

# Legal 500

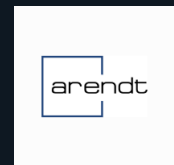
## Country Comparative Guides 2024

### Luxembourg

### International Arbitration

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Luxembourg.

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# Luxembourg: International Arbitration

## 1. What legislation applies to arbitration in your country? Are there any mandatory laws?

As of 25 April 2023, a new Luxembourg arbitration law is in force and applies to agreements concluded after the entry into force of the new law. It modernizes provisions of the New Code of Civil Procedure (NCCP). Articles 1224 to 1249 of the NCCP are the main source of legislation, irrespectively to domestic and international arbitration. The legislation is essentially inspired by French arbitration law and the UNCITRAL Model Law.

Most civil and commercial matters can be referred to arbitration. However, matters regarding divorces, the capacity of persons, legal separation of persons, or rights of absent people are excluded from arbitration<sup>1</sup>. Furthermore, issues related to consumer and employment contracts as well as residential lease agreements are non-arbitrable<sup>2</sup>. Regarding insolvency, Luxembourg legislation provides that initiation of insolvency proceedings does not affect arbitration agreements, but parties cannot arbitrate disputes arising out of insolvency proceedings themselves<sup>3</sup>.

### Footnote(s):

<sup>1</sup> Article 1224 NCCP.

<sup>2</sup> Article 1225 NCCP.

<sup>3</sup> Article 1226 NCCP.

## 2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Luxembourg ratified the New York Convention through the Law of 20 May 1983 approving the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Law entered into force on 25 June 1983.

## 3. What other arbitration-related treaties and conventions is your country a party to?

Besides the New York Convention, Luxembourg is a party to the European Convention on International Commercial

Arbitration of 21 April 1961 (Geneva Convention), which has been ratified by Luxembourg by the law of the 26 November 1981 approving the Geneva Convention and its annexe and has entered into force on 23 December 1981.

Regarding international investment arbitration, Luxembourg ratified the Washington Convention on 30 July 1970 through the law of 8 April 1970 approving the Convention on the settlement of investment disputes between States and nationals of other States signed in Washington on 18 March 1965. The law entered into force on 13 May 1970. Furthermore, Luxembourg, typically within the Belgium-Luxembourg Economic Union (BLEU), entered into over 100 Bilateral Investment Treaties (BITs).

Luxembourg withdrew from the ECT with effect from 17 June 2024<sup>4</sup>.

As an EU Member State, Luxembourg also benefits from the investment protection agreements and the investment chapters of free trade agreements concluded by the EU and third countries, such as Canada, Singapore, and Vietnam.

### Footnote(s):

<sup>4</sup> See Luxembourg, Mémorial A, No 454, 26 July 2023.

## 4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The new Luxembourg arbitration law is based on the UNCITRAL Model Law and on French law. We have not identified any significant differences between provisions of the NCCP and the UNCITRAL Model Law. Some sections of the Luxembourg arbitration law, such as on the Composition of Arbitral Tribunal, are nearly identical to the UNCITRAL Model Law.

## 5. Are there any impending plans to reform the arbitration laws in your country?

The Parliament of Luxembourg voted to modernise Luxembourgish arbitration law in March 2023 and as of 25 April 2023, the new Arbitration Law is in force. The modernised provisions of the NCCP bring Luxembourg's

legislation closer to the French Arbitration Law currently in force and take inspiration from the UNCITRAL Model Law. It thereby makes arbitration in Luxembourg more efficient, flexible and attractive. The new law establishes a transition period and applies to arbitration agreements concluded after 25 April 2023. As a result, it does not apply to arbitration agreements concluded before this date, provided that the parties do not agree otherwise.

Regarding investment arbitration, the Belgium-Luxembourg Economic Union produced a new Model BIT in 2019 which aligns its policy in matters of investment protection with that of the EU<sup>5</sup>. Articles of the new Model BIT narrow down the notion of protected investor and investment, reform standards of protection such as the FET and put greater emphasis on sustainable development and transparency.

Footnote(s):

<sup>5</sup> See Belgian Chamber of Representatives, 'Progress Report of the Deputy Prime Minister and the Minister of Foreign Affairs relating to trade treaties', 28 March 2019, Doc 54 1806/007, p 24.

## 6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

Established in 1987, the main Luxembourg arbitration institution is the Arbitration Centre of the Luxembourg Chamber of Commerce ("LAC"). The Centre implemented its own Rules of Arbitration inspired by the rules of the International Chamber of Commerce (ICC). The Rules have been amended on 1 January 2020 and added, on an opt out basis operating, a simplified, faster and less expensive procedure for disputes not exceeding EUR 1 million as well as dedicated emergency measures provisions. The Centre also makes its secretariat available to parties who have chosen other arbitration rules, such as the ICC Arbitration Rules, with Luxembourg as the seat.

