



ICLG

The International Comparative Legal Guide to:

Business Crime 2013

3rd Edition

A practical cross-border insight into business crime

Published by Global Legal Group, in association with CDR, with contributions from:

Anagnostopoulos Criminal Law & Litigation

Baker & Partners

BCL Burton Copeland

Bloomfield – Advocates and Solicitors

Carlos Pinto de Abreu e Associados

– Sociedade de Advogados, RL

ELÍG, Attorneys-at-Law

Greenberg Traurig, LLP

Homburger

Ivanyan and Partners law firm

Jiménez Cruz Peña

Kachwaha & Partners

Kobre & Kim LLP

Lampert & Schächle Attorneys at Law Ltd.

Maples and Calder

Moraes Pitombo Advogados

Nishimura & Asahi

Park & Jensen LLP

PEREZ-LLORCA

Piper Alderman

Portos, Ortiz Larregui y Asociados, S.C.

Richards Kibbe & Orbe LLP

Schoenherr

Sica, Tangerino, Quito Advogados

Skadden, Arps, Slate, Meagher & Flom LLP

Studio Legale Pisano

Tilleke & Gibbins

Turk & Prum avocats à la Cour

WESSING & PARTNER



GLG

Global Legal Group

Contributing Editors

Gary DiBianco & Gary Rubin, Skadden, Arps, Slate, Meagher & Flom LLP

Account Managers

Brigitte Descacq, Joe Houguez-Simmons, Dror Levy, Maria Lopez, Florjan Osmani, Samuel Romp, Oliver Smith, Rory Smith, Toni Wyatt

Sub Editors

Beatriz Arroyo
Fiona Canning

Editor

Suzie Kidd

Senior Editor

Penny Smale

Group Consulting Editor

Alan Falach

Group Publisher

Richard Firth

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Ashford Colour Press Ltd
October 2012

Copyright © 2012
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-908070-39-5

ISSN 2043-9199

Strategic Partners



General Chapters:

1	Controlling the Fallout: Minimising Follow-on Investigations in Multijurisdictional Settlements – Gary DiBianco & Matthew Cowie, Skadden, Arps, Slate, Meagher & Flom LLP	1
2	Dodd-Frank Whistleblowers and the Evolving Landscape of FCPA Enforcement – James Walker, Richards Kibbe & Orbe LLP	5
3	US Government Investigations: What Every Non-US Company Should Know – Robert W. Henoch & Michael S. Kim, Kobre & Kim LLP	14
4	The Overseas Reach of U.S. Antitrust Laws: Navigating a Maze of Uncertainty – Alan Mansfield & William C. Silverman, Greenberg Traurig, LLP	20
5	The Rights of Employees in Post-Stein Internal Investigations – Douglas R. Jensen & Amy Dieterich, Park & Jensen LLP	26
6	The New Anti-Money Laundering Law and its International Aspects – Antonio Sergio Altieri de Moraes Pitombo & Denise Provasi Vaz, Moraes Pitombo Advogados	32

Country Question and Answer Chapters:

