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Liechtenstein
Private Equity

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This country-specific Q&A provides an overview of private equity laws and regulations applicable in Liechtenstein.

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Liechtenstein: Private Equity

1. What proportion of transactions have involved a financial sponsor as a buyer or seller in the jurisdiction over the last 24 months?

Specific, precise statistics on the proportion of Liechtenstein transactions involving financial sponsors over the last 24 months aren't readily available in general search results. Industry Reports from EY, Deloitte, PwC, KPMG, or Mergermarket covering the DACH region (Germany, Austria, Switzerland) or small European markets as a subject of general analysis may be published and found via their website.

From the Regulator's side as well, the Financial Market Authority (FMA) of Liechtenstein generate some statistics about market development, particular concerning financial intermediaries who are under their supervision, though they focus more on regulatory compliance and financial stability in general than transaction specifics.

However, Liechtenstein's strong financial sector and focus on private wealth suggest significant private equity/sponsor activity, though detailed market reports from local, financial intermediaries, advisors or major financial news outlets would offer concrete figures, as general data focuses more on regulation and stability rather than granular transaction types.

2. What are the main differences in M&A transaction terms between acquiring a business from a trade seller and financial sponsor backed company in your jurisdiction?

Due to a lack of general data, a general statement here is difficult to make. Many years of practical experience in supporting such clients and transactions show that acquiring from a financial sponsor backed company in Liechtenstein often means locked-box pricing, heavy reliance on warranties and indemnification for risk, and the tendence to a minimal seller involvement. In contrast, a trade seller might rather prefer broader warranties (though caps are shrinking) and sometimes retain equity or management roles, driven by strategic fit or emotional ties, often seeking simpler structures than some Private Equity deals.

Overall, no significant special differences or specifications can be highlighted in these transactions compared to other jurisdictions (i.e. Switherland).

3. On an acquisition of shares, what is the process for effecting the transfer of the shares and are transfer taxes payable?

In Liechtenstein, civil/corporate law like in comparable jurisdictions (i.e. Switzerland, Germany, Austria) in general provides for two types of shares, bearer shares and registered shares. In both cases, the transfer takes place as a two-part legal transaction consisting of a title transaction (usually a share purchase agreement) and a disposition transaction, which legally completes the change of ownership. The difference between the two types of shares mainly lies in the disposition transaction. Bearer shares can be legally transferred by simple handover to the new owner (buyer) without any further formalities. However, in order to ensure the transparency of the transaction, there is an obligation to keep the bearer shares in a register at an appointed custodian and to store the certificates there (Art. 326a et seq. PGR). Each transfer must therefore be carried out with the involvement of such appointed custodian.

The transfer of registered shares is effected by endorsement on the share certificate, which proves the chain of ownership, and by changing the new owner in the share register, which must be kept by the company.

If the share certificates are held exclusively in electronic form (CSD, custodian bank), the transfer is carried out in accordance with applicable EU law following the implementation of the relevant EU requirements in Liechtenstein.

In respect of processing the share transfer, in Liechtenstein, share transfers involve signing transfer documents, obtaining the respective board and/or shareholder approval as stipulated in the individual company's Articles of Association, and potentially FMA (Financial Market Authority) approval for regulated companies, if certain participation thresholds are reached.

With particular regard to transfer taxes, based on the customs union treaty of 1923 between Switzerland and Liechtenstein, the Swiss stamp duty tax law of 27 June 1927 is applicable in Liechtenstein. The stamp duty law in general includes the issuance stamp tax and the security transfer tax.

The security transfer tax ranges between 0.15% and 0.3% and is levied if the buyer or seller qualifies as a securities dealer for tax purposes in securities transactions.

4. How do financial sponsors provide comfort to sellers where the purchasing entity is a special purpose vehicle?

Due to the lack of market reports or general statistics, this question must also be answered based on practical experience in handling such transactions. In general, it can be said that in Liechtenstein, as in other comparable jurisdictions, financial sponsors regularly provide sellers with security when using a special purpose vehicle by making an irrevocable capital commitment with regard to the financing fund, which is often underpinned by legal opinions and obliges the sponsor to finance the purchase price or damages if the special purpose vehicle fails. If the transactions take place within or between groups of companies, irrevocable commitments or guarantees from the parent company with corresponding declarations of commitment for external financing are also generally used to ensure that the sponsor steps in if the financing fails in whole or in part. The transactions are regularly processed through the involvement of fund structures of local Liechtenstein providers and fund companies. As these are regularly supervised by the Liechtenstein Financial Market Authority (FMA), these transactions are also secured by the existing regulatory environment.