The majority of cases submitted to the LAC related to construction and commercial law, including cooperation and service agreements, commercial contracts and transfer of shares.

## 7. Is there a specialist arbitration court in your country?

The Luxembourg judicial system does not provide for a specialized court or court chamber for arbitration.

However, some judicial courts regularly deal with arbitration-related matters. The District Court, usually of the City of Luxembourg, and its President often act as acting judge in support of the arbitration ("*juge d'appui*").

The President of the District Court acts as the *juge d'appui* when the seat of the arbitration is in Luxembourg, or when the procedural law governing the arbitration is law of Luxembourg, or when the parties expressly conferred jurisdiction to Luxembourg courts concerning procedural disputes related to arbitration, or when there exists a significant link between the dispute and the Grand Duchy of Luxembourg<sup>6</sup>.

The Court of Appeal has exclusive jurisdiction to annul awards issued in Luxembourg<sup>7</sup>. It also has exclusive jurisdiction against decisions refusing recognition (exequatur) of foreign arbitral awards<sup>8</sup>. The Luxembourg Supreme Court (*Cour de Cassation*) can adjudicate on decisions of the Court of Appeal related specific legal questions, excluding facts.

Footnote(s):

<sup>6</sup> Article 1229 NCCP.

<sup>7</sup> Article 1236 NCCP.

<sup>8</sup> Article 1235 NCCP.

## 8. What are the validity requirements for an arbitration agreement under the laws of your country?

For an arbitration agreement to be valid and enforceable under the laws of Luxembourg, such agreement can either take the form of an arbitration clause (*clause compromissoire*) or a submission agreement (*compromis*). Neither is subject to any formal requirements, and both can be concluded at any moment notwithstanding any commenced court procedure.

## 9. Are arbitration clauses considered separable from the main contract?

Under Article 1227-2 NCCP, an arbitration agreement is considered severable and is not affected by the underlying contract's nullity. By the same token, the nullity of the arbitration agreement does not affect the validity of the contract. This constitutes a major development in comparison to the old law under which it could be debated to what extent arbitration agreements are severable<sup>9</sup>.

Article 5(4) of the 2020 LAC Rules also supports the principle of severability. It provides that, unless otherwise agreed, the arbitrator shall continue to have jurisdiction pursuant to an arbitration agreement even though the contract containing the agreement may itself be non-existent or null and void.

Footnote(s):

<sup>9</sup> Compare for example Luxembourg Court of Appeal, 26 July 2005, no 27789 of the court register with Luxembourg Court of Appeal, 12 March 2003, Pas. 32, p.399.

**10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?**

Luxembourg law does not explicitly provide for such a scenario and Luxembourg case law has not yet decided on such a matter to the best of our knowledge.

**11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?**

Luxembourg law does not provide a specific framework for multiparty or multi-contract arbitration. However, multiparty arbitration is recognized by Article 1228-4 NCCP regarding the appointment of an arbitrators in such a scenario.

Provided that the parties have agreed to arbitrate under the LAC Rules, Article 7 and 8 of the 2020 Rules expressly provide for arbitration between multiple parties or contracts respectively.

**12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?**

There is no specific legislation on that matter. Typically, Luxembourg courts decline jurisdiction in favour of an arbitration agreement if the underlying contract, in which an arbitration agreement had been stipulated, has been transferred to a third party<sup>10</sup> or where the clause had been introduced in order to cover and benefit a third party<sup>11</sup>.

Recent case law exists but does not amount to draw up a conclusive rule: in one case the Court applied Belgian law to the arbitration agreement and concluded to deny the extension of the arbitration agreement to a third party<sup>12</sup>. In another case the Court held that one party was neither a party to, nor a signatory of a contract between two other parties and could therefore not raise a defence on jurisdiction<sup>13</sup>.

Article 1227 NCCP operates only with the possibility that the parties to the arbitration are parties to the arbitration clause which deals with disputes related to contracts.

Furthermore, pursuant to Article 1231-12 NCCP, any interested third party may request the Arbitral Tribunal to intervene in the proceedings by application in writing. A party may also request a third party to intervene. However, in order to be admitted, the intervention requires an arbitration agreement between the third party and the parties to the dispute. This provision implies that third parties can become parties to arbitration only when they sign an arbitration agreement beforehand with the parties to a dispute.

Footnote(s):

<sup>10</sup> Luxembourg District Court, 29 April 1988, no 186/88 of the court register.

<sup>11</sup> KINSCH, Patrick, "La législation luxembourgeoise en matière d'arbitrage", Bulletin François Laurent (1997), pp.63-65, the author notes however that case law might not be unanimous on that subject.

<sup>12</sup> Luxembourg District Court, 28 April 2016, no 171853 of the court register.

<sup>13</sup> Luxembourg Court of Appeal, 15 July 2010, no 32585 and 33002 of the court register.

