

Arbitration Procedures and Practice in Luxembourg: Overview

by Fabio Trevisan and Laure-Hélène Gaicio-Fievez, *BSP*

Country Q&A | Law stated as at 01-Sep-2022 | Luxembourg

A Q&A guide to arbitration law and practice in the Luxembourg.

The country-specific Q&A guide provides a structured overview of the key practical issues concerning arbitration in this jurisdiction, including any mandatory provisions and default rules applicable under local law, confidentiality, local courts' willingness to assist arbitration, enforcement of awards and the available remedies, both final and interim.

Use of Arbitration and Recent Trends

1. How is commercial arbitration used and what are the recent trends?

Use of Commercial Arbitration and Recent Trends

In recent years, Luxembourg has been experiencing a resurgence of interest in arbitration.

According to statistics published by the *Luxembourg Chamber of Commerce* for arbitration, during 2015 to 2019, the number of arbitrations filed with the arbitration centre increased by 60% compared with 2010 to 2014.

Given Luxembourg's position as a premium centre for finance, corporate and investment funds, arbitration is predominantly used in these sectors.

However, as the use of arbitration is not yet so widespread in Luxembourg, the Luxembourg courts are mainly confronted with requests for enforcement of foreign arbitral awards.

Also, mainly for the same reasons, Luxembourg is a favourable place for enforcing a foreign arbitral award, once it is enforceable in the country of origin.

Advantages/Disadvantages

Most commercial and corporate disputes are decided by state courts, but arbitration has become a popular method of dispute resolution, especially when an international factor is present.

Arbitration allows for a procedure that is often faster and more discreet than traditional judicial procedure, and this is particularly true in Luxembourg. For example, the Luxembourg Arbitration Centre provides that the maximum period within which the arbitrator(s) must render their decision is six months.

Due to Luxembourg's position as an international and world recognised financial centre, with a spirit of innate confidentiality as well as financial expertise, the advantages of confidentiality, speed, choice of arbitrators, flexibility of the procedural rules and arbitrator specialisation are particularly applicable in Luxembourg.

In addition, Luxembourg offers many additional advantages that encourage the use of arbitration, such as the multilingual culture, political stability, geographical location and the availability of lawyers from different cultural and legal backgrounds with a thorough knowledge of the different jurisdictions' legal systems.

Legislative Framework

Applicable Legislation

2. What legislation applies to arbitration? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

The Luxembourgish New Code of Civil Procedure (*Nouveau Code de procédure civile*) (NCPC) contains the Luxembourgish arbitration law, in a specific section dedicated to arbitration (Title I, Book III, Part II, Articles 1224 to 1251).

Luxembourg has not adopted the UNCITRAL Model Law, although the arbitration provisions in the NCPC are similar to the provisions of the UNCITRAL Model Law.

The main differences between the UNCITRAL Model Law and the provisions of the Luxembourg NCPC are that:

- Arbitration in Luxembourg is not limited to commercial relationships.
- Luxembourg law does not distinguish between domestic and international arbitration.

However, fundamental reform to the arbitration regime is currently being proposed. On 15 September 2020 the Minister of Justice submitted a draft arbitration Bill to Parliament. The Bill, based on the work of a specialist think tank, aims to:

- Retain the best of both the international arbitration rules and of Belgian and French law on arbitration.
- Redefine the legal basis of the arbitration regime by relying on the provisions of the UNCITRAL model law on international commercial arbitration

See further [Question 37](#).

Mandatory Legislative Provisions

3. Are there any mandatory legislative provisions? What is their effect?

Certain provisions of the NCPC are mandatory, including those relating to:

- The matters that can be submitted to arbitration.
- Enforcement of arbitration awards by an order of the President of the District Court.
- The limited circumstances provided for in Article 1244 of the NCPC for setting aside an arbitral award before the district court.

Non-mandatory provisions which only apply in the absence of agreement between the parties include those relating to the:

- Number of arbitrators.
- Time by which the award must be handed down.
- Language of the proceedings.
- The possibility of appealing the award.