7	Australia	Piper Alderman: Gordon Grieve & Simon Morris	36
8	Austria	Schoenherr Attorneys at Law: Heidemarie Paulitsch	44
9	Brazil	Sica, Tangerino, Quito Advogados: Davi de Paiva Costa Tangerino & Carina Quito	52
10	Cayman Islands	Maples and Calder: Martin Livingston & Adam Huckle	59
11	Czech Republic	Schoenherr: Martin Nedelka & Martin Gracz	67
12	Dominican Republic	Jiménez Cruz Peña: Marcos Peña Rodríguez & Laura Medina Acosta	75
13	England & Wales	BCL Burton Copeland: Guy Bastable & Shaul Brazil	84
14	Germany	WESSING & PARTNER: Prof. Dr. Juergen Wessing & Dr. Heiko Ahlbrecht	92
15	Greece	Anagnostopoulos Criminal Law & Litigation: Ilias G. Anagnostopoulos & Jerina (Gerasimoula) Zapanti	98
16	India	Kachwaha & Partners: Ashok Sagar & Sumeet Kachwaha	106
17	Italy	Studio Legale Pisano: Roberto Pisano	114
18	Japan	Nishimura & Asahi: Yoshinori Ono & Norimitsu Yamamoto	123
19	Jersey	Baker & Partners: Stephen Baker & Cyril Whelan	134
20	Liechtenstein	Lampert & Schächle Attorneys at Law Ltd.: Siegbert Lampert & Rudolf Schächle	141
21	Luxembourg	Turk & Prum avocats à la Cour: François Prum & Anouk Loesch	148
22	Mexico	Portos, Ortiz Larregui y Asociados, S.C.: José Manuel Portos Ubierna	156
23	Nigeria	Bloomfield – Advocates and Solicitors: Adekunle Obebe & Dayo Adu	163
24	Portugal	Carlos Pinto de Abreu e Associados – Sociedade de Advogados, RL: Carlos Pinto de Abreu & Vânia Costa Ramos	169
25	Russia	Ivanyan and Partners law firm: Vasily Torkanovskiy	178
26	Serbia	Moravčević Vojnović Zdravković in cooperation with Schoenherr: Srđana Petronijević & Nataša Lalatović	188
27	Spain	PEREZ-LLORCA: Adriana de Buerba Pando & Juan Palomino Segura	195
28	Switzerland	Homburger: Flavio Romerio & Roman Richers	203
29	Thailand	Tilleke & Gibbins: Michael Ramirez & Amanda Davy	213
30	Turkey	ELİG, Attorneys-at-Law: Gönenç Gürkaynak & Ceyda Karaođlan	220
31	USA	Skadden, Arps, Slate, Meagher & Flom LLP: Gary DiBianco & Gary A. Rubin	227

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

Liechtenstein

Siegbert Lampert



Rudolf Schächle



Lampert & Schächle Attorneys at Law Ltd.

1 General Criminal Law Enforcement

1.1 What authorities can prosecute business crimes, and are there different enforcement authorities at the national and regional levels?

The Liechtenstein Prosecutor's Office is responsible for the investigation and prosecution of all criminal acts it is made aware of. The Prosecutor's Office has to apply to the court for any necessary investigation and punishment measures.

If the Prosecutor's Office deems that a report, a criminal complaint or a file indicates that there are sufficient grounds for a criminal prosecution, the public prosecutor requests the examining magistrate at the District Court and/or the national police to initiate a preliminary investigation. The examining magistrate and/or the national police notifies the Prosecutor's Office of the results of the preliminary investigation and it is on this basis that the public prosecutor decides whether to directly issue an indictment, to apply for a formal investigation, or to drop the case. If a formal investigation is applied for, the examining magistrate at the District Court will lead this investigation. The District Court may do this based on a motion of the Prosecutor's Office, and/or the victim of a crime, and/or *ex officio*. If an indictment is issued, the criminal department of the District Court has jurisdiction to handle the case in the first instance. If the case goes to appeal, the Court of Appeal is the second instance, the Supreme Court is the third and final instance.

There are no different national and/or regional levels.

1.2 If there are more than one set of enforcement agencies, please describe how decisions on which body will investigate and prosecute a matter are made.

This is not applicable in Liechtenstein.

1.3 Is there any civil or administrative enforcement against business crimes? If so, what agencies enforce the laws civilly and which crimes do they combat?

If the victim of a business crime intends to file a civil claim against the defendant, a preliminary injunction may be obtained on application before or during the civil proceeding. Civil requests for asset freezing require – apart from a good cause of action – that the assets are being held within the jurisdiction and that there is an existing threat for these assets to be removed. If the cause of action cannot strictly be proven – which is usually the case – a security for possible damages to the defendant has to be deposited with the

court; this security usually amounts to about 5 to 20% of the underlying financial interest involved.

Besides that, the Prosecutor's Office may apply to the District Court for the temporary securing of assets, thus securing civil claims of the victims of the underlying crime.

2 Organisation of the Courts

2.1 How are the criminal courts in Liechtenstein structured? Are there specialised criminal courts for particular crimes?

Jurisdiction in criminal matters is exercised in the first instance by the District Court, in the second instance by the Court of Appeal, and in the third and last instance by the Supreme Court (see also www.gerichte.li). Decisions of the Supreme Court may be appealed to the Constitutional Court (Staatsgerichtshof or StGH/see also www.stgh.li) in case of a violation of constitutional rights.