**13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?**

The new Arbitration Law clarified disputes which are non-arbitrable. The simple fact that the subject matter of a dispute may fall within Luxembourg's public policy does not per se render the dispute non-arbitrable. Most civil and commercial disputes are arbitrable.

However, following the adoption of the new Arbitration Law in April of 2023, the NCCP now specifies which disputes fall outside the scope of arbitration. Disputes arising out of, but not limited to, matters regarding status

and capacity of persons, representations or rights of absent persons cannot be submitted to arbitration.<sup>14</sup> In addition, disputes arising from consumer contracts, employment contracts and residential leases cannot be submitted to arbitration. The non-arbitrability of these contracts does not become arbitrable when the contractual relationship ends.<sup>15</sup>

The NCCP contains specific provisions on the non-arbitrability of insolvency cases. The opening of insolvency proceedings does not affect arbitration agreements, regardless of whether they were concluded before or after the opening of insolvency proceedings. However, under article 1226 NCCP, disputes arising out of insolvency proceedings cannot be submitted to arbitration.

Footnote(s):

<sup>14</sup> Article 1224 NCCP.

<sup>15</sup> Article 1225 NCCP.

#### 14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

There has been no recent case law in that regard. However, Luxembourg courts allow the parties to choose the applicable law for their arbitration agreement<sup>16</sup>.

Footnote(s):

<sup>16</sup> Luxembourg District Court, 28 April 2016, no 171853 of the court register.

#### 15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

Luxembourg Law does not provide for mandatory choice of law rules that should be applied by the arbitrator. Typically, the parties can agree on the law applicable to the merits to their contracts and the arbitrators generally have to comply with such a choice. Article 1231 NCCP states that the applicable rules are those chosen by the parties, or failing that, those that the Tribunal considers appropriate. Furthermore, Article 1231 allows the parties to provide for the tribunal to render its award *ex aequo et bono* ("*amiable compositeur*"), which offers the tribunal more leeway to organise the procedure, choose the applicable law and generally decide on the merits.

The European Convention on International Commercial Arbitration of 21 April 1961 provides that the parties are free to determine the law applicable on the merits. Failing to do so, the arbitrators shall apply the conflict of law rules they deem applicable but must "take account of the terms of the contract and trade usages" (Article VII(1)). The European Convention only applies when both parties have, at the time of concluding the agreement, "their habitual place of residence or their seat in different Contracting States" (Article I(1)(a)).

Similarly, Article 13 of the LAC Rules give the parties the latitude to agree on the applicable law to the merits or grant the powers of an "*amiable compositeur*" to the arbitrator. Alternatively, the Rules provide that the arbitrator can determine the applicable law if the Parties did not agree on that matter.

To the best of our knowledge, Luxembourg courts have not applied the UNIDROIT principles, nor had an award been challenged in Luxembourg courts on the grounds of being rendered under UNIDROIT or other transnational principles.

#### 16. In your country, are there any restrictions in the appointment of arbitrators?

There are no specific requirements or necessary qualifications under Luxembourg law for the arbitrator. The only restriction is that arbitrators cannot be legal persons such as companies.<sup>17</sup> The parties are free to choose for the person of their choice, as long as this person is impartial and independent with regard to the parties. The arbitrator solely needs to be able to act within its civil rights and has legal capacity to contract. Thus lawyers, civil servants (if their department is not involved), magistrates and foreigners can be chosen as arbitrators.

Article 10(10) of the 2020 LAC Rules requires arbitrators to disclose any facts or circumstances which may affect their impartiality and independence. This disclosure has to happen notwithstanding the relevant issue arising before appointment/confirmation or during the arbitration proceedings.

Footnote(s):

<sup>17</sup> Article 1228-1 NCCP.

#### 17. Are there any default requirements as to the selection of a tribunal?



If the parties have not provided for the appointment of arbitrators, the relevant appointments are made by the appointing authority according to the applicable arbitration rules. In the absence of such an authority, the judge acting in support of the arbitration appoints the arbitrators.<sup>18</sup> Where the dispute should be submitted to one sole arbitrator, but the parties fail to agree on the person to be appointed, the authority administering the arbitration takes charge of the appointment, or the judge in support of the arbitration if the administering authority fails to do so. The same scenario is followed in case of a three-member or five-member tribunal, and in case of proceedings with multiple parties.

If parties fail to agree on the number of arbitrators, the default number is three<sup>19</sup>.

Footnote(s):

<sup>18</sup> Article 1228-4 NCPC.

<sup>19</sup> Article 1228-2 NCPC.

## 18. Can the local courts intervene in the selection of arbitrators? If so, how?

The judge acting in support of the arbitration can intervene if the conditions described in question 7 are met. Pursuant to Article 1230 NCCP, the President of the District Court of and at Luxembourg acts as the instructing judge, unless the parties have designated another President of a district court of the Grand Duchy of Luxembourg. The judge may be seized by either party, the arbitral tribunal or the arbitrators individually. Decisions of the instructing judge are rendered in the form of an order that are not subject to appeal.