4. Does the law prohibit any types of dispute from being resolved through arbitration?

Matters excluded from arbitration, include disputes relating to the:

- Status and legal capacity of natural persons;
- Marital relations;
- Application for divorce or legal separation; and
- Representation of incapacitated persons or missing persons.

(Article 1225, NCPC)

Under Luxembourg case law, disputes in the field of labour law are also excluded from arbitration.

Any arbitration clause inserted in a standard contract concluded between professional traders and consumers and which would deprive the latter of their right to access the courts is considered as an abusive clause, unless it can be shown that the consumer specifically adopted the clause.

Limitation

5. Does the law of limitation apply to arbitration proceedings?

Unless otherwise agreed by the parties, the rules applying to judicial proceedings apply to arbitration proceedings (Article 1230, NCPC). These include the rules regarding limitation periods. The relevant limitation periods depend on the law applicable to the substance of the case.

In commercial matters, and unless provided otherwise by specific provisions, the limitation period is ten years, starting from the moment when the performance is due.

The parties cannot agree on limitation periods that are longer than those that apply to judicial proceedings, but they can agree on shorter limitation periods.

Arbitration Institutions

6. Which arbitration institutions are commonly used to resolve large commercial disputes?

The *Arbitration Centre of the Chamber of Commerce of Luxembourg* (Arbitration Centre) can be used for arbitration in Luxembourg, although the most commonly used institutions are outside Luxembourg, such as the International Court of Arbitration).

The Arbitration Centre sets rules for its own proceedings, and offers the usual related services, such as (among others) the:

- Appointment of an arbitrator when the parties do not agree on the appointment of the chairman.
- Proofreading of final decisions before they are taken.
- Provision of meeting rooms.
- Translation services.

The Arbitration Centre applies its own arbitration rules that are similar to the International Chamber of Commerce (ICC) rules, and is governed by an Arbitration Council comprising the:

- President of the National Luxembourg Committee of the ICC.
- National member of the Arbitration Court of the ICC.
- President of the Luxembourg Bar Association.
- Director of the Chamber of Commerce.
- President of the Auditors Institute (*Institut des Réviseurs d'Entreprise*) (IRE).

The Arbitration Council does not itself decide on disputes, or act as an arbitrator but is an administrative body that acts in a supervisory capacity, in accordance with the Arbitration Centre rules.

Some arbitration proceedings in Luxembourg take place under the rules of CEPANI (the oldest and largest Belgian arbitration and mediation centre, located in Brussels) or under the ICC rules.

Many arbitrations are ad hoc, referring to different institutional rules on a case-by-case basis.

Jurisdictional Issues

7. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?

The principle of kompetenz-kompetenz is recognised in Luxembourg, although no specific rule directly addresses the allocation of competence between courts and arbitrators. The arbitral tribunal can rule on its own jurisdiction and can, for this purpose, examine the arbitration agreement's validity. While this position has been well established by case law in relation to the New York Convention, a recent decision of the Court of Appeal has confirmed that the same principle should also apply to the Washington Convention (see [Question 33](#)) (*Micula v. Romania, judgment of the Luxembourg Court of Appeal of 11 February 2021, No. 15/21*).

If court proceedings are initiated despite an existing arbitration agreement, state courts will therefore decline jurisdiction if one of the parties shows the existence of a valid arbitration clause (provided the party raises at the start of proceedings the incompetence of the state courts due to the arbitration clause). State courts must decline jurisdiction even if the arbitral tribunal has not yet been appointed. Case law further confirms that a state court's non-jurisdiction necessarily implies the arbitral tribunal's jurisdiction.

Arbitration Agreements

Validity Requirements

8. What are the requirements for an arbitration agreement to be enforceable?

Substantive/Formal Requirements

Arbitration agreements can be made by:

- Minutes before the arbitrators.
- Deed before a notary.
- Written agreement under private signature.

(Article 1226, NCPC)

Under Article 1227 of the NCPC, a written arbitration agreement is only valid if it specifies the:

- Parties' intention to submit their dispute to arbitration.
- Subject matter of the dispute.
- Arbitrators' names.