The District Court acts as a Criminal Court composed of five judges or a single judge, depending on the severity of the punishment of the criminal act. If the criminal act is punishable by a sentence of more than three years' imprisonment and the criminal act was committed intentionally, the so-called Criminal Court with five judges sitting on the bench will handle the case. Otherwise, a single judge of the District Court will decide the case.

2.2 Is there a right to a jury in business-crime trials?

No. There are no jury trials, but as mentioned before, criminal acts punishable by a sentence of more than three years are handled by the Criminal Court consisting of a panel of five judges, two of them being professional judges and three being lay judges.

3 Particular Statutes and Crimes

3.1 Please describe any statutes that are commonly used in Liechtenstein to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused:

o Fraud and misrepresentation in connection with sales of securities

According to Art. 24 para. 1 of the Market Abuse Act (MG), the District Court shall punish anyone who:

- performs transactions, buys orders, or sells orders which:

1. send or are likely to send false or misleading signals regarding the supply of, demand for, or the price of financial instruments; or
 2. influence or have the capacity to influence the price of one or several financial instruments placed by one person or several persons acting in collaboration with the intent of driving up prices to an abnormal or artificial level;
- b) trades, places, buys or sells orders under false pretences or by any other deceitful actions; or
 - c) disseminates information via media, including the Internet or through other channels that send or could send false or misleading signals with respect to the financial instruments, among other things, by disseminating rumors and false or misleading news if the person who disseminated this information knew or should have known that the information was false or misleading.

The MG shall apply to market and off-market trading of any financial instrument, irrespective of whether or not the transaction actually takes place, on either of the following markets:

- a) admitted to trading on a regulated market in at least one EU/EEA-Member State; or
- b) for which a request for admission to trading on such a market has been made in at least one EU/EEA-Member State.

Furthermore, § 146 of the Penal Code (StGB) states that in general, a fraud is committed when someone, unjustly enriches himself or a third party, or uses deception concerning facts to induce someone into an act, acquiescence, or omission that is detrimental to the assets of that person or of a third party.

o Accounting fraud

Executives of a corporate entity face criminal and civil liability if they fail to keep true and accurate records and/or annual accounts. Furthermore, accounting fraud may be punishable based on the general fraud provision (§ 146 StGB), as mentioned above.

o Insider trading

According to Article 23 of the Market Abuse Act (MG) the abuse of inside information (insider dealing) is illegal. The District Court shall punish anyone who, as an insider, uses inside information with the intent of obtaining an economic advantage for himself or a third party by:

- a) purchasing or selling financial instruments affected by such information or by offering or recommending such financial instruments to a third party for purchase or sale; or
- b) making such information available to a third party without being permitted to do so (para. 1).

Anyone who is not an insider and who uses inside information that was disclosed to him or information he gained knowledge of with the intent to obtain an economic advantage for himself or a third party, shall also be punished by the District Court (para. 2).

Last but not least, anyone – whether an insider or not – who uses information which he knows to be inside information, or is grossly negligent in not knowing, acts according to para. 1 without the intent to obtain an economic advantage for himself or a third party shall be punished by the District Court (para. 3).

o Embezzlement

Embezzlement according to § 133 of the Penal Code (StGB) is the conscious misappropriation of assets or goods by a person who has been entrusted with such goods, with the purpose of enriching himself or a third party.

Furthermore, criminal breach of trust is illegal according to § 153 of the Penal Code. This provision stipulates that anyone who consciously abuses an authorisation – granted 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 by the District Court. The degree of punishment depends on the size of the damage caused.

o Bribery of government officials

Active and passive corruption of domestic officials is criminalised under §§ 302 *et seq.* of the Penal Code (StGB).

According to §§ 302 *et seq.* StGB, any public official demanding or accepting any advantage as consideration for any action or omission within his official duties is punishable with a term of imprisonment of up to three years.

According to § 307 StGB, anybody offering an advantage to a public official or a third party will be punished with a term of imprisonment of up to two years.

o Criminal anti-competition

Anti-competition is not criminalised in the Penal Code (StGB), but unfair competition and/or dishonest behaviour within the meaning of the law may be punished according to the respective provisions of the Unfair Competition Act (UWG).

o Tax crimes

According to Article 137 of the Tax Act (StG), tax evasion is criminalised. It stipulates that anyone who:

- a) as a taxpayer, by providing incorrect or incomplete information on the tax return or tax statement, or by providing incorrect or incomplete responses to enquiries, wilfully or negligently prevents the demand for payment of a tax to be paid by the taxpayer or otherwise culpably withholds taxes;
- b) as a person required to deduct tax at source, wilfully or negligently fails to carry out a tax deduction or fails to carry it out fully;
- c) wilfully or negligently, for the benefit of himself or others, withholds formation taxes or taxes on insurance premiums; or
- d) as a taxpayer or as a person required to deduct tax at source, wilfully or negligently brings about an improper refund or unjustified abatement,

shall be punished for an infraction with a fine.