There are various circumstances in which the instructing judge may intervene to facilitate good administration of the arbitration. According to Articles 1228-3 and 1228-4 NCCP, there are four instances in which the judge can intervene:

- When the parties do not agree on the choice of the sole arbitrator
- When a party fails to choose an arbitrator within one month of receipt of the request made by the other party, or if the tribunal should be composed of three arbitrators, but the arbitrators do not agree on the third presiding arbitrator.
- When the dispute is between more than two parties and they fail to agree on the manner in which to appoint the arbitrators.

- In the event that there are disputes regarding the challenge of arbitrators<sup>20</sup>, to extend the deadline of the arbitration<sup>21</sup>, or to order a third party to produce documents<sup>22</sup> the acting judge may also intervene.

Footnote(s):

<sup>20</sup> Article 1228-7 to 1228-9 NCCP.

<sup>21</sup> Article 1231-6 NCCP.

<sup>22</sup> Article 1231-8 NCCP.

## 19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

The procedure to challenge the appointment of an arbitrator is primarily settled within the arbitration agreement, or by the arbitration rules chosen by the parties. In absence of parties' agreement, any dispute related to the constitution of an arbitral tribunal is resolved primarily by the arbitral institution in charge of the proceedings. Failing that, the dispute is resolved by the supporting judge.<sup>23</sup> According to Article 1228-7 NCCP arbitrators may be challenged only if there are circumstances likely to give rise to justifiable doubts as to their impartiality or independence, or they lack the qualifications required by the parties.

Whereas the grounds for challenging arbitrators are not set out in the Arbitration Law, case law decided under the old legal framework confirms that grounds and procedure of challenge are akin to the rules governing challenges of judges under Article 521 NCCP<sup>24</sup>. Only the party who is challenging the arbitrator can take part in the procedure. Starting from the day of the judgment on the challenge, the challenging party has 15 days to lodge an appeal (Article 535 NCCP).

These grounds include:

- the arbitrator being part or having a substantial link to the management of one of the parties,
- a family relationship between the arbitrator and a party,
- the arbitrator has advised a party on the same or similar subject, or
- the arbitrator has received any gift shortly before or during the proceeding.

Furthermore, pursuant to Article 11 of the Rules of Arbitration of the Luxembourg Chamber of Commerce, an arbitrator may be challenged for lack of impartiality or independence. The request shall be made to the Secretariat. The LAC's Council will consequently decide on the admissibility of the request, and if the challenge is admissible, on the merits after having heard the parties and the arbitrators.

Footnote(s):

<sup>23</sup> Article 1228-3 NCCP.

<sup>24</sup> Luxembourg District Court, 10 February 1960, pas. 18, p. 101.

## 20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?

To the best of our knowledge, Luxembourg courts have not been recently requested to rule on such a matter. Luxembourg law does not have case law with the bearing of the *Halliburton v Chubb* decision, insofar that courts did not have the opportunity to clarify to a similar extent the duty to disclose for arbitrators.

## 21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

Article 1231-11 NCCP provides that an arbitral tribunal may stay the proceedings. Such a decision suspends the course of the proceedings and the time limit for the arbitration. The Tribunal has power to revoke the stay or to shorten the time limit. Proceedings are also suspended in the event of death, incapacity, resignation, abstention or challenge of an arbitrator. The suspension lasts until the time the arbitrator is replaced and the tribunal may therefore not continue with the proceedings when one or more arbitrators are unable to fulfil their missions. Suspension of proceedings does not affect the Tribunal's jurisdiction.

## 22. Are arbitrators immune from liability?

The new arbitration law does not expressly provide for arbitrator immunity, nor has Luxembourg case law yet addressed a similar issue.

In practice, Luxembourg courts frequently refer to French

arbitration law and its corresponding case law. In this context, arbitrators are generally afforded immunity with respect to their jurisdictional functions. Typically bound by an "obligation of means"<sup>25</sup>, an arbitrator will only incur liability if they have committed a personal fault equivalent to fraud, or one constituting gross negligence, fraud, a denial of justice<sup>26</sup>, or if they have omitted to disclose facts that would have disqualified them from serving as an arbitrator.<sup>27</sup>

Footnote(s):

<sup>25</sup> French Court of Cassation, 17 November 2010, n° 09-12.352.

<sup>26</sup> French Court of Cassation, 15 January 2014, n°11-17.196.

<sup>27</sup> Court of Appeal of Paris, 12 October 1995, *Revue de l'Arbitrage*, Comité Français de l'Arbitrage 1999, Volume 1999, Issue 2), pp. 324 – 326.

## 23. Is the principle of competence-competence recognised in your country?

Whereas before, the principle of competence-competence was not expressly codified in Luxembourg law, Article 1227-2 NCCP now provides that the arbitral tribunal can rule on its own jurisdiction, including any objections relating to the existence or validity of an arbitration agreement.