Arbitration agreements can be contained in general terms and conditions. However, general conditions only bind the other party if both:

- That other party was able to see the general conditions before signing the contract.
- The other party can be considered to have accepted them, depending on the circumstances.

Separate Arbitration Agreement

A clause in the main contract is sufficient to form an arbitration agreement.

If a separate document is entered between the same parties (for example an addendum to the main contract) and refers explicitly to the arbitration clause, the dispute linked to this other document would be referred to arbitration.

Unilateral or Optional Clauses

9. Are unilateral or optional clauses, where one party has the right to choose arbitration, enforceable?

It is unclear whether unilateral or optional clauses are enforceable, as there have been no relevant court cases on this point.

Third Parties

10. In what circumstances can a party that is not a party to an arbitration agreement be joined to the arbitration proceedings?

The arbitration agreement only binds the parties (Article 1243, NCPC). However, parties with an interest in the arbitral proceedings can join or intervene, unless otherwise provided in the arbitration rules agreed between the parties. The Arbitration Centre's 2020 Rules now explicitly include a provision on the intervention and joinder of third parties in the arbitral proceedings.

In practice, a third party, following their request or after nomination by one of the parties in the arbitral proceedings, can submit a request to the Secretariat of the Centre under the formal requirements established in the rules. Unless all parties agree otherwise, this request must take place before the appointment of an arbitrator, since the offer to arbitrate is applicable to the third party and they will have the option of nominating an arbitrator.

11. In what circumstances can a party that is not a party to an arbitration agreement compel a party to the arbitration agreement to arbitrate disputes under the arbitration agreement?

In the event of an assignment of a contract, a number of Luxembourg court decisions have clearly confirmed the enforceability of the arbitration clause against a third party.

Courts have also extended arbitration agreements to non-signatories in cases of group contracts where the parties would:

- Have implicitly agreed to comply with the arbitration agreement.
- Be linked to the master agreement.

Separability

12. Does the applicable law recognise the separability of arbitration agreements?

There are no specific legal provisions on the separability of arbitration agreements.

In 2003, the Court of Appeal ruled that an arbitration clause is ancillary to the principal contract and must therefore be declared void where the principal contract is declared void.

Breach of an Arbitration Agreement

13. What remedies are available where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid jurisdiction clause?

Court Proceedings in Breach of an Arbitration Agreement

If court proceedings are initiated despite an existing arbitration agreement, an objection to jurisdiction must be raised at the start of proceedings. If the opposing party fails to object to the court proceedings, the court will not raise the matter and the opposing party will be deemed to have waived the right to settle the dispute by arbitration proceedings. If the opposing party objects at the outset, the court will declare itself without jurisdiction to hear the case.

Arbitration in Breach of a Valid Jurisdiction Clause

Disputes that are subject to mandatory court jurisdiction cannot be submitted to arbitration. For example, an arbitration clause inserted into a pre-established contract concluded between a professional trader and consumers is considered an abusive clause, if it is not proven that the clause was specifically accepted (*see Question 4*).

14. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

The court cannot restrain proceedings started overseas. The Luxembourg courts only have territorial jurisdiction and cannot issue decisions with extra-territorial effects.

Arbitrators

Number and Qualifications/Characteristics

15. Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators?
Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

Any person over the age of 18 who is capable of entering into an agreement, is not under the supervision of a legal administrator and has full voting rights can act as an arbitrator.

The law does not contain any requirements or limitations with regard to education, nationality, experience or residence.

Independence/Impartiality

16. Are there any requirements relating to arbitrators' independence and/or impartiality?

Arbitrators must be impartial and independent.

Arbitrators must also comply with the ethical duties of the professional association to which they belong (if any). Luxembourg law does not include any provisions in this respect specifically applicable to arbitration.

Appointment/Removal

17. Does the law contain default provisions relating to the appointment and/or removal of arbitrators?

Appointment of Arbitrators

The parties can freely choose the arbitrators. If the parties have signed an arbitration clause without having agreed on a procedure to appoint the arbitrators, or where they encounter difficulties in choosing their arbitrators, each party must appoint one arbitrator and the two appointed arbitrators must then choose a third arbitrator (Article 1227, NCPC).