The fine shall, as a rule, be in the same amount as the evaded tax. In the case of minor fault, the fine may be reduced by up to two-thirds, and in the case of major fault may be increased up to three times.

According to Article 140 StG, tax fraud is also criminalised. It stipulates that anyone who commits tax evasion by wilfully using account books or other records that are false, falsified, or with untrue content, shall be punished for a misdemeanour with imprisonment of up to six months or a monetary penalty of up to 360 daily rates.

o Government-contracting fraud

There is no explicit provision with regard to government-contracting fraud. The general provisions of the Penal Code about fraud and bribery apply though.

o Environmental crimes

Several criminal acts regarding environmental issues are criminalised under §§ 180 *et seq.* of the Penal Code (StGB), as well as under §§ 88 *et seq.* of the Act on Environment Protection (USG).

o Campaign-finance/election law

There is no explicit provision with regard to campaign-financing. In general, illegal manipulation or bribery in the context of elections is illegal according to §§ 261 *et seq.*, especially § 265 of the Penal Code (StGB).

o Any other crime of particular interest in Liechtenstein

Liechtenstein criminalises the offence of money laundering in § 165 of the Penal Code (StGB), which is modelled on the Austrian Criminal Code. The offence of money laundering applies to individuals who hide parts of assets originating from a crime or specified misdemeanour, or conceal their origin, or provide false information in legal relations with regard to the true origin or nature of the assets, ownership or other rights. The law imposes imprisonment of up to five years as a sanction.

3.2 Is there liability for inchoate crimes in Liechtenstein? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed?

Also, the attempt to commit a crime is punishable if attempted intentionally. The attempt is not punishable *inter alia* if the offender steps down from his attempt or if he prevents its success.

4 Corporate Criminal Liability

4.1 Is there entity liability for criminal offences? If so, under what circumstances will an employee's conduct be imputed to the entity?

According to § 74a of the Penal Code (StGB) legal entities are liable for illegal acts of their decision-making executives committed within their respective duties and within the scope of the company. According to § 25 of the Unfair Competition Act (UWG), a legal entity is also liable, together with the individual acting on its behalf for respective fines.

4.2 Is there personal liability for managers, officers, and directors if the entity becomes liable for a crime?

Based on § 74a of the Penal Code (StGB), both the company and the individuals acting on its behalf may be held liable.

4.3 Where there is entity liability and personal liability, do the authorities have a policy or preference as to when to pursue an entity, when to pursue an individual, or both?

As already mentioned, both the legal entity and the individuals acting on its behalf may be held liable. As this section was only implemented in the Penal Code in January 2011, no statement with respect to possible preferences of the authorities can be made. Up to now, there are no published precedents available.

5 Statutes of Limitations

5.1 How are enforcement-limitations periods calculated, and when does a limitations period begin running?

In general, a limitation period begins running when the criminal act or behaviour has been accomplished. In the case of ongoing offences, the period begins at the time of the last criminal activity. The period depends on the possible penalty, as provided in the corresponding provision in the Penal Code (see §§ 57 *et seq.* of the Penal Code). The limitation period is between 1 and 20 years, depending on whether the corresponding criminal act shall be punished with imprisonment of 6 months or 10 or more years.

5.2 Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?

Yes. In case of ongoing or repeated offences, the limitations period starts to run only after the last criminal activity.

5.3 Can the limitations period be tolled? If so, how?

If the result of the criminal action occurs later than the end of the criminal act and/or behaviour, the limitation period does not end a) before the limitation period has elapsed since the result, or b) if the ordinary limitation period multiplied by 1.5 – totalling at least 3 years – has passed (§ 58 of the Penal Code (StGB)).

Furthermore, the limitation period does not end if the offender commits another similar crime during the limitation period. In this case the limitation period of the first crime ends together with the limitation period of the second crime.