## 24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Luxembourg courts regularly decline jurisdiction if they consider the arbitration agreement valid and applicable to the parties to a dispute. However, a party has to object the jurisdiction of the court in favour of an arbitral tribunal *in limine litis*, as Luxembourg courts may not raise the argument *ex officio*.<sup>28</sup> If the arbitral tribunal declares that it does not have jurisdiction, or the award is set aside and parties are precluded from re-submitting the dispute to international arbitration, the case continues before the domestic court initially seized<sup>29</sup>.

Footnote(s):

<sup>28</sup> Article 1227-3 NCCP.

<sup>29</sup> Article 1227-3 NCCP.

## 25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

If without invoking any legitimate reason, one of the parties fails to participate in the oral proceedings or to produce documents, the Arbitral Tribunal shall continue the proceedings and rule on the basis of the evidence before it<sup>30</sup>. If the respondent fails to state its case, the Arbitral Tribunal continues the proceedings, however, without considering this failure as an acceptance of the claimant's allegations<sup>31</sup>. If the claimant fails to state its case, this constitutes a termination of the proceedings, without prejudice to the handling of claims of another party. All of these rules can be changed by agreement of the parties.

Luxembourg law does not specifically allow courts to compel participation, and, to the best of our knowledge, there has not been any case law regarding a request or challenge to compel a party to participate in arbitration.

Luxembourg courts, however, will decline jurisdiction if a party appears before them, despite a valid arbitration agreement, provided the other party raises a defense on jurisdiction *in limine litis*. Luxembourg courts will enforce awards where a respondent illegitimately failed to participate, provided that certain standards of due process and public policy were respected.

### Footnote(s):

<sup>30</sup> Article 1231-10 NCCP.

<sup>31</sup> Article 1231-10 NCCP.

## 26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Pursuant to Article 1231-12 NCCP, any interested third party may request the Arbitral Tribunal to intervene in the proceedings by application in writing. A party may also request a third party to intervene. However, in order to be admitted, the intervention requires an arbitration agreement between the third party and the parties to the dispute. This provision implies that third parties can become parties to arbitration only when they sign an arbitration agreement beforehand with the parties to a dispute.

## 27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

The existence of an arbitration agreement does not prevent a party from bringing a claim for interim measure so long as the Arbitral Tribunal has not yet been constituted, or where it appears that the Arbitral Tribunal cannot grant the relief sought.<sup>32</sup> Furthermore, application for an interim order does not waive the arbitration agreement.

The NCCP does not specify what exact interim measures can be ordered. Article 1231-9 only states that the tribunal can order "interim measures of protection that it considers appropriate". However, that same Article 1231-9 provides that only the domestic court have jurisdiction to order seizures. Appropriate security may be requested from the party that requests an interim measure. The tribunal can award costs and damages related to interim measures at any time during the proceedings.

Generally, Luxembourg courts accept jurisdiction to grant interim relief orders, despite some initial hesitation<sup>33</sup>, provided that the parties did not explicitly exclude state courts to take such measures<sup>34</sup>.

Furthermore, the LAC Rules also provide for conservatory or interim measures before and after the constitution of the tribunal (Articles 20 and 21 of the Rules) as well as a specific procedure since the 2020 amendment in Appendix III of the Rules. The Rules also provide for emergency arbitrations under Article 20 and Appendix III.

### Footnote(s):

<sup>32</sup> Article 1227-4 NCCP.

<sup>33</sup> Luxembourg Court of Appeal, 5 December 1985, no. 10606 of the court registry; District Court, 13 October 2006, no. 204/06 of the court registry; Ord. Référés, 10 November 2008, no. 796/2008 of the court registry; Ord. Référés, 29 July 2004, no. 583/2004 of the court registry; Ord. Référés, 16 October 2007, no. 596/2007 of the court registry.

<sup>34</sup> Luxembourg District Court, 21 June 2019, No. TAL-2019-00209.

## 28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your



## country?

Anti-suit injunctions are not explicitly available in Luxembourg<sup>35</sup>, especially if the Brussels I recast regulation is applicable.

Anti-suit injunctions which are issued by an arbitral tribunal might, however, have an impact as those awards are subject to the New York Convention and not the Brussels I recast Regulation<sup>36</sup>. There has not been conclusive case law regarding anti-arbitration injunctions, but Luxembourg courts would, however, most probably refuse the recognition and enforcement of anti-suit or anti-arbitration injunctions.

Footnote(s):

<sup>35</sup> West Tankers, ECJ, 10 Feb. 2009, case C-185/07.

<sup>36</sup> Gazprom, ECJ, 13 May 2015, case C-536/13

## 29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

Arbitral tribunals in Luxembourg follow the usual approach in relation to collecting and submission of evidence. Parties are free to organise evidentiary matters as they want. The rules regarding production of documents and witness statements are determined at the beginning of the proceedings by parties together with the arbitrators. In this respect, parties usually take guidance from the IBA Rules on the Taking of Evidence in International Commercial Arbitration.

The Luxembourg Arbitration Code provides that arbitral tribunals should take into consideration all necessary evidence. If one of the parties is in possession of evidence the Arbitral Tribunal may order it to produce such evidence. Any person including the parties may be heard as witnesses<sup>37</sup>. The relevant parts of the Luxembourg NCCP on arbitration do not provide any further framework details on the use of evidence in international arbitration.

When a third party possesses a document that a party to the arbitral proceedings intends to rely on, the third party can at the request of the Arbitral Tribunal summon the third party to appear before the judge in charge of the proceedings on order to obtain a copy of the document<sup>38</sup>.

The *juge d'appui* decides on the request subject to penalty payment.

An arbitrator may verify whether the signatures on private deeds are genuine<sup>39</sup>.

In addition, in March 2018, the Rules of Procedure of the Luxembourg Bar were changed to allow Luxembourg lawyers to assist witnesses in the drafting of witness statements and to prepare for cross-examination. This possibility is in contrast with the English law where preparation of witnesses is not generally accepted.

The arbitrators' right to take coercive action is disputed in Luxembourg law and factually limited to the state court's willingness to enforce orders from the tribunal. The question has not yet been submitted to the courts for decision.

Footnote(s):

<sup>37</sup> Article 1231-8 NCCP.

<sup>38</sup> Article 1231-8 NCCP.

<sup>39</sup> KINSCH, Patrick "La législation luxembourgeoise en matière d'arbitrage", Bulletin François Laurent (1997) p. 107.

## 30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

Luxembourg law does not specifically provide for ethical standards that counsels have to abide. Usually, lawyers registered within the Luxembourg bar have to respect their own ethical rules even in the context of arbitration proceedings. Those standards can amount to a caveat for Luxembourg practitioners.

The Luxembourg bar has therefore amended their internal ethical rules in 2018 insofar that the new Article 3.6.5 of the Internal Rules of the Luxembourg Bar Association ("*règlement intérieur de l'Ordre des avocats du Barreau de Luxembourg*") allows Luxembourg lawyers to adapt to foreign or arbitral procedural rules, norms or guidelines regarding the handling of witnesses in such procedures.

Regarding the ethical and professional standards that have to be respected by the arbitrators, Article 1228-6 NCCP provides that the arbitrator must disclose any circumstances likely to affect their independence and impartiality both before and after accepting his

assignment. In addition, provision of the LAC Arbitration Rules, such as Article 10 expressly state that arbitrators must be and remain impartial and independent of the parties involved in proceedings. They must also sign a statement of independence and impartiality before being appointed. The LAC rules do not frame similar requirements in relation to counsels, however it is understood that lawyers registered within Luxembourg bar have to respect their own ethical rules.

### 31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

Luxembourg law in Article 1231-5 NCCP provides for that the arbitration proceedings shall be confidential, unless there is a legal obligation to the contrary or unless otherwise agreed by the parties.

### 32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

The relevant Luxembourg law regarding arbitration is silent regarding the allocation of costs and there are no provisions empowering tribunals to order security for cost specifically. Arbitrators, however, tend to have significant leeway in that respect. The costs of arbitration are typically freely apportioned between the parties by the arbitrators; thus, one party can bear all or only a part of the expenses. No general practice exists in this respect, and the arbitrators decide on a case-by-case basis.

In the context of court proceedings, a Luxembourg defendant could request the court *in limine litis* to order a plaintiff to pay a deposit in respect of costs and damages.<sup>40</sup> This amount would go to an escrow account pending outcome of the case.

The 2020 LAC Rules provide for how to allocate costs and give an estimated range of procedural costs before the arbitration (Appendix I of the Rules). Article 31 states that costs should include "reasonable expenses incurred by the parties for their defence and the fees and expenses of experts in case of an expertise". Even though the rule according to which "costs follow the event" is generally recognised, the 2020 Rules of Arbitration of the Chamber of Commerce provide that in making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner (Article

33(2)).

Costs can be reduced if the parties agree to, and the Rules allow the use of, the simplified procedure, provided in Article 22 and Appendix II of the Rules.

The recovery of interest is a matter of applicable law. Therefore, and if the parties did not agree otherwise, under Luxembourg law, arbitral tribunals are able to award compensatory interest at either the statutory or the contractually agreed rate.

#### Footnote(s):

<sup>40</sup> Article 257 NCCP.

### 33. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

Formalistically speaking, the award must be in writing and the tribunal's deliberations must remain secret. Article 1232 NCCP enables the possibility for the parties to agree that the award will not be unanimous, and arbitrators may issue separate or dissenting opinions. When one or more arbitrators refuse to sign the award, this must be mentioned in the award.