Where a party fails to appoint an arbitrator or if the two appointed arbitrators fail to choose the third one, the President of the District Court appoints, the third arbitrator at the request of either party.

Removal of Arbitrators

The NCPC does not provide for a procedure to challenge an arbitrator. Luxembourg case law however confirmed that the grounds for challenging an arbitrator are limited to those used to challenge a judge's appointment under Article 523 of the NCPC.

Challenges to arbitrators must be brought before the District Court. The opposing party cannot object to the procedure initiated to challenge an arbitrator.

An arbitrator can be challenged and replaced if:

- The arbitrator is a director of a company that is a party to the dispute.
- The arbitrator or their spouse is related to a party or to the spouse of a party to the dispute. If the relevant spouse is an ex-spouse or is dead, this provision continues to apply if there are children, and in the absence of children, the parents-in-law, son or daughter-in-law and siblings-in-law cannot be appointed as arbitrator.
- The arbitrator, their spouse, their ancestors and descendants:
 - are party to another issue with the same object as the one subject to arbitration;
 - are creditors or debtors of one of the parties; or
 - within five years before the challenge, have been an interested party in a criminal prosecution relating to one of the parties or their direct relatives.
- There is an issue between the arbitrator or the arbitrator's spouse, ancestors or descendants and one of the parties, which began before the arbitration proceedings or ended less than six months before.
- The arbitrator is guardian, heir apparent or the recipient of a gift of one of the parties.
- The arbitrator has already advised or written on the issue, been a witness to the dispute, or has entertained the parties in his or her house or received presents.
- There is hostility between the arbitrator and one of the parties (that is, insult, attack or threat as of the beginning of the arbitration proceedings or less than six months before the beginning of the arbitration proceedings).
- The Arbitration Centre, on the other hand, has clear requirements in respect of arbitrator independence, impartiality and disclosure (Article 10, 2020 Arbitration Centre Rules).
- Before appointment or confirmation, the prospective arbitrator must sign a statement of acceptance, availability, impartiality and independence. They must also disclose in writing to the Secretariat of the Arbitration Centre any facts

or circumstances that might be of such a nature as to call into question their independence in the eyes of the parties, as well as any circumstances that might give rise to reasonable doubts as to their impartiality.

Procedure

Commencement of Arbitral Proceedings

18. Does the law provide default rules governing the commencement of arbitral proceedings?

Unless otherwise agreed by the parties, the rules applying to judicial proceedings apply (Article 1230, NCPC). This includes the rules regarding the commencement of proceedings, if the parties have not agreed on another procedure. Usually the arbitration process is started by sending an arbitration request to the other party.

Applicable Rules and Powers

19. What procedural rules are arbitrators bound by? Can the parties determine the procedural rules that apply?
Does the law provide any default rules governing procedure?

Applicable Procedural Rules

The parties can determine the procedural rules, within the limits imposed by the general principles of equality between the parties, the right of defence and the right to a fair trial.

Default Rules

If the parties do not come to an agreement on procedure within the time limits that the tribunal sets, the tribunal can set the procedural rules and place of arbitration (Article 1230, NCPC).

Evidence and Disclosure

20. If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

Luxembourg law does not provide for specific rules of evidence or discovery for arbitration proceedings. Therefore, the general provisions of the NCPC apply, unless the parties agree otherwise. The NCPC allows parties and arbitrators a certain flexibility in organising the collection of evidence in arbitral proceedings (Article 1230, NCPC). The NCPC does not contain any rules on witness testimony. If the witness is easily contactable, parties can freely file witness statements. However, the parties' counsels cannot help with the preparation of these statements and cannot contact witnesses.

The parties can also request the arbitral tribunal to call a witness if the witness is not easily contactable, by proving that they could provide a first-hand testimony on a matter related to the dispute. If the arbitral tribunal accepts the request, the arbitral tribunal will hear the witness. The counsel however cannot directly question the witness and must always go through the tribunal.