The limitation period does not run *inter alia* if the prosecution of the crime is not possible by law and also does not run while criminal investigation proceedings are pending.

6 Initiation of Investigations

6.1 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? If so, please describe them.

As mentioned above (see question 1.1 above and question 12.1 below), the Prosecutor's Office is responsible for the investigation and prosecution of all criminal acts it learns about. Criminal complaints and respective notices may be filed by individuals, the police, the courts or any other administrative body, including the Financial Intelligence Unit (FIU) based on suspicion transaction reports (STRs) filed by regulated financial intermediaries.

6.2 Do the criminal authorities have formal and/or informal mechanisms for cooperating with foreign prosecutors? Do they cooperate with foreign prosecutors?

Liechtenstein has ratified the general European Agreement for Mutual Legal Assistance dated April 20th, 1959, as well as e.g., a special bilateral Mutual Legal Assistance Treaty with the United States of America in 2003. The criminal authorities have to follow the formal rules of these treaties, as well as of the Law on Mutual Legal Assistance in order to cooperate with foreign prosecutors.

In general, it can be noted that according to the valid laws in Liechtenstein, mutual judicial assistance in criminal matters will regularly be granted by Liechtenstein authorities to foreign authorities in a relatively quick and efficient manner.

7 Procedures for Gathering Information from a Company

7.1 What powers does the government have generally to gather information when investigating business crimes?

The Prosecutor's Office and/or the Court have *inter alia* the following powers to gather information when investigating business crimes:

- interrogation of the suspect(s), witnesses and/or expert witnesses;

- search of houses and/or individuals;
- search and confiscation of goods and/or documents; and
- monitoring of the electronic communication.

Document Gathering:

7.2 Under what circumstances can the government demand that a company under investigation produce documents to the government, and under what circumstances can the government raid a company under investigation and seize documents?

Documents which might be relevant for the investigation can be seized. Everyone, except privileged attorneys, etc., is obliged to hand over such documents.

A house search is only permitted, *inter alia* if there is a reasonable suspicion that there will be evidence which could be relevant to an investigation in the house. In general, the person concerned may be interrogated in advance or may be asked to hand over the relevant documents voluntarily before a house search is conducted.

7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does Liechtenstein recognise any privileges protecting documents prepared by attorneys or communications with attorneys? Do Liechtenstein's labour laws protect personal documents of employees, even if located in company files?

In general, there is no protection against production or seizure of documents of a company of any kind.

Documents and/or correspondence with the lawyer may not be used in criminal proceedings. This information is privileged.

7.4 Under what circumstances can the government demand that a company employee produce documents to the government, or raid the home or office of an employee and seize documents?

See questions 7.2 and 7.3 above. Documents can be demanded from an employee to the same extent as they would be from the company itself.

7.5 Under what circumstances can the government demand that a third person produce documents to the government, or raid the home or office of a third person and seize documents?

See questions 7.2 and 7.3 above. Documents may also be demanded from third parties to the same extent as they would be from the company itself.

Questioning of Individuals:

7.6 Under what circumstances can the government demand that an employee, officer, or director of a company under investigation submit to questioning? In what forum can the questioning take place?

In general, only the court can demand that an employee, officer or director of a company under investigation appears in order to be questioned as a witness or as a suspect, but only if the individual is

residing within this jurisdiction. Otherwise, the court may file a request for mutual legal assistance with the state of the individual's residence.

It is also possible that a witness and/or a suspect will be questioned by the national police.

A witness has to answer all questions truthfully. There is no obligation to answer a question, *inter alia* if by answering the witness would incriminate himself or if he has a right to refuse to give evidence (e.g. as a family member of a suspected person/defendant).

A suspect has the right to remain silent and not to answer any questions.

7.7 Under what circumstances can the government demand that a third person submit to questioning? In what forum can the questioning take place?

See question 7.6 above.

7.8 What protections can a person being questioned by the government assert? Is there a right to refuse to answer the government's questions? Is there a right to be represented by an attorney during questioning?

There is no right of the suspect to be represented by an attorney during questioning. Only a witness (not the suspect or defendant) can be accompanied by a person of trust, e.g. an attorney. The suspect does, however, have the right to consult an attorney before being questioned. See question 7.6 above.