Similar to many other jurisdictions, awards must be reasoned, unless the parties agreed otherwise<sup>41</sup>. It is strongly recommended to include the date, name of parties, place of arbitration and other important details, even if the NCCP does not expressly require this.

In order to enforce a foreign award in Luxembourg, the requesting party has to obtain an exequatur order from the president of the territorially competent district court. Exequatur may only be refused on the grounds enshrined in Article 1246 NCCP:

- 1° the arbitral tribunal has wrongly declared itself competent or incompetent ;
- 2° the arbitral tribunal was improperly constituted; or
- 3° the arbitral tribunal ruled without complying with the terms of reference entrusted to it; or
- 4° the award is contrary to public policy;
- 5° the award does not state the reasons on which it is based, unless the parties have dispensed the arbitrators from stating reasons;
- 6° if there has been a violation of the rights of the defense;

- 7° if, after the award has been made, it transpires that it was obtained by fraud on the part of the party in whose favor it was made; or
- 8° if decisive documents that had been withheld by another party have been recovered;
- 9° if the judgment was based on documents that have been acknowledged or judicially declared to be false since the judgment;
- 10° if he has been judged on attestations, testimony or oaths that have been recognized or judicially declared false since the award.

Footnote(s):

<sup>40</sup> Article 1232-2 NCCP.

### **34. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?**

The estimated timeframe to obtain an exequatur order for the recognition and enforcement of an award before the Luxembourg District court is generally a few days to some weeks (through an *ex parte* application).

### **35. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?**

For the recognition and enforcement of an award, Luxembourg law distinguishes awards rendered within Luxembourg and awards rendered abroad. Domestic awards are governed by Articles 1233 to 1244 NCCP and foreign awards rendered outside of the Grand Duchy of Luxembourg are subject to articles 1245 to 1249 NCCP.

Awards rendered in Luxembourg are not subject to any form of appeal before the Luxembourg courts. Instead, they are subject to annulment action before the Court of Appeal.<sup>42</sup> Agreements waiving the action for annulment are ineffective.

Footnote(s):

<sup>42</sup> Article 1236 NCCP

### **36. Does the law impose limits on the available remedies? Are some remedies not enforceable by**

### **the local courts?**

Luxembourg Arbitration Law is silent on the types of remedies that an Arbitral Tribunal can award. Apart from interim relief measures that require public force, such as seizures under Article 1231-9, tribunals can grant the remedies allowed under the laws that they are called upon to apply.

With regard to the possibility of punitive damages, Luxembourg legislation permits only compensatory damages and punitive damages therefore cannot be awarded. An award which grants punitive damages can be annulled on the basis of public policy<sup>43</sup>.

Non-monetary remedies such as interpretation of the award, rectification of errors and omissions and supplementation are possible under Article 1232-4 NCCP.

With effect from April 2023, awards rendered in Luxembourg are also subject to the extraordinary remedy of revision. This is aimed at the award's revocation so that a new decision can be made on law and facts. Revision is possible on four grounds all of which are related to fraud<sup>44</sup>.

Footnote(s):

<sup>43</sup> Article 1238-4 NCCP.

<sup>44</sup> Article 1241-1 NCCP.

### **37. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?**

Domestic awards cannot be appealed and are only subject to annulment. The action for annulment must be lodged within one month from the notification of the award to parties<sup>45</sup>. The grounds to annul an award are enumerated in Article 1238 NCCP:

- The arbitral wrongly asserted its jurisdiction;
- The arbitral was improperly constituted;
- The tribunal exceeded its mandate;
- The award is contrary to public policy;
- The award is not reasoned, unless the parties have dispensed arbitrators from giving reasons;
- There has been a violation of the right of defense.

Exequatur of Foreign awards may be refused on one of the grounds enumerated in Article 1246 NCCP (see

above). If the existence of the ground for refusal referred to in Article 1246 is disclosed to a party after the expiry of the time limit for appeal against the enforcement order, that party may lodge an application for review of the enforcement order within a period of two months from the day on which he became aware of the ground for review. The application for review, which seeks the revocation of the Exequatur order, is lodged with the Court of Appeal. If the withdrawal is upheld, the Court of Appeal will give a final ruling on the enforceability of the award<sup>46</sup>.

Footnote(s):

<sup>45</sup> Article 1239 NCCP.

<sup>46</sup> Article 1247 NCCP.

### **38. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?**

For domestic awards, any agreement to waive the action for annulment is ineffective and void<sup>47</sup>.

Footnote(s):

<sup>47</sup> Luxembourg District Court, 3 January 1996, Bulletin Laurent 1994, IV, pp. 282 to 285.

### **39. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?**

As for Luxembourg law, the underlying principle is that an award which was rendered for and between the two parties of the arbitration cannot be binding or opposable to a third party or non-signatory. The extent of that provision can be ambiguous from case to case.

A third-party opposition against an award rendered in Luxembourg may be brought before a Luxembourg court where the award produces an effect against the third party.

### **40. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?**

Luxembourg Arbitration Law does not contain any provisions related to third party funding or the obligation

to disclose third party funders. The case law is silent on this matter as well.

### **41. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?**

The 2020 LAC Rules established an arbitral emergency procedure through Article 20, 21 and the Appendix III of the Rules. Emergency measures can be requested in matters that cannot wait the constitution of arbitral tribunal, but also in simplified procedures in matters not exceeding 1 million EUR. The status and enforceable character of those measures or awards are debated.

### **42. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?**

Luxembourg law does not provide for such procedures, but the 2020 LAC Rules implemented an, on an opt out basis operating, simplified, faster and less expensive procedure for disputes. Article 22 of the Rules provides that the simplified procedure applies if (i) the value of the dispute does not exceed EUR 1 million and the arbitration agreement has been concluded after the LAC Rules amendment came into force (1 January 2020) or if (ii) the parties agree irrespective of the date. Appendix II of the Rules establishes the procedural framework of the simplified procedure which differs from the ordinary procedure of the Rules.

### **43. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?**

We are not aware of such initiatives in this regard.

### **44. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?**

To the best of our knowledge, no Court decision has been recently rendered regarding the setting aside of an award in Luxembourg and the enforcement in another country. However, Luxembourg case law has recently held that annulment proceedings against an award in the country in which it was rendered justifies the stay of proceedings

for enforcement of this foreign award<sup>48</sup> and renders the award eventually unenforceable if the award is set aside in its country of origin<sup>49</sup>, completely moving away from previous case law<sup>50</sup> which was influenced by the French approach.

Footnote(s):

<sup>48</sup> Luxembourg Court of Appeal, 25 June 2015, no. 42067 of the court register.

<sup>49</sup> Luxembourg Court of Appeal, 27 April 2017, no. 40105 of the court register.

<sup>50</sup> Luxembourg Court of Appeal, 28 January 1999, Pas. 31, p. 95.

**45. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?**

The issue of corruption has been raised in a recent decision where the Luxembourg court considered that corruption would prevent the recognition and enforcement of an award. Giving effect to an award obtained by fraud or corruption would be an unacceptable violation of a fundamental principle and therefore an infringement to public policy of the requested state.<sup>51</sup>

Footnote(s):

<sup>51</sup> Luxembourg Court of Appeal, 5 November 2020, Pas. 40, p.94.

**46. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?**

The Rules have not specifically been amended in response to the COVID-19 pandemic and there has not been an official statement. In practice, the Centre allowed hybrid and virtual proceedings and gave substantial leeway to the parties and the arbitrators to adapt the hearings to the situation.

**47. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of**

**arbitrations? Have there been any recent developments regarding virtual hearings?**

The Centre has amended its rules in 2020 and added a simplified procedure (see question 50), which provides for a faster and less expensive procedure. Those Rules also allow the arbitrator, after consultation with the parties, to hold all the proceedings through virtual hearings (Appendix II, 5. of the Rules). Regarding ordinary proceedings, Article 16 of the Rules allow to hold the case management conference through virtual hearing. In Practice, however, the Centre mostly leaves it to the parties and the arbitrators to decide how proceedings should be held.

There are efforts undertaken by the Centre to amend the Rules and to implement greater use of technology, as, for instance, allowing virtual filings. In practice, virtual hearings are already used, but there has not been an official statement for when such amendments to the Rules are to be made.

**48. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?**

There have not yet been developments in regard to arbitration in matters regarding climate change and/or human rights. There were, however, proceedings initiated by Greenpeace in the Luxembourg Administrative Court aiming to compel the Government to disclose information related to investments done by the national pension fund in the context of a climate-related financial risk and the objectives fixed by the Paris Agreement. The request was rejected<sup>52</sup>. The request was based on the Law of 25 November 2005 concerning public access to environmental information.<sup>53</sup> The aim of Greenpeace was to obtain information on investments in non-renewable energy ventures by the Luxembourg Pension Fund (the FDC). The Administrative Court found the FDC does not constitute a "public authority" within the meaning of the Law of 25 November 2005. The FDC not being a part of the government or a public administration, the law of 25 November 2005 could not be used to obtain the requested information.<sup>54</sup>

Footnote(s):

<sup>52</sup> Luxembourg Administrative Court (tribunal administratif), 17 December 2019, no 43604 of the court register.

<sup>53</sup> Law of 25 November 2005 concerning public access to



environmental information (Loi du 25 novembre 2005 concernant l'accès du public à l'information en matière d'environnement).

<sup>54</sup> Luxembourg Administrative Court (tribunal administratif), 17 December 2019, no 43604 of the court register, p. 19.

**49. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?**

Luxembourg courts will most likely consider international economic sanctions, issues by Luxembourg or the European Union as part of their international public policy. There have not been any recent decisions on that matter.

**50. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?**

We are not aware of any initiatives in this regard.

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