Witness preparation by either party is strictly forbidden and cross-examination does not take place.

Evidence

21. What documents must the parties disclose to the other parties and/or the arbitrator? How, in practice, does the scope of disclosure in arbitrations compare with disclosure in domestic court litigation? Can the parties set the rules on disclosure by agreement?

Scope of Disclosure

Article 60 of the NCPC applies unless the parties agree otherwise. As a general principle, each party must provide evidence of the facts and co-operate in the investigation process conducted by the courts. Each party can therefore provide all documents it considers necessary to its defence. However, under Article 1237 of the NCPC, disclosure of a document must be made at least 15 days before the end of the arbitration period.

An arbitral tribunal can:

- Order the parties to disclose certain documents.
- Order interim measures.
- Issue preventive evidentiary injunctions (Article 350, NCPC).

- Issue emergency evidentiary measures (Article 933, NCPC).

In commercial matters, corporate documents, accepted invoices, correspondence, balance sheets or witness statements are often submitted as evidence (Article 109, Commercial Code).

Validity of Parties' Agreement as to Rules of Disclosure

The parties can follow the rules of disclosure as set out in the NCPC or they can reach an agreement on the rules. The civil law system has a more restrictive approach to sharing evidence than common law jurisdictions (Article 1230, NCPC).

Confidentiality

22. Is arbitration confidential? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

There are no specific legal provisions relating to confidentiality of arbitration proceedings. Usually, parties agree on whether the arbitration proceedings will be confidential, and on the potential remedies attached to the breach of any agreed confidentiality obligation.

Enforcement proceedings are public under Luxembourg Law. However, in enforcement proceedings before the Luxembourg courts, the arbitral award and the arbitration agreement are not part of the public record and cannot be accessed freely by third parties..

Once a party files an appeal to set aside an arbitral award or an appeal against the ex parte decision granting recognition of the arbitral award, the existence of the proceedings becomes part of the public record. However, the contents of the award/ arbitration agreement are not available for public view.

Courts and Arbitration

23. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Parties can apply to state courts for urgent measures or to preserve evidence, provided that this is done before the arbitral tribunal is formed. However, it must be verified that the arbitration clause does not exclude the intervention of the local courts. There is no particular court designated by Luxembourg law which has jurisdiction in arbitration-related matters.

24. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

Risk of Court Intervention

If an arbitration proceeding is pending, a state court cannot intervene and must stay any identical case submitted to it.

Delaying Proceedings

As state courts cannot intervene in pending arbitration proceedings, a party should not be in a position to effectively delay proceedings by frequent court applications.

Insolvency

25. What is the effect on the arbitration of pending insolvency of one or more of the parties to the arbitration?

As of the date of the declaration of bankruptcy, the debtor, through its legal representative, no longer has the right to either:

- Administer its estate.
- Take legal action as a claimant or defend itself against a complaint as defendant or in matters relating to its estate.

The bankruptcy trustee should take over the arbitration proceedings and the arbitration proceedings should be stayed.

Remedies

26. What interim remedies are available from the tribunal?

Interim Remedies

Luxembourg law does not specify the types of remedies that an arbitral tribunal can grant.

Consequently, arbitrators can grant interim relief at the request of one of the parties, if it is clear that the parties have agreed that the arbitration clause or arbitration agreement allows interim measures.

Arbitrators can also order provisional or protective measures, such as conservatory measures, to preserve evidence or prevent irreparable harm.

The District Court through a petition enforces interim measures issued by arbitrators.

There are no specific procedural requirements for an arbitral tribunal to deal with a request for provisional or interim measures, apart from the usual requirements of equal treatment of the parties and due process.

Ex Parte/Without Notice Applications

There are no legal provisions available allowing the tribunal to grant interim relief on an ex parte basis. This matter is untested in Luxembourg arbitration proceedings.

Security

No specific provision empowering arbitral tribunals to order security for costs is expressly provided for in Luxembourg law.

Consequently, unless the parties agree otherwise, the arbitral tribunal can request a security deposit for costs.