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

Criminal cases, depending on the circumstances, are initiated *ex officio* or based on a criminal complaint filed by an individual or a government agency. See also question 1.1 above.

8.2 Are there any rules or guidelines governing the government's decision to charge an entity or individual with a crime? If so, please describe them.

Based on constitutional principles like the Rule of Law and based on the provisions of the Penal Code (StGB), the Act on Criminal Proceedings (StPO) and further relevant acts, the Prosecutor's Office and the courts are obliged to initiate a respective proceeding as soon as there is sufficient suspicion that a crime has been committed.

8.3 Can a defendant and the government agree to resolve a criminal investigation through pretrial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution are available to dispose of criminal investigations.

The abandonment of prosecution after a so-called "diversion" is possible *inter alia* if the facts are clear, if the culpability of the defendant is not grave and if the crime has not lead to the death of a person. Furthermore, a diversion is only possible for offences with a threat of punishment of up to 3 years' imprisonment and

certain other offences (§ 22a of the Act on Criminal Proceedings (StPO)).

If this is the case, in general the prosecutor may choose and offer a diversion measure (i.e. payment, community service, probation and/or extrajudicial agreement with the victim). The consent of the suspect is required. The interests of the victim have to be considered.

8.4 In addition to or instead of any criminal disposition to an investigation, can a defendant be subject to any civil penalties or remedies? If so, please describe the circumstances under which civil penalties or remedies are appropriate.

The victim of an offence may declare his participation in the criminal proceedings and claim his damage within the criminal proceedings. Under certain circumstances the criminal court will also decide on the civil claim. Otherwise the damaged party will be referred to the civil courts.

9 Burden of Proof

9.1 For each element of the business crimes identified above, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

In general, the government, i.e. the prosecutor, has the burden of proof for each element of the (business) crime beyond any reasonable doubt.

The court has to make his decision with free consideration of the evidence, as presented in the main hearing. According to the principle of “*in dubio pro reo*” the court has to be convinced of all elements of the crime in order to sentence the accused.

9.2 What is the standard of proof that the party with the burden must satisfy?

See question 9.1 above. The standard of proof is beyond any reasonable doubt.

9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof?

See question 9.1 above. The court in its free consideration.

10 Conspiracy / Aiding and Abetting

10.1 Can a person who conspires with or assists another to commit a crime be liable? If so, what is the nature of the liability and what are the elements of the offence?

If two or more individuals intentionally commit a crime together, in general, all of them will be subject to prosecution.

Not only a direct offender, but also somebody who assists the direct offender to commit a crime and/or who causes another person to commit a crime, will be subject to prosecution.

11 Common Defences

11.1 Is it a defence to a criminal charge that the defendant did not have the requisite intent to commit the crime? If so, who has the burden of proof with respect to intent?

As a general rule, criminal acts are only punishable if the defendant has acted intentionally. Negligence is a defence to a criminal charge, as long as the law does not stipulate to the contrary in the specific provisions of the Penal Code.

As intention is also an element of a crime, the government also has the burden of proof in this regard.

11.2 Is it a defence to a criminal charge that the defendant was ignorant of the law i.e. that he did not know that his conduct was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the law?

In general, a defendant is not culpable if he did not recognise the wrongfulness of his offence. He is culpable only if the wrongfulness was easy to recognise for everybody, or if he was obliged to inform himself about the respective provisions due to his specific duties or any other circumstances.

See also question 9.1 above.

11.3 Is it a defence to a criminal charge that the defendant was ignorant of the facts i.e. that he did not know that he had engaged in conduct that he knew was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the facts?

If a defendant fulfils an offence by acting without intention with regard to at least one of the elements of the crime or with regard to the relevant facts, he is not acting intentionally and therefore he is not guilty. However, if there is an offence involved, which according to the law is also punishable if committed negligently, there is no such excuse or defence.

12 Voluntary Disclosure Obligations

12.1 If a person becomes aware that a crime has been committed, must the person report the crime to the government? Can the person be liable for failing to report the crime to the government?

In general, there is no obligation for a private person and/or a company to report a crime if they become aware of it, but they are entitled to do so. Only public authorities, and in particular courts, have such an obligation (§§ 53 *et seq.* of the Act on Criminal Proceedings (StPO)).

