. Liechtenstein has confirmed that it is in full compliance with this provision

495. Opportunity to communicate before refusing extradition or mutual legal assistance is used frequently both from the Princely Court and the Central Authority in Liechtenstein.

496. Authorities met during the country visit further explained that if there are documents or other information missing, the Ministry/Office of Justice has to ask for these additional documents or information.

1) Permissibility of extradition shall 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 Ministry 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 shall be taken based on those documents available.

(b) Observations on the implementation of the article

497. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 18 of article 44

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

498. Liechtenstein has confirmed that it is in full compliance with this provision

499. Liechtenstein is a Member State to the European Convention on Extradition (ETS No. 24) and its Additional Protocol (ETS. No. 86).

500. Authorities met during the country visit confirmed that Liechtenstein has concluded several treaties relevant to the provision under review including an extradition treaty with the U.S. (1936) and another one with Belgium (1938).

(b) Observations on the implementation of the article

501. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Article 45. Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

502. Liechtenstein has confirmed that it is in full compliance with this provision

503. Liechtenstein ratified the Convention of the Council of Europe on the transfer of sentenced persons (ETS No. 112) and its Additional Protocol (ETS No. 167). Furthermore Liechtenstein signed and ratified a few bilateral treaties on extradition, criminal and police cooperation with Austria, Belgium, Germany, Netherlands, Switzerland, United Kingdom, United States). According to art. 64 und 76 MLA enforcement of a decision taken by a foreign court is possible independent from an existing bilateral treaty on the basis of reciprocity (art. 3 MLA).

Article 64 MLA 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,

3. the decision was not taken due to a punishable act 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 offense, 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 citizen and has his/her residence or abode in Liechtenstein.

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 fine, absorption of enrichment, forfeiture or confiscation are provided and a corresponding domestic order has not been issued yet.

5) Enforcement of the decision taken by a foreign court in connection with which a fine or absorption of enrichment 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.

6) Enforcement of the decision taken by a foreign court in connection with which forfeiture or confiscation 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.

7) Fines, absorbed amounts of money, forfeited assets and confiscated objects devolve upon the State.

Article 76 MLA 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 absorption of enrichment has been ordered, the Court of Justice must transmit the documents necessary for obtaining the assumption of enforcement to the Ministry of Justice. The Ministry 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, paragraph 1 or in paragraph 3(2) and (3).

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 citizen 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 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 fine or ordering of absorption of enrichment is permissible if collection shall be expected in the requested State.

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 punishable acts is only obtained for the part concerning individual punishable acts and if the sentence has not been separated in the requested State, article 70, paragraph 3 shall 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 transfer 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, paragraph 1 *mutatis mutandis*.

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

(b) Observations on the implementation of the article

504. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Article 46. Mutual legal assistance

Paragraph 1 of article 46

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

505. Liechtenstein has confirmed that it is in full compliance with this provision

506. Multilateral treaties:

- Law on International Mutual Legal Assistance in Criminal Matters of 15 September 2000 (Rechtshilfegesetz, RHG)
- United Nations Convention against Corruption of 31 October 2003
- United Nations Convention against Transnational Organized Crime of 15 November 2000
- Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959
- Council of Europe Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972
- Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983
- Additional Protocol to the Convention on the Transfer of Sentenced Persons of 18 December 1997
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990

507. Liechtenstein signed the Council of Europe Criminal Law Convention on Corruption of 27 January 1999 and its Additional Protocol of 15 May 2003. Before this Convention can be ratified, however, several domestic legal provisions must be adjusted. The necessary amendments to the Liechtenstein Criminal Code are currently being prepared.

Bilateral treaties:

- Treaty of 4 June 1982 between the Principality of Liechtenstein and the Republic of Austria supplementing the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and facilitating its Application
- Treaty of 17 February/29 May 1958 between Liechtenstein and Germany on Direct Correspondence in Civil and Criminal Matters between the Justice Authorities of Liechtenstein and Germany
- Treaty of 8 July 2002 between the Principality of Liechtenstein and the United States of America on Mutual Legal Assistance in Criminal Matters

508. If there are no international agreements applicable, the provisions of the Law on Mutual Legal Assistance in Criminal Matters apply (art. 1). But pursuant to art. 3 par. 1 in this case "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".

509. In addition, a reference is to be made to the general principles in art. 50 of the Law on Mutual Legal Assistance in Criminal Matters, notably par. 3.

Law on Mutual Legal Assistance in Criminal Matters
Article 1
Priority of International Agreements

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

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 shall be informed of the absence of mutuality.
- 3) If compliance with the principle of mutuality is doubtful, the Ministry of Justice shall be asked for advice.
- 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 50 General Principle

- 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.

510. For examples of implementation, see information in attachment on Article 46 paragraph 1.

(b) Observations on the implementation of the article

511. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

(c) Successes and good practices

512. By prohibiting Liechtenstein authorities from making an MLA request if they could not comply with an identical request made by another State, the reviewing experts have seen in Article 3 paragraph (2) an imbedded guarantee of reciprocity to the requested State. The reviewing experts see in that a good practice which might facilitate the rendering of MLA.

Paragraph 2 of article 46

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

513. Liechtenstein has confirmed that it is in full compliance with this provision

514. The criminal liability of legal persons is covered by §§ 74a - 74g of the Liechtenstein Criminal Code (Strafgesetzbuch, StGB) and §§ 357a - 357g of the Liechtenstein Code of Criminal Procedure (Strafprozessordnung, StPO). Therefore, mutual legal assistance can be afforded to the fullest extent possible with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention.

Criminal Code (CC)

§ 74a Liability

- 1) To the extent they are not acting in enforcement of the laws, legal persons shall be liable for crimes and misdemeanours when these are committed unlawfully and culpably, in the performance of business activities and for the purpose of the legal person, by managers.
- 2) Legal persons shall mean
 1. legal persons entered in the Commercial Register as well as legal persons which neither have their registered office nor a place of operation or establishment in Liechtenstein, insofar as these would have been entered in the Commercial Register under domestic law, and
 2. foundations and associations not entered in the Commercial Register as well as foundations and associations which neither have their registered office nor a place of operation or establishment in Liechtenstein.
- 3) Manager shall mean any person
 1. authorized to represent the legal person in external relations,
 2. who performs control duties in a leading capacity, or
 3. otherwise exerts meaningful influence over the business management of the legal person.
- 4) Where the underlying acts have been committed by employees of the legal person, even when not culpably, the legal person shall be liable only when the commission of the act was made possible or was significantly facilitated by the omission of managers, as referred to in paragraph 3, who failed to take the necessary and reasonable measures to prevent such underlying acts.
- 5) The liability of the legal person for the underlying act and the punishability of managers or employees for the same act shall not be exclusive of each other.

§ 74b

Corporate monetary penalty

- 1) Where a legal person is liable for an underlying act, a corporate monetary penalty shall be imposed on that legal person.
- 2) The corporate monetary penalty shall be assessed in daily rates. It shall amount to at least one daily rate.
- 3) The number of daily rates shall amount to at least
 - 180, if the act carries a penalty of imprisonment for life or imprisonment of up to twenty years; 155, if the act carries a penalty of imprisonment of up to fifteen years;
 - 130, if the act carries a penalty of imprisonment of up to ten years; 100, if the act carries a penalty of imprisonment of up to five years; 85, if the act carries a penalty of imprisonment of up to three years; 70, if the act carries a penalty of imprisonment of up to two years, 55, if the act carries a penalty of imprisonment of up to one year; 40 in all other cases.
- 4) The daily rate shall be assessed in accordance with the income situation of the legal person, taking account of its economic ability apart from the income situation. It shall be assessed at an amount that corresponds to 1/360th of the annual corporate income or that is less or more than

that amount by at most one third, but at least 100 francs and at most 15,000 francs. If the legal person serves common-benefit, humanitarian, or ecclesiastic purposes or if it is otherwise not for profit, then the daily rate shall be assessed at least 4 and at most 1,000 francs.

5) The number of daily rates shall be determined in accordance with the seriousness and consequences of the underlying act and the seriousness of the lack of organization. Additionally, the conduct of the legal person after the act shall be taken into account, especially whether it has rectified the consequences of the act.

§ 74c Suspension and instructions

1) Where the legal person is sentenced to a corporate monetary penalty, the corporate monetary penalty shall be suspended and a probationary period of at least one and at most three years determined, and instructions (paragraph 3) shall be issued as appropriate, if it is likely that this will be sufficient to prevent the commission of further acts for which the legal person is liable (§ 74a) and enforcement of the corporate monetary penalty is not needed to deter the commission of acts in the context of the activity of other legal persons. In this regard, especially the kind of act, the gravity of the lack of organisation, prior convictions of the legal person, the reliability of the managers, and the measures taken by the legal person after the act shall be taken into account.

2) Where a legal person is sentenced to a corporate monetary penalty and the conditions referred to in paragraph 1 apply to part of the corporate monetary penalty, then that part, but at least one third and at most five sixths, shall be suspended and a probationary period of at least one and at most three years determined, and instructions (paragraph 3) shall be issued as appropriate.

3) Where the corporate monetary penalty imposed on a legal person is suspended in whole or in part, the court may issue instructions person to deter the commission of further acts for which the legal person is liable. The legal person shall in all cases be instructed to rectify the damage arising from the act to the best of its ability, to the extent that has not already occurred.

§ 74d Legal succession

1) Where the rights and obligations of the legal person are transferred to another legal person by way of universal succession, the legal consequences provided under this law or the Code of Criminal Procedure shall apply to the legal successor. Legal consequences imposed on the legal predecessor shall have effect also for the legal successor.

2) Singular succession shall be deemed equivalent to universal succession if essentially the same ownership situation in regard to the legal person exists and the operation or activity is essentially continued.

3) Where more than one legal successor exists, the corporate monetary penalty may be enforced against every legal successor. Other legal consequences may be attributed to individual legal successors to the extent those legal consequences affect their area of activity.

§ 74e Domestic jurisdiction

Where by law the validity of Liechtenstein criminal laws for acts committed abroad depends on the place of residence or abode of the perpetrator in Liechtenstein or the perpetrator's Liechtenstein citizenship, the registered office or place of operation or establishment of the legal person shall be decisive.

§ 74f

Limitation of enforceability

The period of limitation for enforceability of the imposed corporate monetary penalty shall be ten years.

§ 74g

Application of the general criminal laws

- 1) The general criminal laws shall apply mutatis mutandis also to legal persons, to the extent they are not applicable exclusively to natural persons.
- 2) Where a legal person is sentenced to a corporate monetary penalty, the statutory provisions on joint liability of legal persons for monetary penalties and costs shall not be applicable.

Code of Criminal Procedure (CPC)

§ 357a

- 1) For proceedings concerning the responsibility of a legal person (§ 74a of the Criminal Code), this law shall apply mutatis mutandis, to the extent it is not applicable exclusively to natural persons and nothing else follows from the following provisions.
- 2) The jurisdiction of the court for the underlying offence shall also provide the basis for the jurisdiction for the proceedings against the suspected legal person. As a rule, the proceedings shall be carried out jointly.
- 3) The application for punishment of the legal person shall be combined with the indictment, the application for a sentence, or the application for punishment of the natural person if the proceedings can be conducted jointly. An application for punishment of the legal person shall in any event summarize and assess the facts which give rise to the responsibility of the legal person.
- 4) Under the preconditions of § 67(3), separate criminal proceedings against the legal person shall be permissible.

§ 357b

- 1) The legal person who is suspected of criminal responsibility shall be afforded the rights of a charged person in the proceedings.
- 2) The legal person shall be represented in the proceedings by a member of the organ authorized for external representation or by another person designated by the organ authorized for external representation.
- 3) If the members of the organ authorized for external representation do not designate an appropriate person within a reasonable period of time in spite of a demand by the court, then the court shall appoint an appropriate representative ex officio. The appointment shall come to an end with the intervention of a representative designated by the organs of the legal person or of an appointed counsel.
- 4) If all members of the organ authorized for external representation are themselves suspected of having committed the underlying offence, and if despite being demanded by the court, they do not designate an appropriate person within an appropriate period, paragraph 3 shall be applied.
- 5) If the legal person has been served with legal effect, then the announcement to legal successors (§ 74d of the Criminal Code) shall also be deemed to have occurred.

§ 357c

The leaders of the legal person as well as those employees suspected of having committed the underlying offence, or who have already been convicted of the underlying offence, shall be summoned and questioned as charged persons.

§ 357d

- 1) The Office of the Public Prosecutor may refrain from or abandon the prosecution of a legal person if, when considering the underlying offence, the consequences of the offence, the gravity of the organizational deficits, the conduct of the legal person after the offence, especially reparation for damages, the expected amount of the monetary penalty to be imposed on the legal person, and any legal disadvantages arising from the offence for the legal person

or its property that have already occurred or that are immediately foreseeable and that make it appear dispensable to prosecute and punish the legal person.

2) Moreover, the Office of the Public Prosecutor may also refrain from or abandon the prosecution of a legal person if enquiries or applications for prosecution would entail considerable effort that is evidently disproportionate to the significance of the matter or to the penalties to be expected in the event of conviction.

3) However, the Office of the Public Prosecutor may not refrain from or abandon the prosecution if the prosecution appears called for

1. because there is a danger emanating from the legal person that an offence with grave consequences might be committed, for which the legal person might be responsible,
2. in order to deter the commission of offences within the scope of activities of other legal persons, or
3. because of any other special public interest.

§ 357e

If a legal person is urgently suspected of being responsible for an underlying offence, and if it must be assumed that a monetary penalty for legal persons will be imposed on it, then the court shall, upon application of the Office of the Public Prosecutor, issue an order in accordance with § 97a to secure the monetary penalty, if it must be feared that otherwise collection of the monetary penalty would be in danger or made significantly more difficult.

§ 357f

1) If, on the basis of a sufficiently clarified fact pattern, dropping charges in accordance with § 22 or proceeding in accordance with § 357d has been ruled out, and if the preconditions enumerated in § 22a apply, then the Office of the Public Prosecutor shall abandon the prosecution of a legal person due to responsibility of an underlying offence if the imposition of a monetary penalty on the legal person does not appear necessary to deter commission of underlying offences for which the legal person can be made responsible and the commission of underlying offences within the scope of activities of other legal persons, in light of any of the following measures:

1. payment of a sum of money, to be fixed in the amount of up to 100 daily rates plus the costs of the proceedings to be reimbursed in the event of a conviction,
 2. determination of a probationary period of up to three years, to the extent possible and appropriate in connection with the expressly declared willingness of the legal person to take technical, organizational, or personnel measures to prevent further offences for which the legal person is responsible, or
 3. the explicit declaration of the legal person to provide specified community service for free within a period to be determined not exceeding six months. § 22e shall not apply.
- 2) Abandonment of the prosecution shall furthermore be made contingent upon the legal person compensating the damage arising from the offence within a period to be determined not exceeding six months and upon the legal person providing evidence thereof without delay, unless this requirement can be waived on special grounds.
- 3) Upon commencement of the investigation or submission of the application for punishment of the legal person for an underlying offence to be prosecuted ex officio, the court shall apply paragraphs 1 and 2 mutatis mutandis and issue a ruling suspending proceedings against the legal person under the conditions applicable to the Office of the Public Prosecutor until the end of the trial.

§ 357g

If the legal person is not represented at trial, then the court may conduct the trial, collect evidence, and issue a judgment, but only if the summons to the trial has been served effectively and the summons contained these legal effects, otherwise these legal effects shall be null and void. In that case, the judgment shall be served upon the legal person as a written copy.

such cases.

(b) Observations on the implementation of the article

516. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Subparagraphs 3 (a) to 3 (i) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(a) Summary of information relevant to reviewing the implementation of the article

517. Liechtenstein has confirmed that they can afford the forms of legal assistance listed in the provision above.

518. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (1) Taking evidence or statements from persons;
- (2) Effecting service of judicial documents;
- (3) Executing searches and seizures, and freezing;
- (4) Examining objects and sites;
- (5) Providing information, evidentiary items and expert evaluations;
- (6) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (7) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (8) Facilitating the voluntary appearance of persons in the requesting State Party;
- (9) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

519. The measures are covered by the Law on Mutual Legal Assistance in Criminal Matters (in accordance with the relevant provisions of the Code of Criminal Procedure) and by the aforesaid Conventions.

Law on Mutual Legal Assistance in Criminal Matters

Article 9

Application of the Code of Criminal Procedure

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

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 1.1

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 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 realization of such rights.

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

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 handing over 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, paragraph 1),

2. in the case that the legal assessment of the offense 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 shall 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.

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

1. due to a punishable act 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 shall 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

Surrender 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 surrendered 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 surrender,
 2. his/her presence is not required for criminal proceedings pending in the State,
 3. imprisonment is not prolonged by the surrender, 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 a punishable act committed before transfer.
- 2) Surrender shall not interrupt the implementation of detention pending trial or after trial or the preventive measure.

Article 54a

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 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 a punishable act 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, paragraph 3 shall be applied mutatis mutandis.

Article 58

Applicable Procedural Provisions

Legal assistance shall be granted in accordance with the provisions on criminal proceedings applicable in Liechtenstein. However, a request for carrying out another process shall 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 shall be notified accordingly in the form provided for.

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,

3. the decision was not taken due to a punishable act 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 offense, 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 citizen and has is/her residence or abode in Liechtenstein.

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 fine, absorption of enrichment, forfeiture or confiscation are provided and a corresponding domestic order has not been issued yet.

5) Enforcement of the decision taken by a foreign court in connection with which a fine or absorption of enrichment 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.

6) Enforcement of the decision taken by a foreign court in connection with which forfeiture or confiscation 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.

7) Fines, absorbed amounts of money, forfeited assets and confiscated objects devolve upon the State.

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 shall be determined under Liechtenstein law taking into account the measure pronounced in such decision. The forfeiture ordered in a decision taken by a foreign court may also be enforced as domestic forfeiture if, under Liechtenstein law, there would be an absorption of enrichment.

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

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

520. Authorities met during the country visit further explained that with regard to subparagraph "d", mutual legal assistance can also be afforded for the purposes of examining objects and sites, namely based on the direct applicability of the UNCAC and the Liechtenstein Law on International Mutual Legal Assistance in Criminal Matters which refers in Art. 58 to the provisions on criminal proceedings applicable in Liechtenstein, hence the Code of Criminal Procedure.

521. As for subparagraph "g", mutual legal assistance can be afforded based on the direct applicability of the UNCAC and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds as well as the Law on International Mutual Legal Assistance in Criminal Matters (Art. 58).

522. Examples of implementation:

– Since 2011: Several requests from Egypt in corruption cases. All requests for seizures of documents and freezing of assets in bank accounts were executed and the bank accounts are still blocked.

In the same context Liechtenstein also received a request from Switzerland for seizure of documents which was executed.

– Since 2007: Several requests from Latvia in a corruption case for seizures of documents which were all executed.

– Since 2009: Several requests from Chile in a case of embezzlement/misappropriation. All requests for seizures of documents and interviews of witnesses were executed.

In the same context Liechtenstein also received requests from Switzerland. All these requests for seizure of documents and freezing of assets in bank accounts were executed and the bank accounts are still blocked.

– Since 2010: Several requests from Switzerland in a case of bribery/money laundering. All requests for seizures of documents were executed.

– Since 2012: Several requests from Japan in a case of embezzlement in the private sector and money laundering: All requests for seizures of documents, interview of a witnesses and freezing of assets in bank accounts were executed and the bank accounts are still blocked.

– Since 2012: Several requests from Austria in a case of bribery/money laundering. All requests for seizures of documents were executed.

(b) Observations on the implementation of the article

523. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Subparagraphs 3 (j) and 3 (k) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

...

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

524. Liechtenstein has confirmed that they can afford the forms of mutual legal assistance listed in the provision above
525. See answers to Subparagraphs 3(a) to 3 (i) of article 46.
526. Furthermore, pursuant to art. 50 par. 1 and par. 1a of the Law on Mutual Legal Assistance in Criminal Matters legal assistance may be granted inter alia for the ordering of preventive measures and for the pronouncing of a pecuniary order.

Law on Mutual Legal Assistance in Criminal Matters

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.

527. Furthermore pursuant to art. 50 par. 1 and par. 1a of the Law on Mutual Legal Assistance in Criminal Matters legal assistance may be granted inter alia for the ordering of preventive measures and for the pronouncing of a pecuniary order.
528. For examples of implementation of these measures, see answers and examples referred to in Subparagraphs 3(a) to 3 (i) of article 46.

(b) Observations on the implementation of the article

529. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 4 of article 46

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

530. Liechtenstein has confirmed that it is possible for them to transmit information as described above.

531. The main provisions are art. 54a of the Law on Mutual Legal Assistance in Criminal Matters and art. 10 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Law on Mutual Legal Assistance in Criminal Matters

Article 54a

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
 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 a punishable act 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, paragraph 3 shall be applied mutatis mutandis.

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime

Article 10 - Spontaneous information

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on instrumentalities and proceeds, when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings or might lead to a request by that Party under this chapter.

532. In several cases Liechtenstein transmitted information to other Countries. But there is no specific data available.

(b) Observations on the implementation of the article

533. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 5 of article 46

5. *The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restriction on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

(a) Summary of information relevant to reviewing the implementation of the article

534. Liechtenstein has confirmed that it is in full compliance with this provision

535. Please see answer to Paragraph 4 of article 46.

536. Furthermore, art. 58 of the Law on Mutual Legal Assistance in Criminal Matters provides that "a request for carrying out another process shall be granted provided that this process is compatible with the principles of the Liechtenstein criminal proceedings".

537. Please see answer to Paragraph 4 of article 46 for examples of implementation and related mutual legal assistance and other cases.

538. Authorities met during the country visit further invoked the direct applicability of the UNCAC regarding the confidentiality of the information which shall not prevent the receiving State Party from disclosing it when such information is exculpatory to an accused person.

(b) Observations on the implementation of the article

539. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 8 of article 46

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

540. Liechtenstein has confirmed that it is in full compliance with this provision

541. The bank secrecy is regulated in art. 14 of the Law of Banks and Investment Firms. But it stipulates exceptions in par. 2.

542. In criminal procedures and in cases of mutual legal assistance in criminal matters bank secrecy is not a ground for refusing testimony or refusing the provision of documents requested (according to the rules set out in the Code of Criminal Procedure which apply also to the mutual legal assistance). For example, all necessary bank documents can be seized if the other conditions for granting mutual legal assistance are fulfilled.

Banking Act

Art. 14 Banking Secrecy

1) The members of the governing bodies of banks and their employees as well as any persons otherwise working for such banks shall keep secret all facts that they are entrusted with or that become accessible by them as a result of the business relations with clients. The obligation of secrecy shall apply without any time limit.

2) Paragraph 1 is without prejudice to the legal provisions on the obligation to give testimony or information to the criminal courts and to supervisory bodies as well as the provisions on cooperation with other supervisory authorities.

3) The provisions of paragraphs 1 and 2 shall apply mutatis mutandis to the members of the governing bodies of investment firms and their employees as well as to any persons working for such investment firms.

543. Bank secrecy does not impede effective mutual legal assistance and is not a ground for refusing related requests. Concrete data is not available.

544. Authorities met during the country visit further explained that banking information and documents can be transmitted to foreign authorities because all MLA requests go through the criminal court. They also confirmed that they frequently transmit banking information and documents pursuant to MLA requests.

(b) Observations on the implementation of the article

545. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Subparagraph 9 of article 46

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

546. Liechtenstein has confirmed that it is in full compliance with this provision

547. Pursuant to art. 51 par. 1 nr. 1 of the Law on Mutual Legal Assistance in Criminal Matters granting of mutual legal assistance is impermissible in so far as the act underlying the request is not sanctioned with legal punishment under Liechtenstein law.

548. However, pursuant to art. 46 par. 9 of this Convention Liechtenstein can render mutual legal assistance, when it is consistent with the basic concepts of its legal system. In this respect the Convention is directly applicable (self-executing).

Law on Mutual Legal Assistance in Criminal Matters

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,
2. extradition would be impermissible with regard to the proceedings underlying the request in accordance with article 19(1) and (2), or
3. either the special requirements necessary in accordance with the Code of Criminal Procedure to carry out certain investigations, in particular confiscation and opening of letters or surveillance of telecommunications, 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.

549. Furthermore, the service of documents, if the addressee is willing to accept them, is in any case possible, that means also in the absence of dual criminality (art. 51 par. 2 of the Law on Mutual Legal Assistance in Criminal Matters).

550. Requests are not refused on the sole ground that they involve matters of a *de minimis* nature.

Law on Mutual Legal Assistance in Criminal Matters

Article 51 Impermissibility of Legal Assistance

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.

The most important coercive measures are:

- taking a person into custody (§§ 127ff Code of Criminal Procedure);
- seizure, house search and personal search (§§ 92ff Code of Criminal Procedure); – freezing of assets (§ 97a Code of Criminal Procedure);
- phone tapping (§§ 103f Code of Criminal Procedure); – observation (§ 104a Code of Criminal Procedure);
- undercover investigation (§ 104b Code of Criminal Procedure); – controlled delivery (§ 104c Code of Criminal Procedure).

See the legal texts in the "Addendum".

Examples of non-coercive actions:

- effecting service of documents;
- providing publicly available documents and information;
- facilitating the voluntary appearance of persons in the requesting state; – announcement and sending of final criminal court decisions;
- spontaneous transmission of information.

(b) Observations on the implementation of the article

551. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 10 of article 46

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

552. Liechtenstein has confirmed that it is in full compliance with this provision

553. The transfer of a person being detained or is serving a sentence is possible according to the following legal basis:

- Law on Mutual Legal Assistance in Criminal Matters, art. 54 and 38
- Council of Europe Convention on Extradition, art. 19 par. 2
- Council of Europe Convention on the Transfer of Sentenced Persons and its Additional Protocol

Law on Mutual Legal Assistance in Criminal Matters

Article 54

Surrender 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 surrendered 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 surrender,
 2. his/her presence is not required for criminal proceedings pending in the State,
 3. imprisonment is not prolonged by the surrender, 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 a punishable act committed before transfer.
- 2) Surrender shall not interrupt the implementation of detention pending trial or after trial or the preventive measure.

Article 38

Provisional Transfer (of a person who is to be extradited)

1) Irrespective of the deferral of transfer in accordance with article 37(3), a person subject to the enforcement of imprisonment or a preventive measure may be provisionally transferred 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 transfer may not be carried out if such transfer would place the person to be extradited at a disproportional disadvantage.

- 2) Provisional transfer shall not interrupt the enforcement of domestic imprisonment or preventive measure.
- 3) The Ministry of Justice decides on the request for provisional transfer.

Council of Europe Convention on Extradition

Article 19 - Postponed or conditional surrender

1. The requested Party may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that Party or, if he has already been convicted, in order that he may serve his sentence in the territory of that Party for an offence other than that for which extradition is requested.

2. The requested Party may, instead of postponing surrender, temporarily surrender the person claimed to the requesting Party in accordance with conditions to be determined by mutual agreement between the Parties.

Council of Europe Convention on the Transfer of Sentenced Persons and its Additional Protocol

<<http://conventions.coe.int/Treaty/en/Treaties/Html/112.htm>>

<<http://conventions.coe.int/Treaty/en/Treaties/Html/167.htm>>

554. Examples of implementation:

There was recently a case of a German citizen in pre-trial detention in Switzerland. He was transferred to Liechtenstein for the judicial proceeding here and - after his criminal conviction - also for serving the prison sentence. As soon as his presence is needed in Switzerland for their judicial proceeding he will be brought back immediately.

(b) Observations on the implementation of the article

555. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 11 of article 46

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

556. Liechtenstein has confirmed that it is in full compliance with this provision

557. The relevant provisions are art. 54 and 73 of the Law on Mutual Legal Assistance in Criminal Matters (in connection with art. 59). Corresponding to these provisions, Liechtenstein fulfils all the conditions of par. 11, that means, the transferred person will be kept in custody, he will without delay be returned as agreed and without initiation of an extradition proceeding.

558. Pursuant to § 30 of the Criminal Code and art. 54 par. 2 of the Law on Mutual Legal Assistance in Criminal Matters the person transferred receives credit for the time spent in custody abroad.

Law on Mutual Legal Assistance in Criminal Matters

Article 54

Surrender 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 surrendered 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 surrender,

2. his/her presence is not required for criminal proceedings pending in the State,

3. imprisonment is not prolonged by the surrender, 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 a punishable act committed before transfer.

2) Surrender shall not interrupt the implementation of detention pending trial or after trial or the preventive measure.

Article 73

Surrender of Arrested Persons for the Purpose of Evidence

1) A person under arrest abroad may be surrendered to Liechtenstein in order to carry out important investigations, in particular for questioning or confrontation. The provisions of article 59, paragraphs 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 surrendered to a foreign country in order to carry out important investigations, in particular for questioning or confrontation, article 54 shall be applied mutatis mutandis. However, the consent of the person to be surrendered (article 54, paragraph 1(1)) is not required.

Article 59

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 recognized under Liechtenstein law. The person surrendered shall be arrested in Liechtenstein and returned immediately after termination of the legal assistance action.

Criminal Code

§ 38

Taking account of provisional detention

1) Administrative and judicial custody as well as pre-trial detention shall be counted toward penalties of imprisonment and monetary penalties if the perpetrator was in detention

1. in proceedings regarding the act for which he is being punished, or

2. otherwise after commission of that act on suspicion of an act carrying a penalty, and in both cases only to the extent that the detention was not already counted toward a different sentence or the detainee was already compensated for the detention.

2) When counting the provisional detention toward a monetary penalty, the alternative term of imprisonment shall be used.

559. Examples of implementation:

In the above mentioned case (see nr. 201) the Supreme Court of Liechtenstein confirmed that the person transferred to Liechtenstein has to be kept in custody pursuant to the Swiss decision on pre-trial detention. That means that an additional decision of the Liechtenstein Court of Justice is not needed.

(b) Observations on the implementation of the article

560. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 12 of article 46

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

561. Liechtenstein has confirmed that it is in full compliance with this provision

562. See answers to Subparagraphs 10 and 11 of article 46.

(b) Observations on the implementation of the article

563. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 13 of article 46

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

564. Liechtenstein has confirmed that it is in full compliance with this provision

565. The Ministry of Justice of Liechtenstein serves as the central authority with respect to all international mutual legal assistance in criminal matters.

566. Liechtenstein has confirmed that it has notified the Secretary-General as prescribed above.

567. Liechtenstein has confirmed that it allows that requests for mutual legal assistance and any related communications to be transmitted to the central authorities designated by States parties

568. Liechtenstein has confirmed that it does not require that such requests and related communications be addressed to it through diplomatic channels

569. Liechtenstein has confirmed that it agrees that, in urgent circumstances, requests for mutual legal assistance and related communications should be addressed to it through the International Criminal Police Organization. Requests may even be addressed directly to the requested competent authority.

(b) Observations on the implementation of the article

570. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 14 of article 46

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

571. Liechtenstein has confirmed that it is in compliance with this provision with regard to the communication of requests for mutual legal assistance
572. Concerning UNCAC, Liechtenstein made the Declaration that requests and the related documents have to be submitted in German or English language.
573. Concerning the Council of Europe Convention on Mutual Assistance in Criminal Matters, art. 16, Liechtenstein made the Declaration that requests and the related documents have to be submitted in German language
574. If there are no international agreements applicable, requests and the related documents have to be submitted in German language. Exception: requests for delivery of citations.
575. Declaration of Liechtenstein to the Council of Europe Convention on Mutual Assistance in Criminal Matters, art. 16: The Principality of Liechtenstein stipulates that letters rogatory and annexed documents addressed to the Liechtenstein authorities in a language other than German - with the exception of requests for service of summons - shall be accompanied by a translation into that language.
576. Liechtenstein has confirmed that it notified the Secretary-General of the United Nations as prescribed above.
577. Authorities met during the country visit further explained that, despite the lack of previous examples, nothing in the law prevent them from accepting requests made orally in urgent circumstances. They have also invoked the direct applicability of the UNCAC in this respect.

(b) Observations on the implementation of the article

578. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraphs 15 and 16 of article 46

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request

relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

579. Liechtenstein has confirmed that it is in full compliance with this provision

580. The content of par. 15 is consistent with the conditions set out in the Law on Mutual Legal Assistance in Criminal Matters and in the Council of Europe Convention on Mutual Assistance in Criminal Matters.

581. For the searching of persons or rooms, for the seizing of objects and for the phone tapping there are some special conditions necessary as prescribed in art. 56 par. 2 and 3 of the Law on Mutual Legal Assistance in Criminal Matters.

582. Types of information that are lacking most frequently in requests from other States:

- a precise and concrete prescription of the facts of the criminal behavior;
- the legal assessment of the punishable act underlying the request (this is needed to examine the dual criminality);
- the connection between the criminal behavior or the purpose of the foreign investigation and the requested measures.

Law on Mutual Legal Assistance in Criminal Matters

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 punishable act 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 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.

Pursuant to art. 58 (in conjunction with art. 2 and art. 9 par. 1) of the Law on Mutual Legal Assistance in Criminal Matters, legal assistance shall be granted in accordance with the provisions of the Code of Criminal Procedure. However, a request for carrying out another

process shall be granted provided that this process is compatible with the principles of the Liechtenstein criminal proceedings.

Article 58

Applicable Procedural Provisions

Legal assistance shall be granted in accordance with the provisions on criminal proceedings applicable in Liechtenstein. However, a request for carrying out another process shall 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 shall be notified accordingly in the form provided for.

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 9

Application of the Code of Criminal Procedure

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

583. Information on requests executed in ways specified in the request other than those envisaged in your domestic law: In accordance with the request for questioning a witness, certain other persons may take part even if this would not be allowed in a corresponding domestic procedure.

584. Liechtenstein also referred to Article 14 of the Council of Europe Convention on Mutual Assistance in Criminal Matters and Articles 27 and 28 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds.

(b) Observations on the implementation of the article

585. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 17 of article 46

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

586. Liechtenstein has confirmed that it is in full compliance with this provision

587. Pursuant to art. 58 (in conjunction with art. 2 and art. 9 par. 1) of the Law on Mutual Legal Assistance in Criminal Matters, legal assistance shall be granted in accordance with the provisions of the Code of Criminal Procedure. However, a request for carrying out another process shall be granted provided that this process is compatible with the principles of the Liechtenstein criminal proceedings.

Law on Mutual Legal Assistance in Criminal Matters

Article 58

Applicable Procedural Provisions

Legal assistance shall be granted in accordance with the provisions on criminal proceedings applicable in Liechtenstein. However, a request for carrying out another process shall 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 shall be notified accordingly in the form provided for.

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 9

Application of the Code of Criminal Procedure

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

588. Information on requests executed in ways specified in the request other than those envisaged in your domestic law: In accordance with the request for questioning a witness, certain other persons may take part even if this would not be allowed in a corresponding domestic procedure.

(b) Observations on the implementation of the article

589. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 18 of article 46

18. Whenever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

590. Liechtenstein has confirmed that it permits hearings of individuals mentioned above to take place by video conference as described above.

591. The Code of Criminal Procedure does not provide such hearings by video conference. Because of the very small size of our country this measure is not necessary in domestic proceedings.

592. Also the Law on Mutual Legal Assistance in Criminal Matters does not provide such hearings by video conference. However, this measure is covered by the Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters, art. 9 and 10. Liechtenstein has not yet ratified this Convention but it is

the strong intention to ratify it as soon as possible.

593. Nevertheless, hearings by video conference upon request for mutual legal assistance are done if the person to be interviewed agrees. This consent is given in most cases.

594. Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters

Article 9 - Hearing by video conference

1 If a person is in one Party's territory and has to be heard as a witness or expert by the judicial authorities of another Party, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in paragraphs 2 to 7.

2 The requested Party shall agree to the hearing by video conference provided that the use of the video conference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested Party has no access to the technical means for video conferencing, such means may be made available to it by the requesting Party by mutual agreement.

3 Requests for a hearing by video conference shall contain, in addition to the information referred to in Article 14 of the Convention, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.

4 The judicial authority of the requested Party shall summon the person concerned to appear in accordance with the forms laid down by its law.

5 With reference to hearing by video conference, the following rules shall apply:

a a judicial authority of the requested Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Party. If the judicial authority of the requested Party is of the view that during the hearing the fundamental principles of the law of the requested Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;

b measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Parties;

c the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Party in accordance with its own laws;

d at the request of the requesting Party or the person to be heard, the requested Party shall ensure that the person to be heard is assisted by an interpreter, if necessary;

e the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Party.

6 Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Party shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Party to the competent authority of the requesting Party.

7 Each Party shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory, in accordance with this article, and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.

8 Parties may at their discretion also apply the provisions of this article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving the accused person or the suspect. In this case, the decision to hold the video

conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Parties concerned, in accordance with their national law and relevant international instruments. Hearings involving the accused person or the suspect shall only be carried out with his or her consent.

9 Any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it will not avail itself of the possibility provided in paragraph 8 above of also applying the provisions of this article to hearings by video conference involving the accused person or the suspect.

Article 10 - Hearing by telephone conference

1 If a person is in one Party's territory and has to be heard as a witness or expert by judicial authorities of another Party, the latter may, where its national law so provides, request the assistance of the former Party to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 6.

2 A hearing may be conducted by telephone conference only if the witness or expert agrees that the hearing take place by that method.

3 The requested Party shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law.

4 A request for a hearing by telephone conference shall contain, in addition to the information referred to in Article 14 of the Convention, the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.

5 The practical arrangements regarding the hearing shall be agreed between the Parties concerned. When agreeing such arrangements, the requested Party shall undertake to:
a notify the witness or expert concerned of the time and the venue of the hearing;
b ensure the identification of the witness or expert;
c verify that the witness or expert agrees to the hearing by telephone conference.

6 The requested Party may make its agreement subject, fully or in part, to the relevant provisions of Article 9, paragraphs 5 and 7.

595. Examples of implementation: In the past few years several hearings by video conference have been conducted by the competent Court of Justice, e.g. upon request of Austria, Finland, Israel, Slovenia, Spain, USA and others.

(b) Observations on the implementation of the article

596. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 19 of article 46

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

597. Liechtenstein has confirmed that it is in full compliance with this provision
598. The rule of specialty is based on art. 52 par. 4 of the Law on Mutual Legal Assistance in Criminal Matters. When transmitting the documents in executing the request, the reservation (of specialty) is systematically included in the correspondence.
599. Vice versa, Liechtenstein agrees, of course, to all conditions the requested State Party sets when executing a request for mutual legal assistance from Liechtenstein.

Law on Mutual Legal Assistance in Criminal Matters

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 realization of such rights.
- 3) Sending of objects or documents shall be deferred as long as they are required for pending domestic legal or administrative proceedings.
- 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 handing over 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, paragraph 1),
2. in the case that the legal assessment of the offense 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.

600. Liechtenstein also invoked the direct applicability of UNCAC.
601. See above for examples of implementation.

(b) Observations on the implementation of the article

602. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 20 of article 46

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

603. Liechtenstein has confirmed that it is in full compliance with this provision
604. § 98a par. 3 of the Code of Criminal Procedure allows to obligate some financial intermediaries to keep confidential the fact and substance of the request and the measures taken.
605. But this is only possible for some period. Before sending objects or documents to the requesting State the entitled parties must first be granted a fair hearing (art. 55 par. 4 of the Law on Mutual Legal Assistance in Criminal Matters). These entitled parties may participate in the proceedings and their rights can be limited only under the conditions described in art. 58a of the Law on Mutual Legal Assistance in Criminal Matters. In exceptional cases objects or documents could be sent to the requesting State without the prior hearing of the entitled parties.
606. When it is not possible to comply with the requirement of confidentiality, the requesting State will promptly be informed. It often happens that the requesting State - either immediately or after having taken some other measures - withdraws the requirement.
607. In addition, it has to be pointed out that in proceedings for legal assistance according to art. 58a par. 1 of the Law on Mutual Legal Assistance in Criminal Matters courts do not serve their decisions and summons to appear on to parties residing or situated abroad, unless they have an address for service in Liechtenstein.

Code of Criminal Procedure (CPC) § 98a

3) A ruling under paragraph 1 shall in all cases be served upon the institution. Service upon other persons with powers of disposal that arise from the business relationship and have become known may be deferred if service would endanger the purpose of the investigation. The institution shall be notified of this and must maintain secrecy for the time being with respect to all facts and processes associated with the judicial order vis-à-vis clients and third parties. Under these conditions, persons working for the institution may also not inform the contracting party or third parties about ongoing investigations.

***Law on Mutual Legal Assistance in Criminal Matters Article 55
Competence for the Handling of Requests for Legal Assistance***

4) If in a request for extradition, transmission of objects and documents is demanded, it must be decided 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.

Article 58a 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

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.

608. See above for examples of implementation and cases in which it was not possible to comply with the requirement of confidentiality

609. In most cases the requesting State withdraws the requirement of confidentiality immediately or after having postponed the requested measures for a certain period.

(b) Observations on the implementation of the article

610. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 21 of article 46

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

611. Liechtenstein has confirmed that their legal system recognizes grounds for refusal

612. Mutual legal assistance may be refused:
– if the request respectively the requested measure violates public order or other essential interests of Liechtenstein pursuant to art. 2 of the Law on Mutual Legal

Assistance in Criminal Matters;
– if legal assistance is impermissible pursuant to art. 51 in connection with art. 14, 15 and 19 of the Law on Mutual Legal Assistance in Criminal Matters.

Law on Mutual Legal Assistance in Criminal Matters

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 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,
 2. extradition would be impermissible with regard to the proceedings underlying the request in accordance with article 19(1) and (2), or
 3. either the special requirements necessary in accordance with the Code of Criminal Procedure to carry out certain investigations, in particular confiscation and opening of letters or surveillance of telecommunications, 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. 1a) The fact that the punishable act giving rise to the request is not subject to extradition pursuant to article 15(2) shall not constitute an obstacle to the provision of legal assistance, to the extent the act is punishable and is connected with damage to the budget of the European Communities:
 1. as tax fraud in accordance with article 88 of the Value Added Tax Act or as a customs violation committed maliciously or under aggravating circumstances in accordance with articles 118 and 119 in conjunction with article 124 of the Swiss Customs Act or article 14, paragraph 2 of the Federal Act on Administrative Criminal Law, if in such cases the evaded tax, reduced customs duties, or other unlawful advantage exceeded or was intended to exceed 75,000 francs, or
 2. as a breach of a customs prohibition in accordance with Art. 120 of the Swiss Customs Act.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.

Article 14

Punishable Acts of a Political Nature Extradition is impermissible

1. for political punishable acts,
2. for other punishable acts 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 offense outweighs its political character.

Article 15

Military and Fiscal Punishable acts

- Extradition for punishable acts, 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 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).

613. Furthermore, pursuant to art. 58 of the Law on Mutual Legal Assistance in Criminal Matters, legal assistance shall be granted in accordance with the provisions of the Code of Criminal Procedure. However, a request for carrying out another process shall be granted provided that this process is compatible with the principles of the Liechtenstein criminal proceedings.

(b) Observations on the implementation of the article

614. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 22 of article 46

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

615. Liechtenstein has confirmed that it is in compliance with this provision

616. As seen above, legal assistance is impermissible (pursuant to art. 51 in connection with art. 15 of the Law on Mutual Legal Assistance in Criminal Matters) for punishable acts which, under Liechtenstein law, 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.

617. There are a few exceptions, notably

- for punishable acts stipulated in art. 51 par. 1a of the Law on Mutual Legal Assistance in Criminal Matters;
- for punishable acts referred to in the Treaty between the Principality of Liechtenstein and the United States of America on Mutual Legal Assistance in Criminal Matters.

618. Furthermore, if the punishable acts do not only involve fiscal matters but also "ordinary" offences, then mutual legal assistance can be granted for these offences. With regard to these cases the use of the evidence for the requested State is just prohibited

referring to fiscal offences. This reservation will be declared in the correspondence when executing the request.

619. Besides, art. 2 of the Council of Europe Convention on Mutual Assistance in Criminal Matters also allows the refusal of legal assistance in fiscal matters.

Law on Mutual Legal Assistance in Criminal Matters

Article 51 Impermissibility of Legal Assistance

1a) The fact that the punishable act giving rise to the request is not subject to extradition pursuant to article 15(2) shall not constitute an obstacle to the provision of legal assistance, to the extent the act is punishable and is connected with damage to the budget of the European Communities:

1. as tax fraud in accordance with article 88 of the Value Added Tax Act or as a customs violation committed maliciously or under aggravating circumstances in accordance with articles 118 and 119 in conjunction with article 124 of the Swiss Customs Act or article 14, paragraph 2 of the Federal Act on Administrative Criminal Law, if in such cases the evaded tax, reduced customs duties, or other unlawful advantage exceeded or was intended to exceed 75,000 francs.

Council of Europe Convention on Mutual Assistance in Criminal Matters

Article 2 Assistance may be refused:

a. if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;

620. Authorities met during the country visit confirmed that MLA has been provided in multiple “mixed-cases”.

(b) Observations on the implementation of the article

621. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 23 of article 46

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

622. Liechtenstein has confirmed that it is in full compliance with this provision

623. If there is some information lacking, the requesting State will be given the possibility to amend the request and to submit the lacking information. If legal assistance is not granted in whole or in part, the requesting State will - pursuant to art. 57 par. 1 of the Law on Mutual Legal Assistance in Criminal Matters - be informed by indicating the reasons in the form provided for.

Law on Mutual Legal Assistance in Criminal Matters

Article 57

Refusal of Legal Assistance

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

(b) Observations on the implementation of the article

624. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 24 of article 46

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

625. Liechtenstein has confirmed that it has fully adopted and implemented this provision

626. The competent authority for handling request for legal assistance is the Court of Justice (art. 55 of the Law on Mutual Legal Assistance in Criminal Matters). Upon receipt of a request the Court of Justice immediately sends by fax or e-mail an acknowledgment of receipt to the requesting authority; this acknowledgment indicates the file number and the name, telephone number, fax number and e-mail address of the competent judge.

627. The requesting State may send requests on the status and progress in its handling directly to the competent judge or may get in contact with him by telephone, if needed.

628. Requests on the status and progress in its handling will be answered as soon as possible by the competent judge of the Court of Justice.

Law on Mutual Legal Assistance in Criminal Matters

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.

629. Information on the customary length of time between receiving requests for mutual legal assistance and responding to them:

It is very difficult to provide precise information on the average length of time required to respond to a request for mutual legal assistance. This depends on several criteria, inter alia the complexity of the case, the actions requested and the possibility of appeals against decisions of the Court of Justice. The duration for "ordinary" cases without appeals ranges from two to three months, in cases with one appeal between three and five months. In complex cases involving several persons or entities or in cases with more than one appeal the duration may be longer.

However, some measures are implemented shortly, e.g. seizure of documents, blockage of funds, phone tapping, observation etc. In particular, the competent judge may order the freezing of bank accounts immediately after having received and approved the request.

With the consent of the entitled persons, objects and documents can be sent to the requesting State without any further formal procedures (art. 52 par. 5 of the Law on Mutual Legal Assistance in Criminal Matters). This accelerates the execution of the request considerably.

Law on Mutual Legal Assistance in Criminal Matters

Article 52

Sending of Objects and Documents

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 shall 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.

(b) Observations on the implementation of the article

630. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 25 of article 46

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

631. Liechtenstein has confirmed that it is in full compliance with this provision

632. The only requirement is regulated in art. 52 par. 3 of the Law on Mutual Legal Assistance in Criminal Matters.

Law on Mutual Legal Assistance in Criminal Matters

Article 52

Sending of Objects and Documents

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

633. There are no concrete cases known in which the execution of the request was postponed on the ground that it interfered with an ongoing proceeding.

634. Authorities met during the country visit further explained that according to the Law on Mutual Legal Assistance in Criminal Matters, the only reason for postponing legal assistance is the need of objects or documents for a pending domestic proceeding. Otherwise, the Law on Mutual Legal Assistance in Criminal Matters does not allow postponing legal assistant on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(b) Observations on the implementation of the article

635. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 26 of article 46

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

636. Liechtenstein has confirmed that it is in full compliance with this provision

637. See answer to Paragraph 23 of article 46.

638. The requesting State will be given the possibility to accept assistance subject to concrete conditions.

639. See also art. 4 of the Law on Mutual Legal Assistance in Criminal Matters.

Law on Mutual Legal Assistance in Criminal Matters

Article 4 Conditions

Conditions established by another State with regard to the authorization 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.

640. Authorities met during the country visit further explained that if it was possible to grant assistance subject to concrete terms and conditions, the requesting State Party can be consulted before refusing a request or postponing its execution. They have also invoked the direct applicability of UNCAC regarding the provision under review.

(b) Observations on the implementation of the article

641. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 27 of article 46

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

642. Liechtenstein has confirmed that it is in full compliance with this provision

643. The relevant legal basis is art. 53 of the Law on Mutual Legal Assistance in Criminal Matters.

Law on Mutual Legal Assistance in Criminal Matters

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

1. due to a punishable act 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.

(b) Observations on the implementation of the article

644. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 28 of article 46

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

645. Liechtenstein has confirmed that it is in full compliance with this provision

646. The relevant legal basis is art. 5 of the Law on Mutual Legal Assistance in Criminal Matters.

Law on Mutual Legal Assistance in Criminal Matters

Article 5 Costs

Costs incurred due to the authorization 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 is always to be asked for from the State making the request.

647. In most cases all the costs are borne by Liechtenstein. However, if the requesting State is to be charged with costs involved in the execution of a request, there will be a prior consultation with the respective State. Example of costs which are, as an exception, normally borne by the requesting State: the costs of hearings by video-conference.

(b) Observations on the implementation of the article

648. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Subparagraph 29 (a) of article 46

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(a) Summary of information relevant to reviewing the implementation of the article

649. Liechtenstein has confirmed that it is in full compliance with this provision

650. The Law on Mutual Legal Assistance in Criminal Matters does not include such a provision. This kind of documents and information is publicly available and can be provided upon request. Therefore, a specific provision is not necessary.

651. Examples of such documents are the publicly available certificates of registration of entities in the trade register of Liechtenstein.

(b) Observations on the implementation of the article

652. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Subparagraph 29 (b) of article 46

29. The requested State Party:

...

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

653. Liechtenstein has confirmed that it is in full compliance with this provision

654. Upon request these documents or information can be provided to the requesting State if the conditions of the Law on Mutual Legal Assistance in Criminal Matters, as described above, are met. The main provisions in this respect are art. 52 and art. 55 par. 5.

Law on Mutual Legal Assistance in Criminal Matters

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 realization of such rights.

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

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 handing over 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, paragraph 1),

2. in the case that the legal assessment of the offense 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 shall 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.

Article 55

Competence for the Handling of Requests for Legal Assistance

5) The announcement and sending of final criminal court decisions to the requesting authority is permissible without a formal procedure.

(b) Observations on the implementation of the article

655. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 30 of article 46

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

656. Liechtenstein confirmed that it has fully adopted and implemented this provision of the Convention.

657. See answer to Paragraph 1 of article 46.

(b) Observations on the implementation of the article

658. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Article 47. Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

659. Liechtenstein confirmed that it has fully adopted and implemented this provision of the Convention.

660. Liechtenstein complies with this provision. Transfer of proceedings is possible according to Art. 60 and 74 MLA and due to multilateral treaties (Art. 21 of the European Convention on Mutual Assistance in Criminal Matters, ETS No. 30 and European Convention on the Transfer of Proceedings in Criminal Matters, ETS No. 73).

A. Assumption of Prosecution

Article 60 MLA Competence and Proceedings

1) Requests for the assumption of prosecution shall be examined on a provisional basis by the competent member of the Government for the Department of Justice. If the request does not provide sufficient grounds for prosecution, the competent member of the Government for the Department of Justice must refuse further dealing with the request or otherwise send it to the Office of the Public Prosecutor. The competent member of the Government for the Department 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.

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.

Article 74

Obtaining of Assumption of Prosecution

1) The competent member of the Government for the Department of Justice may request another State to institute criminal proceedings against a person due to a punishable act subject to Liechtenstein jurisdiction if jurisdiction of this State seems to be justified and

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 punishable act 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 Ministry of Justice accordingly and transmit the necessary documents.

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 punishable act 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 shall 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.

661. Additionally, the possibilities of taking over criminal proceedings in accordance with article 60 MLAA and effecting the takeover of criminal proceedings in accordance with article 74 MLAA for the Office of the Public Prosecutor may be pointed out

662. Examples of implementation: The transfer of criminal proceedings to and from other states happens quite regularly, mainly with our neighbouring countries (Switzerland, Germany, Austria) and occasionally also with other states.

663. No concrete data available on recent court or other cases in which proceedings for the prosecution of an offence of corruption have been transferred to and from you

(b) Observations on the implementation of the article

664. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Article 48. Law enforcement cooperation

Subparagraph 1 (a) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(a) **Summary of information relevant to reviewing the implementation of the article**

665. Liechtenstein confirmed that it has fully adopted and implemented the measures stated above.

666. Liechtenstein makes use of Interpol and SIRENE (Europol) channels to exchange information - also on corruption offences. The NCB and SIRENE are located with the National Police, so that all information can be compiled and evaluated in a centralized manner. Only one police authority exists in Liechtenstein, namely the National Police.

667. Liechtenstein National Police is also an associated member of the Police Concordat of Eastern Switzerland since 2003 and a member of Schengen/Dublin area since 2011. It's also a part of StAR/Interpol Global Focal Points network on asset recovery.

668. Moreover, Liechtenstein's FIU is a member of the Egmont Group and exchange information with its foreign counterparts through the Egmont Secure Web (ESW).

Law on National Administration

Article 25

1) The administrative authorities (official persons) and organs of the State and the municipalities as well as the courts shall render mutual assistance to each other when undertaking or executing administrative acts (administrative cooperation, administrative assistance), whether such assistance is otherwise legally stipulated or not.

2) In important administrative matters, domestic municipal administrative authorities may grant assistance to foreign administrative authorities only via the Government, unless existing practice or laws stipulate otherwise.

3) The extent to which the Government is authorized to grant assistance to foreign administrative authorities or organs on its own behalf or on behalf of other National Administration authorities shall be determined by the provisions applicable in this regard (international treaties, administrative agreements, Government declarations, laws, or ordinances), existing practice, or reciprocity, unless such administrative cooperation is impermissible according to the principles of public law.

4) The Administrative Court shall decide on complaints by the parties concerning refusal or granting of administrative cooperation by the Government; until the decision of the Administrative Court, any assistance shall be provisionally deferred, subject to protective measures.

5) When providing administrative assistance, the authorities (official persons) and their organs may apply the coercive measures permissible in their official sphere, especially penalties for non-compliance, with the possibility of appeal (Article 29, paragraph 4).

§ 10 Code of Criminal Procedure

1) The National Police shall be obliged to investigate every criminal offense which is subject to indictment and suspicion of which has been brought to their attention. For this purpose the

National Police shall without delay carry out inquiries to ascertain the facts and issue such orders as are necessary to prevent the removal of the traces of the criminal act or the escape of the suspect. The National Police shall only be permitted unsolicitedly to take persons into custody, and to take other coercive measures, in the cases envisaged in this law. They shall inform the Office of the Public Prosecutor or the investigating judge of their orders and inquiries in accordance with § 11.

- 2) To perform their duty in accordance with paragraph 1 the National Police shall be entitled,
 1. to receive communications and demand information from persons;
 2. to ascertain the identity of suspects and persons who can contribute towards clarification of the suspicion (§ 91a);
 3. to take fingerprints and photographs of persons who are strongly suspected of a crime or an offense (Art. 24a of the National Police Act);
 4. to question unsworn witnesses and suspects, whereby the National Police shall apply *mutatis mutandis* the provisions of Titles X. to XII;
 5. to search real estate and premises which are not accessible to the general public and do not form part of a household (§ 92 paragraph 1), vehicles or containers, as well as a person, in accordance with § 92 paragraph 2;
 6. to carry out a house search in the cases listed under § 94;
 7. to arrange the investigation of biological traces at the scene of a crime or the non-invasive sampling of persons (§ 95a paragraph 3, last sentence);
 8. to seize items pursuant to § 96a;
 9. to monitor the behavior of a person pursuant to § 104a;
 10. to carry out an undercover inquiry (§ 104b).
- 3) Insofar as the National Police are not carrying out an undercover inquiry, they shall point out their official status, unless this is obvious from the circumstances. They are permitted to receive communications or demand information provided this is given voluntarily and is not obtained by compulsion. The provisions concerning the questioning of persons charged and witnesses shall not be permitted to be circumvented thereby. The subject-matter of information provided and other circumstances which has been obtained through such inquiries and which may be of significance for the proceedings shall be recorded in an official memorandum (§ 47 paragraph 2).
- 4) A deferment of the inquiries incumbent upon the National Police in accordance with this provision is permissible if
 1. this promotes the clarification of a substantially more serious criminal act or the gathering of information on a leading accessory to the commission of the punishable act and this deferment does not involve any serious risk to life, health, physical injury or the freedom of third parties, or
 2. otherwise a serious risk to life, health, physical injury or the freedom of a person would arise, which cannot be averted in another manner.
- 5) The National Police shall without delay inform the Office of the Public Prosecutor about a deferment in accordance with paragraph 4.

§ 53 Code of Criminal Procedure

- 1) If an authority, within its legal scope of activities, gains knowledge of a suspicion of an offence subject to *ex officio* prosecution, it is required to report the suspicion to the Office of the Public Prosecutor or the National Police.
- 2) There is no reporting obligation under paragraph 1:
 1. if the report would adversely affect an official activity whose effectiveness requires a personal relationship of trust, or
 2. if and as long as there are sufficient grounds to assume that the punishability of the offence will be eliminated in the near future pursuant to measures to remedy the damage.
- 3) The authority must in any event do everything necessary to protect the injured party or other persons from danger; where necessary, reports must also be filed in cases covered by paragraph 2.
- 4) The reporting obligation of the National Police and the courts as well as reporting obligations set out in other laws shall remain unaffected.

Law on the Financial Intelligence Unit

Article 9

1) On request, the national authorities shall provide the FIU with the information necessary to fulfil its responsibilities. In order to fulfil its responsibilities, the FIU is entitled to access certain registers of the administrative offices of the National Administration by means of an online retrieval procedure. Once the relevant administrative office has given its consent, the FIU may access the record concerned.

2) The Government shall specify by ordinance which registers the FIU may access.

Law on Due Diligence

Article 36

1) The domestic authorities, in particular the courts, the Office of the Public Prosecutor, the FMA, the FIU, the National Police, and other authorities responsible for combating money laundering, organized crime, and terrorist financing are required to provide all information and transmit all records to each other that are necessary for the enforcement of this Act.

2) In proceedings relating to §§ 165, 278 to 278d CC, the Office of the Public Prosecutor shall inform the FMA and the FIU whenever such proceedings are initiated and discontinued, and the courts shall transmit copies of any judgments rendered in such proceedings. In addition, the persons subject to due diligence that have submitted a report pursuant to Article 17 shall be informed of the outcome of the corresponding proceedings.

3) In addition, the Office of the Public Prosecutor shall inform the FMA about the initiation and discontinuation of proceedings in connection with Article 30, and the courts shall transfer copies of any judgments rendered in such proceedings.

669. Examples of implementation

In 2011, Interpol Rome directed an enquiry to the National Police in Vaduz regarding clarifications of a suspicion of a breach of official duties (in connection with a piece of art).

Liechtenstein has set up a AML/CFT Working Group (“PROTEGE”) that is responsible to coordinate all AML/CFT related activities. It is also mandate to coordinate operational activities. The AML/CFT Working Group is chaired by the Director of the FIU and meets 4-6 times a year. The WG Chair reports to the Prime Minister and to the Minister of Foreign Affairs every 3 months on the activities of the Working Group.

In addition, the Prosecutor General, a judge of the court of Justice, the Director FIU, the CEO of the FMA, the Head of the Criminal Police, and the Directors of the Foreign Office, the Tax Administration and the Office for International Financial Affairs meet on a quarterly basis, to inform each other on current developments (ERFAG-Group).

Due to the smallness of the country, all relevant decision takers meet regularly, sometimes weekly, to discuss operational matters.

The FIU and the Office of the Public Prosecutor has quarterly meetings to review the disseminated cases and to allow documentation of follow up.

Art. 25 LVG, Art. 36 DDA, Art. 9 FIU Act, §10 StPO (Criminal Procedure Ordinance), § 53 StPO, all provide for sufficient legal ground to exchange information between authorities.

(b) Observations on the implementation of the article

670. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Subparagraph 1 (b) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(a) Summary of information relevant to reviewing the implementation of the article

671. Liechtenstein confirmed that it has fully adopted and implemented this provision of the Convention.

672. Pursuant to Articles 35 et seq. of the Police Act (International Administrative assistance), the National Police is authorized to exchange personal data with foreign security authorities and to forward all information that does not explicitly require a court order to be obtained in Liechtenstein. Request for judicial assistance may also be used to obtain and forward banking and account information.

673. Authorities met during the country visit further explained that the FIU, and pursuant to a request of information received from a foreign counterpart, can only check and exchange information held in its database, or obtainable by the FIU, in line with the recent FATF evaluation of Norway. Hence, to cooperate in cases covered by subparagraphs (ii) and (iii) a formal request for mutual legal assistance is needed due to the fact that sharing of such information is only possible based on a court order

To sum up, here are the three possible scenarios:

1) FIU receives request / FIU holds requested information (of any kind, including beneficial owner information!) / FIU shares with foreign counterpart without any ramifications.

2) FIU receives request / FIU does not hold requested information / FIU identifies that request is connected to an SAR that it has received from a reporting entity(s) / FIU approaches reporting entity (s) in accordance with Article 26 (2) Due Diligence Ordinance and asks for all the information the requesting jurisdiction would like to see.

3) FIU receives request / FIU does not hold requested information / FIU does not identify that request is connected to previous SAR / FIU has no information to share.

Authorities confirmed that the FIU has shared banking and account information – under the circumstances explained further above – for years with foreign counterparts.

674. No examples of implementation so far.

(b) Observations on the implementation of the article

675. As thoroughly discussed during the country-visit held between the evaluation team as well as two representatives from the FIU it was clearly explained that the FIU does provide all information it keeps in its own databases to foreign counterparts. The only caveat is that the FIU can only share information internationally that it holds or can obtain domestically. That being the case the FIU can share all information, including banking and account information with its counterparts as it keeps this information in its databases when a Suspicious Activity Report (SAR) is filed domestically. Should such by foreign FIUs requested information and data not be held in the FIU's databases the FIU has the power to request such information but only as long as the request is connected to an SAR that has been previously filed with the FIU.

676. With the exception of the FIU channel which can only share information internationally that it holds domestically or that it can request when such information is connected to an SAR that has been previously filed with the FIU, the reviewing experts concluded that the MLA channel was the only channel through which banking and account information might be provided to foreign authorities. This situation limits the capacity of national authorities to cooperate on the international level in conducting inquiries concerning the movement of proceeds of crime or property derived from the commission of offences covered by this Convention, when such proceeds are held in a banking institution.

677. In terms of efficiency, the reviewing experts recommend Liechtenstein, to take the appropriate measures to enable its competent law enforcement authorities to cooperate on the international level in conducting inquiries concerning the movement of proceeds of crime or property derived from the commission of offences covered by this Convention, when such proceeds are held in a banking institution.

Subparagraph 1 (c) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and

administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(a) Summary of information relevant to reviewing the implementation of the article

678. Liechtenstein confirmed that it has fully adopted and implemented this provision of the Convention.

679. Within the framework of the Mutual Legal Assistance Act, evidence of foreign law enforcement authorities may also be made available for investigation and evaluation purposes.

680. Authorities met during the country visit referred to Article 52 of the MLAA and further explained that the term “objects” was broad enough to include items and quantities referred to in the provision under review.

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 realization of such rights.

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

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 handing over 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, paragraph 1),

2. in the case that the legal assessment of the offense 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 shall 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.

681. No examples of implementation so far.

(b) Observations on the implementation of the article

682. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Subparagraph 1 (d) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(a) Summary of information relevant to reviewing the implementation of the article

683. Liechtenstein confirmed that it has fully adopted and implemented this provision of the Convention.

684. Please see answers to Paragraphs 1a and 1b.

685. No examples of implementation so far.

686. Authorities met during the country visit further explained that information covered by the provision under review is provided through INTERPOL purple notices which include information on *modi operandi*, objects, devices and concealment methods used by criminals. Moreover, as an associated member of EUROPOL, Liechtenstein scans new phenomena in Liechtenstein and provides the information to EUROPOL through the nominated focal point for organized crime. The FIU also publishes an annual report in which a section is dedicated to typologies.

(b) Observations on the implementation of the article

687. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Subparagraph 1 (e) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(a) Summary of information relevant to reviewing the implementation of the article

688. Liechtenstein confirmed that it has fully adopted and implemented this provision of the Convention.

689. Since the beginning of 2014 Liechtenstein is part of Europol and its network of liaison officers. The National Police will accredit a liaison officer with whom the information sharing and exchange as well as the cooperation including regarding corruption offences will be facilitated. Investigations of international corruption cases with the involvement of more States Parties is coordinated through their liaison officers in The Hague.

690. The Trilateral Cooperation Treaty between Liechtenstein, Switzerland and Austria also foresees the possibility to exchange liaison officers if necessary (Art. 14 of the Treaty).

***Art. 14 Cooperation Treaty between Liechtenstein, Switzerland and Austria
Delegation of liaison officers***

1) A State Party may delegate liaison officers to another State Party's security authorities with the consent of that State Party's central bureau.

2) The liaison officers play a support and consultative role without independently exercising sovereign powers. They provide information and perform their assignments within the framework of the instructions given to them by the States Parties involved.

3) Liaison officers delegated to another State Party or a third State may, by mutual consent of the central bureaus concerned, also represent the interests of another State Party.

691. Authorities met during the country visit further explained that all police cadets took part in practical trainings for several weeks with the Swiss police, based on a Police school agreement. The same applies to trainee prosecutors and judges who work for foreign prosecutors' offices and Courts especially in Austria and Switzerland.

692. Moreover, staff from the Police Economic Crime Unit and the Forensic Unit, including at high managerial level, work with the Austrian police in Vienna in the framework of a training initiative. Liechtenstein is also a member of the European judicial Network in the framework of which, exchange of experiences among prosecutors takes place.

(b) Observations on the implementation of the article

693. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Subparagraph 1 (f) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

694. Liechtenstein confirmed that it has fully adopted and implemented this provision of the Convention.

695. See answer to paragraph 1 e).

696. No examples of implementation so far.

(b) Observations on the implementation of the article

697. The reviewing experts made also a reference to Article 54a of the MLAA (Spontaneous Transmission of Information) and concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 2 of article 48

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

698. Liechtenstein has confirmed that they have entered into the following bilateral or multilateral agreements or arrangements on direct cooperation with law enforcement agencies of other States parties:

-The Trilateral Cooperation Treaty between Liechtenstein, Switzerland and Austria is also applicable in corruption cases, as is Europol and Interpol, where Liechtenstein is a State Party.

- the Cooperation-Treaty between Liechtenstein and Eurojust, in force since 19 November 2013.

699. Liechtenstein has confirmed that it partly considers this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention

(b) Observations on the implementation of the article

700. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 3 of article 48

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

701. Liechtenstein has confirmed that it is in full compliance with this provision

702. The National Police disposes of its own IT-Unit, which is a member of the G8-Network for IT/Internet Offences.

703. Liechtenstein has the following provisions on Cybercrime in its Criminal Code:

§ 126a damage to data; § 126b interference with the functioning of a computer system; §126c misuse of computer programs or data; § 131a data theft; § 148a fraudulent misuse of data processing.

704. Authorities met during the country visit further explained that the Forensic Unit under the Crime Investigation Division has two IT experts who will normally assist the investigators of the Financial Crime Unit whenever they deal with an offence covered by this Convention and committed through the use of modern technology. Authorities have also noted that Liechtenstein has criminalized cybercrimes and is in the process of ratifying the cybercrime Convention of the Council of Europe.

(b) Observations on the implementation of the article

705. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Article 49. Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

706. Liechtenstein confirmed that it has fully adopted and implemented the measures described above

707. See also answers to Art. 48: Interpol, Europol and the Trilateral Cooperation Treaty between Liechtenstein, Switzerland and Austria all foresee joint investigations.

708. No examples of implementation so far.

709. Authorities met during the country visit further explained that nothing prevent them from signing an agreement to conduct joint investigations on a case-by-case basis, when needed.

(b) Observations on the implementation of the article

710. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Article 50. Special investigative techniques

Paragraph 1 of article 50

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

(a) Summary of information relevant to reviewing the implementation of the article

711. Liechtenstein confirmed that it has fully adopted and implemented the measures described above

712. §§ 103 to 104c ff of the Criminal Procedure Code govern the special investigation methods (surveillance of communication, observation, covert investigation, bogus transaction/controlled delivery); if requests for mutual legal assistance for special investigations in Liechtenstein are granted, these may also be used before courts abroad.

713. There have only been a few cases so far. So far, these techniques have been used primarily in cases of drug trafficking or human trafficking and not yet in investigations concerning offences covered by this Convention.

§ 103 Code of Criminal Procedure

- 1) An order of surveillance of electronic communication, including recording of the content thereof, shall only be permissible if it must be expected that such surveillance can help solve a wilfully committed offence subject to a penalty of more than one year of imprisonment and if
 1. there are substantial grounds to believe the owner of the means of communication has himself committed the offence, or
 2. there are reasons to assume that a person with respect to whom there are substantial grounds to believe he committed the offence is staying with the owner of the means of communication or will use the means of communication to contact him, unless the owner is one of the persons referred to in § 107 paragraph 1(2), or
 3. the owner of the means of communication expressly agrees to the surveillance.
- 2) The order of surveillance of electronic communication shall be the responsibility of the investigating judge, but he must immediately obtain approval from the President of the Court of Appeal. If approval is denied, then the investigating judge must immediately revoke the order and have the recordings destroyed.
- 3) The National Police shall be requested to execute the surveillance of electronic communication in consultation with the providers within the meaning of the Communications Act (§ 10). Initially, parties and other participants in the proceedings shall not be informed.
- 4) The ordered surveillance shall be limited to three months. If a need for surveillance continues after expiry of this deadline, the procedure set out in the preceding paragraphs shall again be followed.

§ 104 Code of Criminal Procedure

- 1) As soon as the preconditions for continued surveillance of electronic communication no

longer apply, the investigating judge shall order the immediate termination of the surveillance.

2) After termination of the surveillance, the investigating judge shall inform the owner of the means of communication subject to surveillance and the suspect (accused) that the surveillance occurred. At the same time, the owner of the means of communication shall be given the opportunity to inspect the recordings, and likewise the suspect (accused) distinct from the owner of the means of communication, the latter however only to the extent that the recordings could be of importance to ongoing or future criminal proceedings against him. When inspecting the recordings, the owner of the means of communication and the suspect (accused) may demand that the recordings reviewed by them be stored. If no such demand is made, the investigating judge must only enter the recordings into the record to the extent that they could be of importance to ongoing or future criminal proceedings; he shall have recordings not included in the record destroyed.

3) In all cases, recordings of conversations between a suspect (accused) and his counsel (§ 108 paragraph 1(2)) shall be destroyed, unless both agree to have the recording stored.

4) If the owner of the means of communication under surveillance believes himself to have been injured by the order, approval, or continuation of the surveillance or by an order to store a recording, he shall be entitled to appeal to the Court of Appeal by way of a complaint within fourteen days of being notified by the investigating judge. If the complaint is deemed justified, then it shall simultaneously be ordered that all recordings gained by means of impermissible surveillance be destroyed, unless their storage under paragraph 2 or 3 has been ordered.

§ 104a Code of Criminal Procedure

1) The National Police is entitled ex officio to covertly observe the conduct of a person (observation) if doing so is conducive to solving an offence or determining the location of an accused.

2) The following measures are permissible to support an observation if the observation would otherwise be futile or significantly more difficult:

1. the concealed use of devices serving to record and transmit images at public locations, and
2. the concealed use of devices which, by way of transmitting signals, make it possible to determine the spatial area where the observed person is located, as well as opening vehicles and containers for the purpose of placing such devices.

3) If the observation

1. is supported by the use of devices as referred to in paragraph 2 or
2. is to be carried out for more than 48 hours,

it shall be permissible only if it is suspected that an offence punishable by more than one year of imprisonment has been committed wilfully, and if it can be assumed on the basis of certain facts that the observed person has committed the offence or will establish contact with the accused person or if the observation can determine the location of a fugitive or absent accused person.

4) An observation pursuant to paragraph 3 shall be ordered by the investigating judge on the application of the Office of the Public Prosecutor for the time period expected to be necessary for the observation to achieve its purpose, but at the longest for three months. The National Police shall be requested to carry out the observation (§ 10). In the event of imminent danger, the National Police shall however be entitled to initiate the observation ex officio; but it must immediately inform the Office of the Public Prosecutor, which shall then request a court order, unless the observation has already come to an end. It shall be permissible to order the observation again if the preconditions persist and if, on the basis of certain facts, it can be expected that further observation will be successful. Notifications of parties or other participants in the proceedings shall initially be refrained from.

5) An observation must be terminated as soon as its preconditions no longer apply, its purpose has been achieved or can no longer be expected to be achieved, or if the investigating judge orders that it be terminated. After the termination of the observation pursuant to paragraph 3, the accused person and the affected persons shall be notified that the observation occurred, provided that their identity is known or can be determined without major procedural effort.

This notification may be deferred as long as it would endanger the purpose of the investigation in these or other proceedings.

§ 104b Code of Criminal Procedure

1) The National Police is entitled ex officio to involve its organs or other persons on its behalf who neither disclose nor otherwise indicate their official position or their remit (undercover investigation), if doing so is conducive to solving an offence.

2) A systematic, prolonged undercover investigation shall be permissible only if it otherwise would be significantly more difficult to solve a wilfully committed offence punishable by more than one year of imprisonment or to prevent an offence planned as part of a criminal or terrorist group or a criminal organization (§§ 278 to 278b CC). To the extent doing so is indispensable to solve or prevent the offence, it shall also be permissible to manufacture documents that mislead as to the identity of an organ of the National Police and to use such documents in legal transactions for the purpose of fulfilling the purpose of the investigation.

3) An undercover investigation pursuant to paragraph 2 shall be ordered by the investigating judge on the application of the Office of the Public Prosecutor; the investigating judge shall mandate the National Police to carry out the investigation (§ 10 paragraph 1). In accordance with paragraph 2, the undercover investigation may be ordered or approved only for the time period expected to be necessary for the observation to achieve its purpose, but at the longest for three months. It shall be permissible to order the undercover investigation again if the preconditions persist and if, on the basis of certain facts, it can be expected that further undercover investigations will be successful. The undercover investigator shall be managed and regularly monitored by the National Police. The use of the undercover investigator and the investigator's particulars as well as information and reports obtained through the investigator shall be recorded in an official memo (§ 47 paragraph 2) if they might be relevant to the investigation. Undercover investigators may enter dwellings and other premises protected by domiciliary rights only with the consent of the proprietor. Consent may not be obtained by purporting to have the right of access.

4) An undercover investigation must be terminated as soon as its preconditions no longer apply, its purpose has been achieved or can no longer be expected to be achieved, or if the investigating judge orders that it be terminated.

5) Notifications of parties or other participants in the proceedings shall initially be refrained from. After the termination of the undercover investigation pursuant to paragraph 2, the accused person and the affected persons shall be notified that the undercover investigation occurred, provided that their identity is known or can be determined without major procedural effort. This notification may, however, be deferred as long as it would endanger the purpose of the investigation in these or other proceedings.

§ 104c Code of Criminal Procedure

1) On the application of the Office of the Public Prosecutor and pursuant to a ruling by the Court of Justice, the National Police shall be entitled to carry out a simulated transaction (paragraph 2) if it otherwise would be significantly more difficult to solve a crime (§ 17 paragraph 1 CC) or to secure objects or assets originating from a crime or subject to forfeiture (§ 20b CC) or confiscation (§ 26 CC). Under these preconditions, it is also permissible to contribute to the execution of a simulated transaction by third parties (§ 12, third case CC).

2) For the purpose of this law, a "simulated transaction" means the attempted or simulated execution of offences to the extent they consist in the acquisition, obtaining, possession, import, export, or transit of objects or assets that have been alienated, that originated from a crime, that are intended for the commission of a crime, or the possession of which is absolutely prohibited.

3) The execution of a simulated transaction shall be ordered by the investigating judge on the application of the Office of the Public Prosecutor; the investigating judge shall mandate the National Police to carry out the investigation (§ 8).

3) After the execution of a simulated transaction, the accused person and any affected persons shall be notified that the simulated transaction occurred, provided that their identity is known or can be determined without major procedural effort. This notification may, however, be

deferred as long as it would endanger the purpose of the investigation in these or other proceedings.

714. Authorities met during the country visit further explained that several treaties to which Liechtenstein is party cover special investigative techniques including the Cooperation Treaty between Liechtenstein, Switzerland and Austria.

(b) Observations on the implementation of the article

715. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 2 of article 50

2. For the purpose of investigating the offences covered by this Convention, States parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

(a) Summary of information relevant to reviewing the implementation of the article

716. Liechtenstein has confirmed that it is in full compliance with this provision

717. Applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s):

Article 10 (observation) and article 12 (controlled delivery) of the trilateral police cooperation treaty envisage special investigative methods in cooperation with the law enforcement authorities of Liechtenstein, Switzerland, and Austria. These are in principle also applicable to corruption offences.

In the Convention implementing the Schengen Agreement, special investigative methods such as cross-border observation, covert registration, and controlled delivery are also provided; in the Convention implementing the Schengen Agreement, controlled delivery is restricted to narcotics offences.

Liechtenstein has ratified the European Convention on Mutual Assistance, and therefore grants mutual legal assistance to all States Parties, also with special investigative methods as provided in the Criminal Procedure Code (§ 103 to § 104c ff of the Criminal Procedure Code: observation, covert investigations, controlled delivery).

In the same way applicable are also the Council of Europe Convention on Money Laundering, the UN Convention against Transnational Organized Crime and the Treaty between Liechtenstein and the USA on Legal Assistance.

***Art. 10 Cooperation Treaty between Liechtenstein, Switzerland and Austria
Cross-border observation***

1) In the context of an investigative procedure pertaining to an offence that is extraditable in the requested State Party, organs of the security authorities of a State Party shall be authorized to continue an observation on the territory of another State Party if this State Party has agreed to the cross-border observation on the basis of a prior request; the same shall apply to an

observation with the goal of securing enforcement of a sentence. Approval may be given with conditions. On demand, the observation shall be delegated to officials of the State Party on whose territory it takes place. The request pursuant to the first sentence shall be addressed to the authority designated by the requested State Party that is authorized to grant or transmit the requested approval. Approval shall be granted in each case for the entire territory. Borders may also be crossed outside approved border crossings and specified hours of operation.

2) If, due to particular urgency of the matter, prior approval by the other State Party cannot be requested, an observation may be continued across the border under the condition that the crossing of the border is notified without delay and before the observation is concluded to the competent authority of the State Party on whose territory the observation is to be continued.

Competent authorities shall be:

- in the Republic of Austria, the Security Directorates for the provinces of Vorarlberg and Tyrol;
- in the Swiss Confederation, the Police Command Centres of St. Gallen and Graubünden; and
- in the Principality of Liechtenstein, the National Police.

A request under paragraph 1 in which the reasons are also presented that justify crossing of a border without prior approval shall be subsequently submitted without delay. The observation shall be suspended as soon as the State Party on whose territory it takes place so demands on the basis of the notification or the request, or if approval has not been given within twelve hours of crossing the border.

3) Observation under paragraphs 1 and 2 is solely permissible under the following general conditions:

- a) The observing officers shall be bound by the provisions of this article and the law of the State Party on whose territory they appear; they shall follow the orders of the local competent authorities.
- b) The vehicles employed shall be deemed equivalent to the vehicles of the security authorities of the State Party on whose territory they are employed with respect to waivers of traffic prohibitions and traffic restrictions. Signals may be set to the extent required by execution of the observation.
- c) The observing officers must be able to provide evidence of their official function at all times.
- d) Entering dwellings and property that is not open to the public is not permissible. Work, operating, and business premises that are open to the public may be entered during work, operating, and business hours.
- e) If the observed person is caught during the commission of or participation in an offence that is extraditable in the requested State or if the observed person is being pursued for such an offence, then the observing officers shall be entitled to the same powers that they have in the case of cross-border pursuits.
- f) A report on every observation shall be submitted to the authorities of the State Party on whose territory it has taken place; the personal appearance of the observing officers may be demanded.
- g) The authorities of the State Party from whose territory the observing officers originate shall, upon request, support the subsequent police and judicial investigations of the State Party on whose territory the observation was carried out.
- h) Technical means needed for execution of the observation may be employed to the extent necessary and permissible under the law of the State Party on whose territory the observation is being continued. The technical means used for visual and acoustic surveillance of persons shall be enumerated in the request under paragraph 1.

4) Requests under paragraph 1 shall be addressed to:

- in the Republic of Austria, the Federal Ministry of the Interior, Directorate General for Public Security;
- in the Swiss Confederation, the prosecution authorities of the Confederation or the canton onto whose territory the border is expected to be crossed;
- in the Principality of Liechtenstein, the National Police.

5) Cross-border observations may, to the extent that the national law of the involved States

Parties so allows, also be carried out:

- a) to avert extraditable offences,
- b) to prevent a specific extraditable offence planned by a person while it is still being prepared, or
- c) to avert crime committed by gangs or organized crime.

Paragraphs 1 to 3 shall apply *mutatis mutandis*.

6) Observations pursuant to prior approval under paragraph 5 shall only be permissible

- a) to the extent that a request cannot be made under paragraph 1 in the context of an investigative procedure, and
- b) if the purpose of the observation cannot be achieved by transferring the official act to organs of the other State Party or by forming joint observation groups (Article 13).

7) Requests in the case of observations under paragraph 5 shall be addressed to:

- in the Republic of Austria, the Federal Ministry of the Interior, Directorate General for Public Security;
- in the Swiss Confederation, the prosecution authorities of the Confederation or the canton onto whose territory the border is expected to be crossed;
- in the Principality of Liechtenstein, the National Police.

The national central bureaus shall receive a copy of the request without delay.

Art. 12 Cooperation Treaty between Liechtenstein, Switzerland and Austria

Controlled delivery

1) On application of the requesting State Party, the requested State Party may permit controlled import onto its territory, controlled transit, or controlled export, in particular in the case of unlawful trade in narcotics, weapons, explosives, counterfeit money, stolen goods, and handling of stolen goods and money laundering, if, in the view of the requesting State Party, the determination of principals and other persons involved in the offence or the uncovering of distribution channels would be futile or significantly more difficult. Article 11, paragraph 3 shall apply *mutatis mutandis*. The controlled delivery may, as agreed by the States Parties, be intercepted and released for further transport in such a way that it remains untouched, is removed, or is replaced in whole or in part. If an unreasonable risk arises from the goods for the persons involved in the transport or if a danger arises for public safety, then the controlled delivery shall be limited or refused by the requested State Party.

2) The requested State Party shall assume control of the delivery when it crosses the border or at an arranged transfer point, in order to avoid an interruption of control. Over the further course of the transport, the requested State Party shall ensure constant surveillance in a way that it always has the possibility to seize the perpetrators and the goods. Officers of the requesting State Party may, in consultation with the requested State Party, continue to accompany the controlled delivery after the transfer, along with the accepting officers of the requested State Party. In this regard, they shall be bound by the provisions of this article and the law of the requested State Party; they shall obey the orders of the officers of the requested State Party.

3) Requests for controlled deliveries that are begun or continued in a third State shall be granted only if fulfilment of the conditions under paragraph 2 by the third State is guaranteed.

4) Article 10, paragraph 3(b), (c), (d), (e), (g) and (h) shall apply *mutatis mutandis*.

5) Requests for controlled export shall be addressed to:

- in the Republic of Austria, the national central bureau or the office of the public prosecutor in whose district the transport begins, with simultaneous notification of the national central bureau;
- in the Swiss Confederation, the prosecution authorities of the Confederation or the canton onto whose territory the border is expected to be crossed;
- in the Principality of Liechtenstein, the National Police.

(b) Observations on the implementation of the article

718. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 3 of article 50

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

(a) Summary of information relevant to reviewing the implementation of the article

719. Liechtenstein confirmed that it has fully adopted and implemented the measures described above

720. Article 35 in conjunction with article 35a of the Police Act provides special investigative methods within the framework of international police assistance with all foreign law enforcement authorities that have the same scope of responsibilities as the National Police (averting of danger, criminal prosecution, State security) and with which no agreements as referred to in paragraph 2 exists.

721. In the case of States with which no mutual legal assistance treaties exist, mutual legal assistance shall likewise be possible in the case of special investigative methods under the Criminal Procedure Code, in accordance with the principle of reciprocity (article 3 MLAA).

Art. 35a National Police Act is well related to special investigative techniques:

Type of administrative assistance

- 1) The National Police may grant administrative assistance by:
 - a) transmitting personal data, including especially sensitive personal data, in particular regarding administrative or criminal prosecutions and punishments, as well as personality profiles;
 - b) granting and supporting foreign covert investigations on Liechtenstein territory;
 - c) other measures not requiring a court order.
- 2) Obtaining personal data for the purpose of administrative assistance pursuant to paragraph 1 (a) is permissible only through:
 - a) the use of data processed by the National Police in the performance of its duties;
 - b) obtaining information from other administrative offices of the National Public Administration, administrative authorities and the courts;
 - c) police interrogations;
 - d) observation, if such observation constitutes an essential precondition for the effective granting of administrative assistance.
- 3) Administrative assistance pursuant to paragraph 1 (b) shall require authorization by the Chief of Police. Authorization may be granted only if clarification of the fact pattern for the purpose of performing police duties within the meaning of article 2 would be hopeless or significantly more difficult without the planned investigative measure and if mutuality exists.
- 4) With the consent of the Chief of Police, organs of foreign law enforcement authorities may be present during police interrogations and observations, to the extent necessary for the performance of their police duties within the meaning of article 2 and to the extent mutuality exists. These organs may not, however, carry out official acts for the requesting State. In the case of a police interrogation, the person concerned shall be informed of the presence of the organ of a foreign law enforcement authority.

(b) Observations on the implementation of the article

722. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.

Paragraph 4 of article 50

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

723. Liechtenstein confirmed that it has fully adopted and implemented the measures described above

724. This is regulated in the Code of Criminal Procedure, § 104c Para 2.

(b) Observations on the implementation of the article

725. The reviewing experts concluded that Liechtenstein is in compliance with the provision under review.