In summary, the standard instruments for securing such transactions are also used in Liechtenstein, meaning in general guarantee letters by the sponsor guaranteeing funding (equity/debt) for the purchase price (full or part security of seller's funds), risk transfer by using warranties and indemnification, special limited sponsor guarantees and mainly in the context of multinationals and stock companies involved in the deal a specific securitization/collateralization.

5. How prevalent is the use of locked box pricing mechanisms in your jurisdiction and in what circumstances are these ordinarily seen?

Based on experience in handling M&A transactions, it can generally be said that, as in other comparable European jurisdictions, such locked-box pricing mechanisms are widely used in Liechtenstein and are more or less standard practice in transactions of a relevant size and mostly demanded from the seller's side, seeking a fixed price, clean exit, and quick capital use.

6. What are the typical methods and constructs of how risk is allocated between a buyer and seller?

In Liechtenstein, like elsewhere, risk allocation between buyers and sellers hinges on contractual clarity, often using mechanisms like Material Adverse Change (MAC) clauses, price adjustments, and termination fees in M&A, focusing on who best controls or bears the cost efficiently, while general principles favor the party with control, best ability to manage, or efficiency gains. A distinction can be made between typical M&A transactions on the capital market and those in the commercial sector, as well as letter of credit and forward transactions, where special market standards, such as Incoterms, apply.

7. How prevalent is the use of W&I insurance in your transactions?

While specific Liechtenstein data is scarce, W&I insurance is generally growing in prevalence in Liechtenstein as well as across Europe and globally for private M&A, acting as a key risk management tool for clean seller exits, bid differentiation, and faster deal completion, suggesting increasing adoption in Liechtenstein's M&A market.

8. How active have financial sponsors been in acquiring publicly listed companies?

Liechtenstein does not have its own regulated stock exchange, but there are companies that are listed on foreign stock exchanges or are being floated on the stock market via newer financial instruments such as tokenization. Liechtenstein itself has a small number of listed companies, mainly in the banking and financial sector, which are listed on the SIX Swiss Exchange (Switzerland).

Financial sponsors (private equity) have played a limited role in the acquisition of listed companies in Liechtenstein, with their activities often focusing on regulated companies such as banks that require approval from the FMA. The focus has been more on funds and asset management than on large-scale acquisitions of listed companies, as the financial center is not large enough for this. Key dynamics include Liechtenstein's focus on funds and asset management, the FMA's supervision of acquisitions of regulated companies, and the need to comply with the rules of foreign stock exchanges on which listed companies are traded.

9. Outside of anti-trust and heavily regulated sectors, are there any foreign investment controls or other governmental consents which are typically required to be made by financial sponsors?

Outside of antitrust law (Liechtenstein does not have its own national antitrust law, but is bound by EU antitrust regulations through its membership in the EEA) and heavily regulated sectors (such as banking, insurance, and real estate), Liechtenstein generally does not have comprehensive foreign investment reviews or specific regulatory approval requirements for financial sponsors thanks to its EEA membership, which promotes the free movement of capital. However, special licensing from the FMA (Financial Market Authority) is essential for activities such as fund management or the provision of investment services, and real estate purchases are subject to strict national control with corresponding comprehensive restrictions.

10. How is the risk of merger clearance normally dealt with where a financial sponsor is the acquirer?

In general, Liechtenstein has a form of merger control, but it is not regulated by a dedicated national antitrust law. Instead, it relies on integration into the EEA (European Economic Area) for large mergers and on established administrative practice and personal and corporate law (PGR) for cross-border cases, particularly with Switzerland. Large, EU-wide mergers fall under the EU Merger Regulation, which also applies in Liechtenstein. There is no separate legislation for national merger control.

That being said, in Liechtenstein, merger clearance risk for financial sponsors involves navigating EEA competition law (for larger deals) and stringent FMA approval for regulated entities (banks, insurers, fintechs), focusing heavily on the acquirer's "fitness and propriety" with risk typically managed via specific contractual clauses (hell-or-high-water undertakings) or dedicated risk-sharing mechanisms like price adjustments and walk-away rights, rather than solely relying on a local merger control system, as Liechtenstein lacks one but adheres to EU/EEA rules for significant transactions.