If somebody reports a crime that is not in fact a crime, he is liable if he did so on purpose. Based on Art. 17 para. 1 of the Due Diligence Act (DDA), persons subject to due diligence (e.g. banks, insurance companies, asset management companies, trustees, trust enterprises, auditors, to some extent lawyers and others) must immediately report in writing to the Financial Intelligence Unit (FIU) if any suspicion of money laundering, a predicate offence of money laundering, organised crime, or terrorist financing exists. According to Art. 19 DDA these individuals are not liable if it turns out that this report was not justified.

13 Cooperation Provisions / Leniency

13.1 If a person voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person, can the person request leniency from the government? If so, what rules or guidelines govern the government's ability to offer leniency in exchange for voluntary disclosures or cooperation?

In general, it could reduce the punishment for a suspect, if he makes a "remorseful confession" or if he helped significantly with his statement to find the truth (§ 34 No. 17 of the Penal Code).

Another reason to reduce the sentence could be if the defendant voluntarily discloses his own offence (§ 34 No. 16 of the Penal Code), except if the discovery of the crime by the authorities was imminent or directly threatening.

13.2 Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in Liechtenstein, and describe the favourable treatment generally received.

Permanent full cooperation with the authorities will be necessary. See also question 4.1 above.

14 Plea Bargaining

14.1 Can a defendant voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges, or in exchange for an agreed upon sentence?

In general, plea bargaining does not exist in Liechtenstein.

14.2 Please describe any rules or guidelines governing the government's ability to plea bargain with a defendant. Must any aspects of the plea bargain be approved by the court?

This is not applicable in Liechtenstein.

15 Elements of a Corporate Sentence

15.1 After the court determines that a defendant is guilty of a crime, are there any rules or guidelines governing the court's imposition of sentence on the defendant? Please describe the sentencing process.

Every offence is provided with a range of sentences in the law, i.e. a minimum and a maximum sentence. The court has to determine the sentence according to its discretion. The basic principle of the determination of sentence is the guilt of the defendant (§ 32 of the Penal Code). The courts usually impose the sentence based on precedents of comparable cases, if any.

15.2 Before imposing a sentence on a corporation, must the court determine whether the sentence satisfies any elements? If so, please describe those elements.

If a corporation is responsible for an offence, it will be sentenced to pay a fine. This fine is measured by rates. The amount of rates depends on the range/threat of sentence, as well as on the earning position and the economical capacity of the company. The quantity of the rates depends on the gravity and the outcome of the offence. Furthermore, the behaviour of the company is relevant and above all, whether the company has repaired the caused damage (§ 74b of the Penal Code).

16 Appeals

16.1 Is a guilty or a non-guilty verdict appealable by either the defendant or the government?

A full guilty verdict with respect to all criminal charges of the first instance is appealable only by the defendant; a full non-guilty verdict with respect to all criminal charges is appealable only by the prosecutor. Mixed verdicts are appealable by the defendant and the public prosecutor.

16.2 Is a criminal sentence following a guilty verdict appealable? If so, which party may appeal?

The defendant may always appeal the criminal sentence, the prosecutor only if the court did not follow the prosecutor's motions.

16.3 What is the appellate court's standard of review?

The Court of Appeal may review the judgment of the first instance in any respect, according to the statement of grounds and the motions contained in the appeal. New facts and/or evidence are admissible. Possible grounds for an appeal are in particular the nullity of the judgment (e.g. procedural errors and errors of the judgment), the conviction (question of facts), and/or the sentence (§ 219 and 316 of the Code of Criminal Proceedings (StPO)).

16.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?

The Court of Appeal may lift the judgment and remand the case to the first instance, or under certain circumstances, the Court of Appeal may render a verdict including the criminal sentence.

**Siegbert Lampert**

Lampert & Schächle Attorneys at Law Ltd.
Landstrasse 104
P.O. Box 1257
FL-9490 Vaduz
Liechtenstein

Tel: +423 233 45 40
Fax: +423 233 45 41
Email: lampert@lslaw.li
URL: www.lslaw.li

Partner

Education: University of St. Gallen School of Law, Switzerland (lic.iur.HSG, 1991); University of Miami School of Law, USA (Master of Laws in Comparative Law, 1995).