27. What final remedies are available from the tribunal?

The arbitral tribunal can award the same final remedies as the state courts, for example:

- Damages.
- Terminating a contract or declaring it void.
- Ordering a party to comply with contractual obligations.

Under Luxembourg law, damages can only be compensatory and cannot exceed the amount of the loss effectively suffered by the injured party. In this respect, an arbitral award granting punitive damages could be set aside on the basis of a violation of public policy.

Appeals

28. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitral clause itself)?

Rights of Appeal/Challenge

An arbitration award can only be challenged before the local Luxembourg District court (*Tribunal d'Arrondissement de et à Luxembourg*).

Grounds and Procedure

The only way to challenge an arbitral award is to have it declared null and void by way opposing the enforcement order of the President of the district court. This is however only possible for Luxembourg awards and not for foreign awards.

Domestic awards can therefore be annulled by state courts on any of the grounds listed in Article 1244 of the NCPC, as follows:

- The arbitration award
 - infringes public order;
 - does not state the reasons on which it is based, unless the parties have agreed that no reasons need to be given;
 - contains contradictory statements;
 - was obtained by fraud;
 - is based on evidence that has been declared false by an irrevocable judicial decision or on evidence that was recognised to be false;
 - was made by an arbitral tribunal that was established improperly.
- The dispute should not have been subject to arbitration proceedings.
- There was no valid arbitration agreement.
- The arbitral tribunal:
 - exceeded the limits of its jurisdiction or of its powers;
 - omitted to rule on one or more points of the dispute, and the issues omitted cannot be separated from the issues on which the tribunal has already ruled.
- The rights of the defence have been breached.

- After the arbitration award was made, a document or other piece of evidence that would have had a decisive influence on the award and that was withheld by a deliberate act of the other party was discovered.

The party challenging the award is bound by the challenge served on the opposing party. This means that the party challenging the award must indicate, in its challenge, all the grounds it raises for the nullity of the award and it cannot add new grounds at a later stage. There is one exception to this rule, where the grounds for annulment are only known at a later date (that is, grounds ten, 11 and 12 in Article 1244 of the NCPC).

A request for annulment is only admissible if the award can no longer be challenged before arbitrators.

Although international awards cannot be set aside, their enforcement can be denied in Luxembourg during the ex-parte proceedings for the same reasons as those permitted for setting aside national awards (Article 1251, NCPC).

Waiving Rights of Appeal

The parties can exclude the possibility of an appeal on the merits (Article 1231, NCPC).

29. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

An application based on one of the grounds in paragraphs 1 to 9, Article 1244 of the NCPC must be filed within one month from the notification of the award or from the discovery of the fraud (Article 1246, NCPC).

An application based on one of the grounds in paragraphs 10 to 12, Article 1244 of the NCPC must be brought within one month from the discovery of the fraud, document or other evidence, or from the day on which the evidence was declared false or acknowledged. The period of five years from the day on which the enforcement order was served to the parties must not have expired.

Costs

30. What legal fee structures can be used? Are fees fixed by law?

In principle, it is accepted that the arbitral tribunal decides on its own fees and expenses. This power is restricted in institutional arbitration, as the relevant institution generally fixes the arbitrators' fees by application of cost scales or schedules, under which fees are calculated on the basis of either the amount in dispute or time spent.

In ad hoc arbitrations, parties generally refer to an institution's schedule of costs to establish the arbitral tribunal's fees, to avoid conflicts.

There are currently no specific rules concerning the financing of a dispute by a third party. The admissibility of third-party litigation funding has never been, as such, reviewed by the Luxembourg courts, but no rule excludes it.

Consequently, the financing of a dispute by a third party is in theory available to the parties to the proceedings.

In addition, attorneys in Luxembourg must carry out their activities in compliance with the strict ethical rules laid down by both the amended law of 10 August 1991 on the legal profession and the ethical rules provided by the Bar. In that regard, the prohibition on charging purely contingency fees, the duty of professional secrecy and the duty of independence are the most relevant in regard to advising clients on the subject of third-party funding.

31. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

Cost Allocation

Under Luxembourg procedural law and in the absence of a party agreement, costs are awarded at the arbitral tribunal's discretion considering the circumstances of the case and, in particular, the outcome of the proceedings. This discretion is part of the arbitral tribunal's adjudicating function and is expressly included in some arbitration rules. In practice, however, a party can request that the unsuccessful party bears the costs of the arbitration (that is, the arbitrators' fees and expenses, and the administering authority's costs). The arbitration court usually grants this request when the unsuccessful party loses on all grounds.

Cost Calculation

The following costs can typically be awarded:

- Arbitrators' fees and expenses.
- Institutional and administrative fees.
- Attorneys' fees.
- Costs for the taking of written and oral witness evidence.

Costs incurred by the parties are awarded to the extent they were necessary for the pursuit of the parties' respective claims and defences.

Enforcement of an Award

Domestic Awards

32. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

Arbitration awards are enforced by an order of the President of the District Court, on request by one of the parties or one of the arbitrators (Article 1241, NCPC).

No specific time limit is laid down for requesting enforcement.

The award must be signed by each arbitrator, either approving or disapproving of the award (Article 1237, NCPC). The only substantial requirement is that the award must be reasoned, unless the parties have expressly exempted the arbitrators from that duty (Article 1244(8), NCPC).

Foreign Awards

33. Is your jurisdiction party to international treaties relating to recognition and enforcement of foreign arbitration awards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

Luxembourg is party to the New York Convention, which was approved by the Law of 20 May 1983. The New York Convention applies on the basis of reciprocity, for the recognition and enforcement of arbitration awards made in the territory of another contracting state.

Luxembourg is also party to the European Convention on International Commercial Arbitration 1961, the Washington Convention 1965, the Convention on Conciliation and Arbitration within the OSCE 1992 and more than 100 bilateral investment treaties.

34. To what extent is a foreign arbitration award enforceable?

Exequatur

The exequatur of a foreign arbitration award is granted by the President of the District Court (Article 1250, NCPC). The President grants the exequatur by order when the award is no longer open to appeal.

A request for an exequatur is dismissed if the award or its enforcement is contrary to national public policy or if the dispute was not capable of settlement by arbitration.

In addition, the President of the District Court can refuse to enforce the foreign award if it was rendered in a jurisdiction that:

- Is not party to the New York Convention. In such a situation, the court only applies the provisions of Article 1251 of the NCPC, if no other convention (such as the Washington Convention) applies, to determine whether the award is enforceable in Luxembourg.

Article 1251 lists the limited cases in which annulment or non-recognition can be declared, and does not include the annulment of an award in the home jurisdiction as a ground for refusal of an exequatur. Recent case law considers that such an annulled award cannot be enforced in Luxembourg.

- Is party to the New York Convention, but one of the limited grounds for refusal in Article V of the New York Convention applies.

Procedure

Enforcement. The procedure for enforcement of a foreign arbitration award depends on whether an international convention applies. Luxembourg ratified the New York Convention with a reciprocity reservation (see [Question 33](#)) and adopted the European Convention on International Commercial Arbitration 1961. In addition, it has concluded bilateral arbitration conventions with multiple countries.

The standard provisions of the NCPC do not apply if the New York Convention applies. If the New York Convention applies, a Luxembourg judge cannot take into account Luxembourg law provisions. Where the award is not subject to the New York Convention, the provisions of the NCPC apply and, therefore, a party cannot object to an award's enforcement on the basis that setting aside proceedings are pending in its country of origin.

Appeal. The enforcement order or refusal of such can be appealed before the Court of Appeal. The appeal must be lodged within two months (one month, if the defendant is a Luxembourg resident) of the day of service of the decision. After the Court of Appeal has rendered a decision, the defendant can lodge a final appeal before the Supreme Court (*Cour de Cassation*).

35. What is the limitation period applicable to actions to enforce international arbitration awards rendered outside your jurisdiction?

There is no limitation period specific to arbitration. The award should be enforceable as long as it is valid and enforceable in its home country.

Length of Enforcement Proceedings

36. How long do enforcement proceedings in the local court take, from the date of filing the application to the date when the first instance court makes its final order? Is there an expedited procedure?

The length of enforcement proceedings varies depending on the facts. Enforcement of a foreign award can take about two weeks. However, if the enforcement is challenged, the proceedings on the challenge to the enforcement before the Court of Appeal can take up to 18 months.

There is no expedited procedure.

Reform

37. Are any changes to the law currently under consideration or being proposed?

Even though Luxembourg's arbitration legislation has been subject to few ad hoc reforms, these reforms have never led to a complete overhaul, which the Council of State has been calling for since 1980.

On 15 September 2020, the Luxembourg Council of Government published draft Bill No. 7671 to reform the national arbitration law and the NCPC clauses.

The draft Bill is based on a proposal from a group of practitioners and academics interested in arbitration, the Think Tank for Arbitration, and is inspired by both the French procedural rules and the UNCITRAL Model Law. Contrary to the provisions applicable in France, the draft Bill does not distinguish between national and international arbitration procedure.

The purpose of the reform is to modernise the Luxembourg arbitration rules to highlight its advantages of flexibility, speed and confidentiality, while providing appropriate guarantees, particularly with regard to respect for public order, the right of the parties to arbitration and respect for the rights of third parties.

For example, the draft Bill:

- Excludes certain matters from its scope of application, in particular matters deemed protective for a party considered at a disadvantage. This includes consumer law, employment law, rent leases and personal status.
- Clarifies the role and competence of the Luxembourg supporting judge (*juge d'appui*).
- Clarifies the duty of arbitrators to disclose any circumstance which may affect their independence or impartiality.

- Confirms the doctrine of kompetenz-kompetenz.
- Provides that the Court of Appeal will replace the District Court as appeal court for an award made in Luxembourg.
- The draft Bill is due to be commented on and discussed in parliament. There is confidence that the proposed provisions, once voted into law, will surely help streamline and enhance arbitration in Luxembourg.

Contributor Profiles

Fabio Trevisan, Partner and head of Dispute Resolution practice

Bonn Steichen & Partners

T +352 26025 1

F +352 26025-999

E ftrevisan@bsp.lu

W www.bsp.lu

Professional qualifications. Attorney, Luxembourg, 1993; New York Bar; 1993.

Areas of practice. Arbitration, litigation, real estate and construction, general commercial, insolvency and restructuring, private wealth and business planning

- Specialising in complex commercial, corporate and financial litigation and arbitration.
- Acting in a number of high-profile cases, with over two decades of experience in managing and conducting litigation for his clients in almost all sectors.
- Extensive experience of applications for enforcing and obtaining freezing injunctions in international arbitration, enforcements of ICSID awards, and more generally in the recovery of assets.
- Represents institutional lenders, developers, general contractors and other business entities in commercial transactions and real estate law issues, including financing, corporate structuring, real estate development.
- Extensive experience in commercial contracts, drafting and negotiating complex commercial agreements across a wide variety of industry sectors.
- Founder and Head of BSP's Italian desk.

Professional associations/memberships. Luxembourg Arbitration Association (LAA); member of the International Fraud Group (IFG); International Bar Association (IBA); member of the Bar Council, 2004-05 and 2010-2013.

Languages. French, English, Italian.

Laure-Hélène Gaicio-Fievez, Partner

Bonn Steichen & Partners

T +352 26025

F +352 26025-999

E lhgaicio@bsp.lu

W www.bsp.lu

Professional qualifications. Attorney, Luxembourg, 2011.

Areas of practice. Litigation and arbitration; real estate and construction; general commercial.

- Extensive experience in all forms of international and domestic dispute resolution including litigation and arbitration, as well as enforcing and obtaining freezing injunctions in international arbitration, enforcements of ICSID awards, and the recovery of assets.
- Experience in real estate and commercial contracts, drafting and negotiating complex agreements.

Professional associations/memberships. Luxembourg Arbitration Association (LAA); member of the International Fraud Group; International Bar Association (IBA).

END OF DOCUMENT