11. Have you seen an increase in (A) the number of minority investments undertaken by financial sponsors and are they typically structured as equity investments with certain minority protections or as debt-like investments with rights to participate in the equity upside; and (B) 'continuation fund' transactions where a financial sponsor divests one or more portfolio companies to funds managed by the same sponsor?

Due to the lack of official data or statistics on such transactions, we can only rely on our own perceptions and experience gained from providing legal support in the execution of such transactions. It can be said that both minority investments by financial investors and continuation fund transactions are evident, which suggests that investors want to place valuable assets in the longer term amid general uncertainty on the international markets. Minority investments are structured variably as equity or debt-like instruments. This is usually secured by contractual rights of co-determination, although national company law also provides for various regulations for the protection of minorities. With regard to continuation funds, which enable investors to sell to their own funds in order to extend the holding period, no concrete statement can be made.

12. How are management incentive schemes typically structured?

Management incentive schemes in Liechtenstein heavily emphasize performance based models, blending fixed pay with substantial variable components tied to company success and individual goals, using tools such as annual bonuses with bonus-malus provisions (e.g., up to certain percentage of target bonus) and potential equity options, with a strong focus on aligning management's interests with shareholders for long-term growth, often incorporating elements from behavioural economics for fairness and effectiveness.

Management incentive schemes in Liechtenstein often use a mix of actual shares (stocks, options) and synthetic shares (phantom shares such as cash-settled rights to future values, often linked to share price performance), similar to Switzerland, with a focus on performance alignment. Phantom shares are popular because they are easy to implement, but are taxed as salary, while actual shares offer potential capital gains advantages but require more complex administration, as is often found in PE-financed companies with multi-tiered structures.

In terms of maturity, a distinction can also be made between the instruments used, which are widely applied in Liechtenstein. Long-term incentives (LTIs) are usually granted in the form of shares or share-like instruments and are generally subject to a vesting period and often combined with short-term (STI) cash bonuses.

In combination or alternatively, incentive shares/hurdle-based awards are granted, i.e., the granting of rights to value increases above a certain threshold.

13. Are there any specific tax rules which commonly feature in the structuring of management's incentive schemes?

No general statement can be made here, as the individual incentive models used in companies are subject to taxation in Liechtenstein at the corporate level and are subject to the specific provisions of national tax legislation, whereby the tax authorities generally apply a case-by-case approach in accordance with relevant tax practice. For this reason, it is essential to work out the details of the incentive model with a tax expert, and this is usually done in advance of a tax ruling.

Due to the fact that Liechtenstein has a large number of foreign employees residing outside Liechtenstein, both at management level and among staff, foreign tax regulations are also regularly taken into account in order to avoid national tax advantages being offset by foreign tax disadvantages at the expense of the incentive recipients.

14. Are senior managers subject to non-competes and if so what is the general duration?

Yes, senior managers in Liechtenstein can be subject to post-termination non-compete clauses, which must be reasonably limited in time (often up to 1-2 years, potentially longer for executives), geography, and scope, requiring adequate compensation for the restricted period to be enforceable, protecting the employer's interests in confidential data or client bases.

While general employees rely on contractual clauses, managers (like board members) may have statutory non-compete duties and also enter into contractual post-termination agreements.

15. How does a financial sponsor typically ensure it has control over material business decisions made by the portfolio company and what are the typical documents used to regulate the governance of the portfolio company?

The most common instruments like in comparable jurisdictions to ensure control over material business decisions are Shareholder Agreements (SHAs) and specific control clauses in Articles of Incorporation, securing board seats, veto rights on major decisions (e.g., M&A, budgets), and appointing key management, using documents like the Share Purchase Agreement (SPA) for initial acquisition terms, while governance is shaped by Articles/Statutes, SHAs, and board/committee charters, aligning with Liechtenstein's corporate law for companies like AGs (Public Ltd./Company limited by shares) or GmbHs (Ltd./Limited Liability Company LLC).

How Control is frequently ensured:

Board Representation & Veto Rights: Sponsors demand seats on the Board of Directors (Verwaltungsrat) and specific reserved matters (vetoes) over fundamental decisions like large investments, M&A, budget approval, and executive appointments, often defined in SHAs.

Shareholder Rights: They use protective provisions in SHAs to control key actions, ensuring alignment with their investment strategy.

Management Appointments: Control is exerted by appointing key executives or directors, often via board resolutions, ensuring alignment with sponsor goals.

Information Rights: Access to detailed financial and operational reports is crucial for oversight.

Key Governance Documents:

Articles of Association/Statutes (Statuten): defines the company's legal structure, share classes, board composition, and fundamental rules;

Shareholder Agreement (SHA): contract between sponsors and other shareholders/founders, detailing control rights, exit mechanisms, and governance;

Share Purchase Agreement (SPA): contract for acquisition, outlining warranties, conditions precedent, and initial governance terms;

Internal Directives: internal rules for board and management operations;

Board & Committee Charters: define powers and procedures for board committees (e.g., Audit, Remuneration);

Investment & Delegation Policies: frameworks for risk management, compliance, and operational authority.

16. Is it common to use management pooling vehicles where there are a large number of employee shareholders?

Such systems are frequently used when the aim is to pool resources (financial or human) in order to increase efficiency and flexibility by centralizing surplus funds (cash pooling, management/employee pooling) from one area and distributing them to other areas with bottlenecks as needed, thereby reducing costs and optimizing utilization. Based on our experience in providing legal support to a large number of companies in Liechtenstein, we can conclude that this is a common practice. On the other hand, we have not yet been able to determine that the use of pooling vehicles is a common instrument in Liechtenstein, unlike possibly in other jurisdictions.

17. What are the most commonly used debt finance capital structures across small, medium and large financings?

Based on our consulting experience, we cannot identify any significant differences compared to other comparable jurisdictions. Debt financing structures in Liechtenstein vary by company size, with small business enterprises, which represent the majority of companies in the country, regularly are using bank loans (term loans, lines of credit), vendor financing or asset-based lending, while mid-sized and large corporations are leveraging bank loans, private placements, use mezzanine debt, and private credit, and beyond that commonly rely on public/private bonds (investment-grade, high-yield), syndicated bank loans, and asset-backed securities and commonly show them often for hybrid options blending debt and equity.

18. Is financial assistance legislation applicable to debt financing arrangements? If so, how is that normally dealt with?

In general, national corporate law strongly prohibits the repayment of the equity capital but beyond that allows financing assistance through company arrangements under certain conditions.

Regularly, such financial assistance must in particular be allowed by the company's articles of association, which shall include the purpose of group support and financial assistance be in the interest of the target company, further should match the dealing at arm's length criteria, consider the importance of the security or loan compared to the other assets of the companies involved and financial capacity of the recipient and not constitute a repayment of the equity capital of the target company or an unjustifiable contribution.

Apart from the above, financial assistance rules driven by EU directives via EEA membership, apply in Liechtenstein, particularly concerning company financing, though "financial assistance" isn't strictly defined. It can be said that such instrument is handled through EU law transposition and FMA oversight regarding intermediaries under FMA supervision (i.e. banks, insurance companies), ensuring bank stability and borrower risk management, often via borrower-based measures and strict licensing for lenders.

19. For a typical financing, is there a standard form of credit agreement used which is then negotiated and typically how material is the level of negotiation?

There is no universal Liechtenstein "standard form" in place. However, it is a common standard among the market participants concerned (mid/large scale institutional intermediaries) to use such templates heavily tailored by lawyers, with negotiation focusing on key covenants, representations, security, interest rates, and conditions.

20. What have been the key areas of negotiation between borrowers and lenders in the last two years?

No general statement can be made, as it depends greatly on the individual case, its circumstances, and the respective goal that is to be pursued.. In Liechtenstein's lending market (2023-2025), it may generally be assumed that the framework conditions are very stable and, unlike in the rest of Europe (with the possible exception of Switzerland), not particularly volatile. In this respect, inflation-related considerations are not a major concern.

The content of agreements between lenders and borrowers is therefore focused more on the implementation of investment projects and the short- and long-term identification and implementation of investment opportunities.

21. Have you seen an increase or use of private equity credit funds as sources of debt capital?

Yes, there's a significant, growing global trend of using private credit funds for debt, driven by bank retrenchment and borrower demand for flexible, tailored financing, a shift also felt in established financial centers like Liechtenstein, which offers strong foundations for funds despite specific data for Liechtenstein being limited in general overviews. While general European private credit saw deal sizes grow substantially in the recent years, Liechtenstein's robust fund industry and stability position appears to leverage this trend, even if exact figures for local PE credit fund usage aren't detailed in broad reports.

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