Professional Experience: Clerkship with the Princely Liechtenstein Court of Justice and associate in different law offices (1991 - 1996). Since 1996, founding partner of the firm *Lampert & Schächle Attorneys at Law Ltd.* Lecturer at the University of Liechtenstein (1999 - 2006). Ethics Commission of the Liechtenstein Association of Auditors (since 2004).

Areas of Practice: Asset Tracing and Recovery; Corporate and Commercial Law; Trusts and Estate Planning; Charitable Organisations; Financial Institutions Regulations; and Mutual Legal Assistance.

Publications: Section on Liechtenstein in "Stiftungsrecht in Europa" (Laws on Foundations in Europe) by Hopt/Reuter, Bucerius Law School, Carl Heymanns Verlag, 2001; Section on Liechtenstein in "International Commercial Fraud" by Robert Goldspink and Jeremy Cole, Sweet & Maxwell, 2002; Section on Liechtenstein in "The FraudNet World Compendium on Asset Tracing & Recovery" by Bernd H. Klose, Erich Schmidt Verlag, 2009; Chapter on Liechtenstein in "Getting the Deal through" re. Anti-Corruption Regulation, 2009 - 2011.

Languages: German, English and French.

**Rudolf Schächle**

Lampert & Schächle Attorneys at Law Ltd.
Landstrasse 104
P.O. Box 1257
FL-9490 Vaduz
Liechtenstein

Tel: +423 233 45 40
Fax: +423 233 45 41
Email: schaechle@lslaw.li
URL: www.lslaw.li

Partner

Education: University of Innsbruck, Austria (Mag.iur., 1993). First admitted to the Austrian bar in 1996 and then to the Liechtenstein bar in 1998.

Professional Experience: In-house counsel of a major Austrian banking group (1994 - 1995). Professional experience in different Austrian and Liechtenstein law firms (1996 - 2000). Since 2001 associate and later partner at the firm *Lampert & Schächle Attorneys at Law Ltd.*

Areas of Practice: General Practice and Litigation; Corporate and Commercial Law; White Collar Crime Proceedings; Transactions/Due Diligence; International Law; Arbitration; and Bankruptcies.

Publications: Co-Author: Section on Liechtenstein in "The FraudNet World Compendium on Asset Tracing & Recovery" by Bernd H. Klose, Erich Schmidt Verlag, 2009; Co-Author: Chapter on Liechtenstein "Getting the Deal through" re. Anti-Corruption Regulation, 2009 - 2011, edited by Getting the Deal through, Law Business Research Ltd., London.

Languages: German and English.

Rechtsanwälte
Attorneys at Law

lampert & schächle

Lampert & Schächle Attorneys at Law Ltd. serves a broad range of national and international, public and private, corporate and individual clients. The firm has represented and still acts on behalf of different national governments. Besides major civil and criminal proceedings, several high-profile cases of grand fraud and corruption are handled by the firm.

The partners Siegbert Lampert and Rudolf Schächle are also authors especially of important publications in the fields of asset tracing, fraud and corruption.

The main focus of the firm's activities lies in asset tracing and recovery, corporate and commercial law, as well as further associated legal fields. These also include matters of international legal assistance and financial market surveillance regulations.

In addition to active membership of the key international legal associations, the firm is also a member of WORLD-LINK FOR LAW, an organisation of business law firms with a global focus, of EUROJURIS INTERNATIONAL, one of the largest European networks of regional legal chambers and of FraudNet, an initiative of the International Chamber of Commerce ICC.

FraudNet is a worldwide network of lawyers specialised in asset tracing and recovery, with members present in 56 countries, providing victims of fraud with the possibility of retaining the best asset recovery professionals in the targeted jurisdictions and access to a 24/7 international rapid deployment force to recover their stolen assets with the same cyber-powered speed, stealth, reach and proficiency as the most sophisticated global fraud network.

Other titles in the ICLG series include:

- Aviation Law
- Cartels & Leniency
- Class & Group Actions
- Commodities and Trade Law
- Competition Litigation
- Corporate Governance
- Corporate Recovery & Insolvency
- Corporate Tax
- Dominance
- Employment & Labour Law
- Enforcement of Competition Law
- Environment & Climate Change Law
- Gas Regulation
- Insurance & Reinsurance
- International Arbitration
- Investment Funds
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining
- Patents
- PFI / PPP Projects
- Pharmaceutical Advertising
- Private Client
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Telecoms, Media & Internet
- Trade Marks



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk