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IBA ARBITRATION COMMITTEE

# Arbitration Guide

# LUXEMBOURG

— UPDATED DECEMBER 2024 —

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# I. Background

## (i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

Luxembourg is a frequent seat in ICC, DIS and CEPANI arbitrations, and is seen as a convenient, central and neutral location to hold meetings and hearings between European parties.

Although alternative dispute resolution methods are not mandatory, their use has been promoted during the last years.

Luxembourg presents several significant advantages as a hub for arbitration, particularly in international and financial disputes. As a long-standing financial centre for EU investment funds and the banking sector, Luxembourg benefits from a stable geopolitical outlook, a AAA credit rating, and its central location in Europe. Its multicultural and multilingual environment further enhances its appeal as a neutral arbitration seat, enabling the smooth handling of complex, cross-border cases.

The recent law reform of 19 April 2023, modernising the New Code of Civil Procedure (Nouveau Code de Procédure Civile) has made arbitration in Luxembourg more attractive by introducing innovations such as the ‘support judge,’ (*‘juge d’appui’*) who assists parties in overcoming obstacles before the arbitral tribunal is constituted. Moreover, parties with no ties to Luxembourg can bring their cases before this judge when there is a risk of denial of justice in their home courts, a provision known as ‘universal jurisdiction’.

Arbitration in Luxembourg also offers other traditional benefits like speed, confidentiality and the flexibility to choose arbitrators and procedural rules. For example, the Luxembourg Arbitration Centre imposes a six-month deadline for arbitrators to render their decisions, ensuring a quicker resolution process. Combined with its political stability, renowned financial expertise and a wide range of multilingual legal professionals, Luxembourg is becoming an increasingly preferred venue for arbitration, particularly in the investment and financial sectors.

## (ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

The Luxembourg Arbitration Centre within the Chamber of Commerce, which administers arbitration proceedings under its own Arbitration Rules, modernised in January 2020 to take account of developments in arbitration practice and to facilitate access to arbitration for SMEs, can be used for arbitration in Luxembourg. However, international arbitral institutions outside of Luxembourg such as the ICC still are the preferred institutions.

These rules were modernised in January 2020 to reflect developments in arbitration practice and to facilitate access to arbitration for SMEs. Notably, two significant changes were introduced: (i) an emergency procedure allowing parties to request urgent protective or provisional measures that cannot wait for the establishment of a substantive arbitral tribunal and (ii) a simplified procedure for resolving disputes where the amount in question does not exceed one million euros or where the parties have agreed to use this simplified procedure.

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 arbitration 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.

Finally, for international cases, institutional arbitrations are more frequent than ad hoc arbitrations.

### **(iii) What types of disputes are typically arbitrated?**

The Arbitration Centre of the Luxembourg Chamber of Commerce mostly handles commercial disputes.

### **(iv) How long do arbitral proceedings usually last in your country?**

Under Article 1231-6 of the New Code of Civil Procedure ('NCPC'), unless expressly provided for in the arbitration agreement or the arbitration rules, the arbitration process is limited to six months as from the acceptance by the last arbitrator of their appointment. This timeframe can however be extended by the parties, by the arbitral institution if it has been empowered to do so by the parties or, failing that, by the supervisory judge.

### **(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?**

Foreign providers of alternative dispute resolution services can operate in Luxembourg without restrictions.

## **II. Arbitration Laws**

### **(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

The reform of arbitration law came into effect on 25 April 2023, and was introduced by the law of 19 April 2023 modifying the NCPC. Key aspects of the reform address the arbitrability, validity and separability of the arbitration agreement, the intervention of a state court, the role of the supporting judge, and the enforceability and annulment of awards.

Drawing inspiration from both the UNCITRAL Model Law on International Commercial Arbitration and French arbitration law, this framework seeks to enhance the adaptability, effectiveness, and attractiveness of the arbitration process as a means for parties to resolve their conflicts.

In Luxembourg, arbitration is governed by Articles 1224 to 1249 of the NCPC.

The regulations provided for in the above-mentioned articles contain only a few mandatory provisions, implemented by the recent provisions of the new arbitration law. The freedom of the parties to set forth the terms of the arbitration proceedings is therefore left intact.

Nevertheless, there are provisions and rules of law which, because of their general applicability, have the effect of restricting the scope of rights and/or matters that may be subject to arbitration.

**(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

No, under the new law on arbitration there is no difference between domestic and international arbitration.

**(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama 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.

**(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?**

According to Article 1228-2 NCPC, parties are free to agree upon the rules of law to be applied by the arbitrator to the merits of the dispute. In the absence of any such agreement, the arbitrator will then apply the rules of law which it determines to be appropriate.

### **III. Arbitration Agreements**

**(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

The arbitration agreement is a contract in which parties agree to submit existing or future disputes related to a specific legal relationship, whether contractual or non-contractual, to arbitration. Notably, it does not require any formalities and can take the form of an arbitration clause within a contract or a separate compromise for an ongoing dispute.

A clause in the main contract is sufficient to form an arbitration agreement. An arbitration clause is treated as distinct from other clauses in the contract, ensuring that its validity is not affected by the nullity or termination of the contract itself.

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.

In any case, the existence of an arbitration agreement does not hinder a party from seeking interim or conservatory measures from a state court before the tribunal is constituted, nor does it imply a waiver of the arbitration agreement.

Pursuant to Article 1227 NCPC, the arbitration agreement is defined as a contract through which the parties decide to submit to arbitration all or certain disputes that have arisen or may arise between them regarding a specific legal relationship, whether contractual or non-contractual. It can take the form of either an arbitration clause or a compromise. An arbitration clause is an agreement within contracts in which the parties commit to resolve any disputes arising from those contracts through arbitration. Differently, a compromise refers to an agreement where the parties to an existing dispute agree to submit that dispute to arbitration. There are no formal requirements.

Furthermore, Article 1227-1 stipulates that parties can enter into a compromise even while legal proceedings are already underway before a court.

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

**(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

Pursuant article 1227 NCPC, an arbitration agreement is not subject to any formal requirements, however, the agreement to arbitrate will not be enforced if the dispute submitted to it involves a matter excluded from arbitration by law (Articles 1225, 1226 and 1228-5 NCPC). Furthermore, the presence of pathological arbitration clauses, notably clauses containing defective elements making their interpretation impossible, often have the effect of making the parties' agreement to arbitrate invalid or unenforceable.

**(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Under Luxembourg law, multi-tier dispute resolution clauses are considered valid and are occasionally encountered in practice.

If such a clause includes a clear and mandatory obligation for the parties to engage in mediation before initiating arbitration proceedings and this is raised *in limine litis* before an arbitral tribunal, the tribunal must suspend its review of the case and declare itself temporarily incompetent until the mediation requirement is fulfilled. Following the conclusion of the mediation, the parties are required to recommence the arbitration proceedings.

**(iv) What are the requirements for a valid multi-party arbitration agreement?**

The NCPC does not contain specific provisions addressing multi-party arbitration agreements; the requirements are identical to those applicable to bilateral arbitration agreements.

In cases involving multi-party disputes where the parties have differing interests, Article 1227 of the NCPC stipulates that the parties must agree on the appointment of three arbitrators. Typically, the claimant(s) and defendant(s) each select one arbitrator, and the two appointed arbitrators jointly choose the chairperson of the arbitral tribunal. If the parties fail to reach an agreement, any party may request the president of the District Court to appoint all the arbitrators.

**(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

As arbitration is a voluntary alternative dispute resolution mechanism, all the parties have to agree to submit their dispute, present or future, to arbitration. No party to a contract can be compelled to submit to arbitration, as Article 1227 of the NCPC affirms that an arbitration agreement is an agreement by which the parties agree to submit to arbitration all or some of the disputes that have arisen or may arise between them in respect of a particular legal relationship, whether contractual or not. Regarding agreements granting one party a unilateral right to arbitrate, neither the NCPC nor existing case law provides specific guidance on their enforceability.

**(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?**

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.

**(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?**

The Rules of Arbitration of the Luxembourg Chamber of Commerce provide that the parties may freely determine the rules of law governing the merits of their dispute. In the absence of such an agreement, the arbitrator will apply the rules of law, deemed appropriate. The arbitrator must also consider the provisions of the contract between the parties and, where applicable, any relevant trade customs.

**(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?**

Yes, Article 1228 NCPC allows for the seat of the arbitration to be freely determined by the parties. Parties may also choose to delegate this choice to the arbitral institution. If no choice is made, the seat is determined by the arbitral tribunal. Unless otherwise agreed, the arbitral tribunal may hold hearings and conduct meetings in any location which it considers appropriate.

**(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?**

Yes, as it does not fall within the categories of disputes excluded from arbitration under Article 1225 of the NCPC.

**(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?**

Yes, a valid arbitration agreement can become invalid under certain circumstances. While the Luxembourg NCPC recognises both submission agreements and arbitration clauses, their validity depends on compliance with specific requirements. For instance, an arbitration agreement must relate to disputes over which parties are free to dispose of their rights (Article 1224 NCPC) and must not cover matters explicitly excluded by Article 1225 of the NCPC, such as those concerning civil capacity or marital relations.

Moreover, certain legal provisions, such as Article 46 of the modified Law of 27 July 1997 on insurance contracts and Article L.211-3 of the Consumer Code, impose additional restrictions on arbitration clauses, although these do not affect submission agreements for arbitration. Courts may also scrutinise arbitration agreements for potential unfairness, especially in standardised contracts, under Article 1135-1 of the Civil Code, though its applicability has diminished for agreements subject to the New York Convention.

Thus, while an arbitration agreement may initially meet validity requirements, changes in the legal, factual, or procedural context, such as its scope being found to contravene mandatory provisions or procedural fairness standards, can render it invalid.

## IV. Arbitrability and Jurisdiction

**(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

Disputes that are subject to mandatory court jurisdiction cannot be submitted to arbitration. The arbitral tribunal will therefore have to declare its lack of jurisdiction.

Article 1224 of the NCPC lists a series of matters that cannot be submitted to arbitration, as well as prohibiting representation of incapacitated or missing persons

Article 1224(2) of the NCPC provides for a series of matters for which arbitration is prohibited, mainly on the matters of personal status and family law.

In addition, Article 1225 of the NCPC states that disputes between professionals and consumers, employers and employees and relating to residential leases cannot be submitted to arbitration.

When jurisdiction is exclusively granted to a court, in the event of a conflict, the parties may not decide to submit their dispute to arbitration.

**(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

Article 1227-3 of the NCPC establishes that when a dispute covered by an arbitration agreement is brought before a state court, the court must declare its lack of jurisdiction unless the arbitration agreement is invalid due to the non-arbitrability of the subject matter or is manifestly null or inapplicable for other reasons. It is important to note that state courts cannot unilaterally recognise their own lack of jurisdiction. If the arbitral tribunal finds itself incompetent, or if the arbitral award is annulled for a reason that excludes the possibility of re-submission to arbitration, the case will proceed in the initially seized state court, provided that the parties have notified the court registry and other parties of the relevant event.

Article 1227-4 NCPC clarifies that as long as the arbitral tribunal has not been constituted, or if it is apparent that the tribunal cannot grant the requested measures, the existence of an arbitration agreement does not prevent a party from approaching a state court to seek interim or provisional measures. Importantly, such a request does not constitute a waiver of the arbitration agreement.

Unless otherwise agreed by the parties, the rules applying to judicial proceedings apply to arbitration proceedings (Article 1231 NCPC). These include the rules regarding limitation periods. The relevant limitation periods depend on the law applicable to the substance of the case.

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

**(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

One of the key principles established by the Arbitration Law of 2023 is the principle of 'competence-competence'.

If a dispute covered by an arbitration agreement is brought before a state court, the court must declare itself incompetent unless the arbitration agreement is found to be null due to non-arbitrability or other clear reasons. Furthermore, the state court cannot unilaterally recognise its own incompetence. In cases where the arbitral tribunal declares itself incompetent or if an arbitral award is annulled for reasons preventing reconstitution of the tribunal, the matter may proceed before the state court that was initially seized once relevant notifications have been made.

Similar to French law, this principle has a positive effect, allowing the arbitral tribunal to determine its own jurisdiction, including issues concerning the existence or validity of the arbitration agreement. On the other hand, it has a negative effect in that a court that is presented with a dispute falling under an arbitration agreement must decline to exercise its jurisdiction, albeit with certain limited exceptions.

These exceptions include situations where the arbitration agreement is deemed invalid due to the non-arbitrability of the subject matter or if it is manifestly null or inapplicable for other reasons. Unlike in French law, the composition of the arbitral tribunal does not prevent a Luxembourg court from asserting jurisdiction based on this exception.

Additionally, another exception pertains to interim measures, such as provisional or conservatory measures, where the arbitral tribunal has yet to be constituted or is unable to issue such orders for any reason, such as in cases of attachment measures.

On the other hand, the new Luxembourg arbitration law introduces the role of the supporting judge (*juge d'appui*), a concept inspired by French law. This judge, typically the President of the District Court, may be called upon by one of the parties, the arbitral tribunal, or one of its members to provide assistance in the arbitration process. The supporting judge's decisions are made in summary proceedings, and, unless otherwise specified, they are not subject to appeal (Article 1230 NCPC).

The supporting judge has jurisdiction in cases where: (i) the seat of arbitration is Luxembourg, (ii) the parties have agreed to apply Luxembourg procedural rules, (iii) the parties have expressly granted jurisdiction to Luxembourg courts for arbitration-related matters, or (iv) there is a significant connection between the dispute and Luxembourg. The supporting judge is also competent to prevent a denial of justice (Article 1229 NCPC).

The judge's role is typically subsidiary, intervening only when the parties cannot resolve an issue themselves or when the designated arbitration institution is unable to assist. This includes handling disputes related to the constitution of the arbitral tribunal, arbitrator appointments, and challenges to arbitrators' impartiality or independence. The judge may also intervene if the arbitration agreement is manifestly invalid or inapplicable.

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

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.

## V. Selection of Arbitrators

### (i) How are arbitrators selected? Do courts play a role?

Parties have the right to choose the number of arbitrators, their appointment or their removal and everything that concerns the arbitration process. This includes selecting the location of arbitration, the language, the applicable law and the procedural rules, which can be chosen directly or by reference to standard arbitration rules.

According to Article 1228-2, the arbitration agreement can designate arbitrators directly or refer to an arbitration regulation or procedural rules for their selection. The parties have the freedom to agree on the number of arbitrators, and in the absence of such an agreement, three arbitrators will be appointed.

Article 1228-4 outlines the procedures for designating an arbitrator when the parties have not reached an agreement. For arbitration with a single arbitrator, if the parties cannot agree on who to select, the arbitrator will be appointed by the person responsible for organising the arbitration or, if that person is not available, by the support judge. In cases involving three arbitrators, each party selects one arbitrator, and those two arbitrators will then choose the third. If one party fails to appoint an arbitrator within one month of receiving a request from the other party, or if the two appointed arbitrators cannot agree on the third within one month of the last appointment's acceptance, the person organising the arbitration or the support judge will make the appointment.

If the dispute involves more than two parties and there is no agreement on how to constitute the arbitral tribunal, the person organising the arbitration or the support judge will appoint the arbitrators. Additionally, any other disagreements regarding the selection of arbitrators will similarly be resolved by the person in charge of organizing the arbitration or, in their absence, by the support judge.

### (ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

Articles 1228-6 to 1228-9 of the NCPC provide for obligatory disclosure from the arbitrator of any circumstances that could affect their neutrality before accepting their roles, and they must continue to do so if new issues arise during the arbitration.

Challenges to an arbitrator's impartiality can only be made based on legitimate doubts about their independence or if they lack the necessary qualifications. If a dispute arises over such a challenge, it must be resolved by the designated authority or support judge within a month of the issue being raised.

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.

Additionally, the Arbitration Centre, on the other hand, has clear requirements in respect of arbitrator independence, impartiality and disclosure (Article 11, 2020 rules of the Arbitration Centre).

Lastly, 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 521 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).

**(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?**

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.

Article 1228-1 of the NCPC requires physical persons to be arbitrators and, if the arbitral agreement is designating a moral person to be arbitrator, then the latter has only the power to nominate an alternative valid arbitrator.

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

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.

**(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?**

The NCPC requires arbitrators to be impartial and independent but does not outline specific rules or codes of conduct regarding conflicts of interest. The Rules of Arbitration of the Luxembourg Arbitration Center reinforce this principle,

stipulating that arbitrators must remain impartial and independent throughout the proceedings. Under the NCPC, an arbitrator may only be challenged on grounds arising after accepting the arbitration agreement, which must name the arbitrators to be valid, with grounds for challenge mirroring those for state court judges.

While the International Bar Association Guidelines on Conflicts of Interest are also frequently used as a reference, no express reference is made in the Rules.

## VI. Interim Measures and Emergency Arbitration

### (i) **Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

The arbitral tribunal itself may also issue provisional or conservatory measures, as per Article 1231-9 of the NCPC, but it cannot order attachments or issue rulings that bind third parties. The tribunal retains the power to modify, suspend or retract these measures. If a party is granted such a measure, they are liable for any costs or damages should the tribunal later determine the measure was unwarranted. To ensure their effectiveness, these decisions are enforceable in the same manner as final awards, with enforceability only being denied for grounds of annulment listed under Article 1238 of the NCPC.

As 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, 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.

### (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?**

Under Article 1227-4 of the NCPC, a party may request interim protective measures from state courts either before the arbitral tribunal is constituted or, once constituted, if the tribunal is unable to grant the requested measure. Such measures do not serve as definitive relief.

It is very important to note that a court order rendered by the interim relief judge will only have interim or provisional effect pending final judgment in the case.

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.

### (iii) **To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

Yes, in fact the recent introduction of the supporting judge (*'juge d'appui'*) represents one of the significant changes to the legislation, as it ensures the smooth conduct of arbitration and resolution of disputes that the arbitral tribunal cannot decide upon.

In particular, when the documents are held by a third party, the NCPC provides that this third party may be summoned before the supporting judge to obtain the release of these documents. This summons before the supporting judge takes place at the request of the arbitral tribunal.

**(iv) Are decisions by emergency arbitrators enforceable in your country?**

Yes.

**(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?**

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

In any case, in Luxembourg, there is no concept of anti-suit actions, instead, the term 'preventive measures' (*'mesures conservatoires'*) is used. Such actions:

- can be requested for contested or non-enforceable claims
- designed to ensure effective cross-border legal cooperation and efficient recovery of claims.

**(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?**

The *juge d'appui* wouldn't be competent, unless: (i) the parties have chosen Luxembourg procedural law, (ii) the parties have explicitly conferred jurisdiction to Luxembourg courts, (iii) there is a significant link to Luxembourg, or (iv) there is a risk of denial of justice.

## VII. Disclosure/Discovery

**(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

The general principles outlined in the Luxembourg procedural law are also applicable to arbitration proceedings, as stated in Article 1231 of the NCPC. Consequently, the rules governing document production in arbitration align with those in state court proceedings, meaning that the same conditions and criteria apply in both contexts, unless the parties agree otherwise.

The Luxembourg Arbitration Law allows the tribunal to request the production of any evidence held by a party in whatever manner it finds suitable, and it may impose penalties if necessary (Article 1231-8 1° NCPC). If the evidence is held by a third party, the requesting party can approach the supporting judge at the tribunal's invitation (Article 1231-8 2° NCPC).

When there is no express agreement regarding disclosure, the arbitrator has the authority to order the disclosure of documents and the attendance of witnesses (both factual and expert).

The scope of document disclosure in arbitration generally follows the principles established for state courts in Luxembourg, as arbitration proceedings are subject to the same foundational rules (Articles 51 and following NCPC). This means that the tribunal has discretion to order disclosure in the same manner as a domestic judge would, including the possibility of requesting production from third parties or imposing penalties for non-compliance. However, arbitration offers more flexibility in determining how extensive the disclosure process should be, allowing parties to limit or expand the scope as appropriate for the specific dispute.

Parties in arbitration must spontaneously disclose any documents they refer to during the proceedings (Article 279 NCPC). Failure to do so can lead to judicial intervention, where the tribunal may order the production of such documents, and if necessary, impose penalties (Article 1231-8 NCPC). The same rules apply to documents held by third parties, which can be requested via the supporting judge upon the tribunal's invitation. In practice, this mirrors the requirements in domestic

court litigation, where timely communication of documents is essential, and any failure can result in exclusion of the document from the proceedings (Article 282 NCPC).

**(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?**

In practice, the scope of disclosure in arbitration can vary based on the parties' agreement and the tribunal's orders. While the default is to follow the general framework applied in court proceedings, including compulsory disclosure of key evidence, arbitration allows for adjustments. Parties may agree to limit disclosure to specific categories of documents, or to expand it beyond the norms of domestic litigation.

Luxembourg arbitration law permits parties to set their own procedural rules, including rules governing document disclosure, through mutual agreement. This can be done either directly in the arbitration agreement or by reference to a specific set of procedural rules (Article 1231-2 NCPC). If no such agreement exists, the tribunal retains authority to determine the rules for disclosure.

**(iii) Are there special rules for handling electronically stored information?**

The NCPC does not contain any special rules or guidance for handling such information. Regardless, the principal data protection legislation in Luxembourg remains the General Data Protection Regulation ('GDPR').

## VIII. Confidentiality

**(i) Are arbitrations confidential? What are the rules regarding confidentiality?**

The new Luxembourg arbitration law establishes that arbitration proceedings are generally confidential (Article 1231-5 NCPC), though this principle is subject to legal obligations and the specific agreement of the parties. The parties can agree to extend confidentiality to various aspects of the proceedings, including their very existence, and may also agree on the potential sanctions for breaches of confidentiality.

However, the confidentiality of the arbitration may be compromised if the matter is brought before state courts. For instance, if the supporting judge is involved to assist with the arbitration, or if a domestic award is challenged or an appeal is made against the *exequatur* of a foreign award, certain details of the proceedings may become public.

**(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

No, it is not present in the arbitration law. However, domestic rules of the NCPC apply.

**(iii) Are there any provisions in your arbitration law as to rules of privilege?**

There is no specific provision on this matter; however, the rules applicable to domestic proceedings may also be applied in arbitration.

## IX. Evidence and Hearings

**(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

No, it is not.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

Yes, there are limits to an arbitral tribunal's discretion to govern the hearings under Luxembourg law.

While the NCPC grants parties and arbitrators significant autonomy, certain constraints apply:

- Agreement between the parties: Article 1228 of the NCPC allows the parties to determine procedural rules or to delegate this authority to the arbitral tribunal. However, the tribunal must respect any agreed-upon procedural framework.
- Judicial oversight: In case of procedural disagreements or issues beyond the tribunal's authority (eg, appointing arbitrators or resolving challenges), the *juge d'appui* steps in to resolve disputes (Articles 1228-3 - 1228-9 NCPC).
- Arbitrator obligations: Arbitrators must adhere to standards of independence and impartiality (Article 1228-6 NCPC), and their actions may be scrutinised for bias or procedural fairness (Article 1228-7 NCPC).

Thus, arbitral tribunals must act within the procedural agreements of the parties, maintain impartiality, and comply with the NCPC's provisions for judicial intervention where necessary.

**(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

When there is no express agreement regarding disclosure, the arbitrator has the authority to order the disclosure of documents and the attendance of witnesses (both factual and expert).

If the witness is easily contactable, parties can freely file witness statements. However, the parties' counsels can neither help with the preparation of these statements nor contact witnesses.

Written evidence prevails but parties may also rely, for example, on testimonial evidence and declarations.

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.

**(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

In Luxembourg, the rules on who can appear as a witness allow anyone to testify unless legally prohibited. Certain individuals, such as those with a legal incapacity, cannot testify but may still be heard without an oath, as per Article 405 of the NCPC. Additionally, close family members (eg, parents, children, spouses) can refuse to testify in cases involving their relatives, protecting them from potential conflict or emotional strain. Witnesses must provide personal details and swear an oath to tell the truth, unless exempt. These rules balance the need for evidence with the protection of individuals' rights, particularly in sensitive family matters.

**(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?**

Although the NCPC acknowledges connections between witnesses and parties, it does not prohibit testimony from individuals who are specially connected, such as employees or legal representatives. Article 410 of the NCPC requires witnesses to declare their relationship with the parties (eg, subordination, collaboration, or community of interest). However, this does not prevent them from being heard; it merely ensures the court is aware of any potential bias. The credibility of their testimony may be weighed accordingly by the court.

Witnesses specially connected to a party are held to the same standards as unrelated witnesses, including the obligation to testify truthfully under oath. Nonetheless, their relationship with the parties may influence the assessment of their testimony.

**(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Expert testimony is typically presented through reports or in-person testimony before the court, often facilitated by the judge when technical expertise is required. To this end, Article 415 of the NCPC mentions the possibility of an expert attending hearings.

While the NCPC does not explicitly set out formal requirements regarding the independence or impartiality of expert witnesses, such principles are generally inferred from broader legal standards, including fairness in proceedings. Judges typically ensure experts are neutral and may exclude or disregard testimony if there is evidence of bias. This approach aligns with the principle of fair trial and objective evidence evaluation.

**(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

Expert testimony may be ordered *ex officio* by the judge, or organised at the request of the parties. Except in the case of special provisions, the judge is entitled to refuse to order an expert opinion if he considers that it is not relevant to the resolution of the dispute.

In specific cases disciplined by law, the judge is required to order an expert opinion, but in no case an expert opinion may be ordered to make up for the parties' failure to provide evidence.

The opinion may be sought in summary proceedings, before any trial, if it appears necessary to establish or safeguard evidence.

**(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

No.

**(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

Yes, the Arbitration Rules of the Chamber of Commerce of Luxembourg provide for the use of a secretary, and its use is common in domestic seated arbitration.

**(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?**

Yes, members of the Bar must respect the deontological rules set forth in the law on the law profession of 10 August 1991 (*loi sur la profession d'avocat*).

Furthermore, the NCPC states at the Articles 1228-6 to 1228-9, that arbitrators must adhere to strict ethical obligations to ensure independence, impartiality, and integrity. They are required to disclose any potential conflicts of interest both before and during their mandate. Challenges to their impartiality or qualifications are resolved by the arbitration organiser or the *juge d'appui*. Revocation requires unanimous party consent or judicial intervention. Arbitrators are also obliged to complete their mission unless a legitimate reason for abstention or resignation is justified. These rules uphold the fairness and credibility of the arbitration process.

**(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?**

No specific rule is in place at the moment.

**(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?**

The Rules of Arbitration of the Chamber of Commerce of Luxembourg provides that case management conferences may be conducted through a meeting in person, by video conference, telephone or similar means of communication. In the absence of an agreement of the parties, the arbitrator shall determine the means by which the conference will be conducted. However, the NCPC is silent on the topic.

## **X. Awards**

**(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

Yes, there are formal requirements for an arbitral award to be valid under Luxembourg law. The award must comply with public policy rules and the provisions of the NCPC. Additionally, the relief granted in the award must not contravene these provisions or public policy. While domestic courts do not review the merits of the award, the President of the District Court, during enforcement proceedings, assesses whether the award violates these principles.

**(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

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.

**(iii) Are interim or partial awards enforceable?**

Yes, interim or partial awards are enforceable. Under Luxembourg law, the enforcement of arbitral awards, including interim or partial awards, is subject to the *exequatur* procedure. The Court of Appeal can only refuse to grant *exequatur* to an arbitral award in specific cases, such as where the tribunal was incorrectly declared competent or incompetent, where the tribunal was improperly constituted, or where the award violates public policy, among other grounds. These conditions apply to both final and partial awards, meaning that interim or partial awards can be enforced unless one of the listed exceptions applies.

**(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?**

Dissenting opinions are permitted. Pursuant to Article 1232 of the NCPC, the parties may stipulate in their arbitration agreement or adopt the rules of an arbitral institution in which a dissenting or individual opinion is appended to the award.

**(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?**

While there is not an explicit reference of this possibility in the NCPC, the Arbitration Rules of the Luxembourg Chamber of Commerce provide for arbitration by consent. In particular, if the parties reach a settlement after the case has been referred to the arbitrator, the settlement may be documented in the form of an award by consent of the parties, provided the parties request it and the arbitrator consents.

**(vi) What powers, if any, do arbitrators have to correct or interpret an award?**

Under Article 1232-4 of the NCPC, arbitrators have the power to correct or interpret an award under certain conditions. Specifically, at the request of a party, the arbitral tribunal can interpret the award, correct material errors or omissions, or supplement the award if it has failed to address a particular claim. This decision is made after hearing the parties or notifying them accordingly.

However, if the arbitral tribunal cannot be reconstituted, and the parties are unable to agree on how to do so, this power is transferred to the support judge, who will decide in accordance with the appeal procedure outlined in Article 939 of the NCPC.

## **XI. Costs**

**(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?**

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.

**(ii) What are the elements of costs that are typically awarded?**

In court proceedings, the successful party can recover three types of costs.

First, legal costs, which are typically borne by the losing party, and include bailiff fees, clerk fees and expert fees. However, a judge may choose not to award these costs in special circumstances, such as when unnecessary measures were taken.

Second, other legal costs, consist of expenses that would be unfair to leave at the successful party's expense, primarily intended to covering lawyers' fees (Article 240 NCPC). On top, the expenses (*frais et dépens*) are calculated following a dated regulation. These costs are usually minimal, such as a fixed rate per kilometre driven by the lawyer to attend court, the number of pages of briefs, etc. These costs do not include lawyer fees, which must be paid by each of the parties. Luxembourg does not have court fees.

In local arbitration proceedings, arbitrators would typically ask for the justification of the lawyer's and expert witness costs.

**(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?**

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.

**(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?**

According to the arbitration rules of the Luxembourg Chamber of Commerce, the arbitrator may decide on costs at any stage of the arbitral proceedings, apart from those to be fixed by the Council, and may order any payment. In the final award, the arbitrator will determine the arbitration costs and decide which party will bear them or in what proportion. When making decisions on costs, the arbitrator may consider factors such as how expeditiously and cost-effectively each party has conducted the arbitration.

Additionally, if all claims are withdrawn or the arbitration is terminated before the award fixing costs is rendered, the Council will set the fees and expenses of the arbitrator and the administrative costs of the Arbitration Centre, considering the stage of the proceedings and the work already completed. If the parties have not agreed on the allocation of costs, the arbitrator will decide on these matters. If the arbitrator has not yet started their mission at the time of withdrawal or termination, any party may request the Council to proceed with the constitution of the arbitral tribunal to make decisions regarding costs.

**(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

No review on the merits is possible, only a review on the compliance of the awards with public policy provisions and the grounds of recognition and enforcement of the NCPC.

## **XII. Challenges to Awards**

**(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

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

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 Articles 1238 and 1246 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 10, 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 under the same motives claimed as the ones to set aside national awards (Article 1251 NCPC).

As a general rule, pursuant to Article 571 of the NCPC, the time limit for appeals is 40 days from:

- the notification of the judgment, if it is contradictory; or
- the expiry of the time limit of the opposition period, if the judgment is given by default.

However, some provisions provide for a much shorter time limit (eg, 15 days in bankruptcy cases).

In addition, the time limit for appeals is extended by an additional 15, 25 or 35 days for those residing abroad, depending on their country of residency (Article 167 NCPC).

If the judgment has been rendered in default of appearance of the parties, the limitation period starts from the date on which opposition to a judgment (opposition) will no longer be admissible.

**(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

No, Article of the 1236 NCPC clearly stipulates that the award may be subject to an action for annulment before the Court of Appeal, and that any stipulation to the contrary is deemed unwritten.

**(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

Under the new arbitration law, arbitral awards are not subject to opposition or appeal, however, awards can be challenged through an application for annulment before the Court of Appeal pursuant Article 1236 of the NCPC.

**(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

No, courts in Luxembourg do not have the power to remand an award to the arbitral tribunal. However, in cases of manifest incompetence of the arbitral tribunal, domestic courts assume jurisdiction over the matter.

**(v) Is there a specialist arbitration court in your jurisdiction?**

The establishment of the national service of the Consumer Ombudsman through the law of 17 February 2016 (which introduced out-of-court settlement for consumer disputes in the Consumer Code) is a notable advancement in Luxembourg's approach to consumer disputes.

Going forward, any consumer or professional seeking to find an amicable solution to a consumer dispute can contact the Consumer Ombudsman. The Consumer Ombudsman will either handle the case themselves or refer it to a specialised service responsible for out-of-court dispute resolution in the matter concerned.

The procedure before the Consumer Ombudsman is free of charge for all parties, which is a considerable advantage.

**(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (*iura novit arbiter*)? Could this be a basis to set aside the award?**

In the NCPC there is no explicit provision on such powers, however, Article 1228-3 of the NCPC affirms that, in the absence of agreement by the parties, any dispute relating to the constitution of the arbitral tribunal shall be settled by the person responsible for organising the arbitration or, failing that, decided by the supporting judge.

## **XIII. Arbitrator Liability**

**(i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?**

The arbitration law or the NCPC do not explicitly provide for the immunity of arbitrators, experts, translators, interpreters, or other participants in arbitration proceedings from civil liability in connection with their mandate. However, under general principles of civil liability, arbitrators may be held liable only for gross negligence or intentional misconduct in the performance of their duties. This limited liability functions similarly to immunity, protecting arbitrators from frivolous claims while holding them accountable for serious breaches.

**(ii) Does this immunity, if any, extend to criminal liability?**

As for criminal liability, no specific immunity is granted under Luxembourg arbitration law. Participants in arbitration proceedings, including arbitrators and experts, remain subject to the general provisions of criminal law and may be held liable for criminal conduct arising in connection with their mandate. To this end, Articles 250 and 252 of the Luxembourg Criminal Code (*Code Pénal*) provide for sanctions against corrupt arbitrators.

## **XIV. Recognition and Enforcement of Awards**

**(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

In Luxembourg, the process for recognising and enforcing arbitral awards varies depending on whether the award is domestic or foreign. Domestic awards are enforceable only after obtaining an *exequatur* from the President of the District Court, in accordance with Articles 1233–1235 of the NCPC. Foreign arbitral awards require *exequatur* under the conditions of Articles 1245–1249 of the NCPC, unless an international convention, such as the New York Convention, applies. The enforcement procedure is unilateral and non-adversarial, requiring the submission of the original or a certified copy of the award and arbitration agreement, with translations if necessary.

No specific time limit is laid down for requesting enforcement.

The grounds for opposing enforcement include procedural irregularities, violations of public policy, failure to reason the award (unless waived by the parties), breach of the tribunal's mandate, improper constitution of the tribunal and jurisdictional errors. These grounds align with Articles 1238 and 1246 NCPC, as well as the New York Convention's provisions, particularly Article V. Additionally, Luxembourg courts, based on recent case law, will refuse enforcement if the award has been annulled by the courts in its jurisdiction of origin or if it is not legally effective there.

The competent court for granting or refusing *exequatur* is the President of the District Court. Decisions granting or refusing *exequatur* can be appealed to the Court of Appeal and, subsequently, to the Supreme Court.

Opposition to execution does not automatically stay enforcement, however, until the *exequatur* procedure isn't completed, the award cannot be enforced. Furthermore, if the award is not provisionally enforceable or remains subject to setting-aside proceedings in its jurisdiction of origin, Luxembourg courts may refuse to enforce it. In cases where *exequatur* is granted despite pending proceedings or opposition, the debtor may seek annulment under Articles 1236–1242 of the NCPC, but such challenges are limited in scope.

It is not possible to obtain leave to enforce if the award is found to lack legal effect in its country of origin or is otherwise invalid under the grounds specified in the NCPC or international conventions. Enforcement is strictly linked to the legal validity and enforceability of the award in its jurisdiction of origin.

**(ii) If an *exequatur* is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?**

The enforcement of an arbitral award in Luxembourg is contingent upon obtaining an *exequatur* order from the President of the District Court, as specified in Article 1233 of the NCPC. The procedure for requesting *exequatur* is non-adversarial, and the application must be submitted by the diligent party along with the original or a copy of the arbitral award and the arbitration agreement. If these documents are not in one of the official languages, the court may require translations.

*Exequatur* cannot be granted if the award is manifestly affected by grounds for annulment as outlined in Article 1238. The order granting *exequatur* cannot be separately appealed; however, a refusal can be challenged in the Court of Appeal within one month of notification. If a party appeals against the refusal, the Court of Appeal may also consider an annulment challenge against the arbitral award, provided the appeal period has not expired.

Under Article 1236, arbitral awards cannot be contested by opposition, appeal, or cassation in state courts, but they can be annulled through the Court of Appeal. The annulment appeal also automatically includes a challenge to the *exequatur* ruling.

The grounds for annulment listed in Article 1238 include erroneous jurisdiction determinations by the tribunal, irregular constitution of the tribunal, non-compliance with its mandate, public policy violations, lack of reasoning (unless waived by the parties) and violations of due process rights. The annulment appeal must be lodged within one month of the award's notification, following the formalities in Article 1232-3.

Annulment requests are filed by a bailiff, citing the other parties to the award, and are judged according to civil procedure rules. Importantly, annulment appeals are not suspensive, although the Court of Appeal may suspend enforcement if it could severely harm a party's rights.

If the annulment request is rejected, the *exequatur* is conferred to the award or the unaffected parts. Article 1243 outlines that a revision appeal may be filed against the award under specific conditions, such as fraud or new evidence emerging post-award. This appeal must be filed within two months of discovering the revision grounds.

### (iii) **Are conservatory measures available pending enforcement of the award?**

In Luxembourg, conservatory measures are available to secure assets pending the enforcement of an arbitral award. These measures ensure the preservation of a debtor's assets to protect the creditor's claim. They can take the form of judicial securities or conservatory attachments.

Judicial securities, such as the registration of a mortgage or pledges on business assets or shares, provide a preferential right to the creditor. However, these measures are temporary and require a separate enforcement procedure to realise the secured assets if the debtor fails to pay.

Conservatory attachments are more action-oriented, rendering the debtor's assets temporarily unavailable or frozen until an enforceable title is obtained. They can be applied to various assets, including movable property, vehicles, bank accounts, receivables, or securities. These measures are particularly suited to prevent the dissipation of assets prior to enforcement.

A court order must generally be obtained in order to implement such measures. However, no prior court authorisation is needed if the creditor holds an enforceable title, a non-executable court decision, or certain unpaid instruments, such as cheques or bills of exchange.

Once the award becomes enforceable, conservatory measures can be converted into enforcement measures to recover the amounts owed.

### (iv) **What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?**

**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 () and adopted the European Convention on International Commercial Arbitration 1961. In addition, it has concluded bilateral arbitration conventions with multiple countries.

When the New York Convention applies, a Luxembourg judge must rely solely on the Convention's provisions and cannot consider Luxembourg law's extended list of objections to enforcement, such as those in Article 1246 of the NCPC. However, where the New York Convention does not apply, the relevant NCPC provisions, including those permitting objections based on pending annulment proceedings in the award's country of origin, remain fully applicable.

**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 review before the Supreme Court (*Cour de Cassation*).

**(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?**

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.

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.

## **XV. Sovereign Immunity**

**(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?**

Yes, state parties enjoy immunities in Luxembourg, based on customary international law and principles of state sovereignty. Luxembourg distinguishes between immunity from jurisdiction and immunity from execution:

- Immunity from Jurisdiction:
  - States are generally immune from the jurisdiction of foreign courts unless they waive this immunity.
  - Immunity applies to acts performed in a sovereign capacity (*jure imperii*) but not to private or commercial acts (*jure gestionis*).
  - Waiver of jurisdictional immunity may occur through explicit clauses in contracts or participation in legal proceedings without invoking immunity, provided the state acts with clear and unequivocal intent.
- Immunity from Execution:
  - This immunity protects state assets from enforcement measures, particularly those used for sovereign purposes (eg, diplomatic premises, central bank funds).
  - Luxembourg courts require a specific and unequivocal waiver for execution immunity. Such a waiver must be explicitly included in an agreement and cannot be inferred from a waiver of jurisdictional immunity.

State assets used for commercial purposes may be subject to enforcement if a valid waiver exists.

**(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?**

Although in the NCPC there is no special provision on sovereign immunity, Luxembourg applies special rules deriving from customary law as well as international conventions for enforcing awards against states or state entities:

- *Exequatur* and Execution Distinction:
  - *Exequatur* is the process of recognising an arbitral award as binding and enforceable, distinct from actual execution.

While *exequatur* does not affect immunity, execution measures depend on compliance with domestic and international immunity rules.

- *Immunity from Execution*:
  - Execution is permitted only when assets are commercial or when the state has provided a specific, unequivocal waiver.
  - State-owned assets used for sovereign purposes remain immune, but assets used for commercial activities may be subject to enforcement.
- Applicable International Conventions:

- The ICSID and New York Conventions play a crucial role in enforcement. The ICSID Convention enforces awards as final judgments, while domestic law governs execution, taking immunity into account.

Under the New York Convention, enforcement may be denied on public policy grounds, potentially including sovereign immunity considerations.

### **(iii) Are there any requirements for arbitrations involving sovereign entities?**

The provisions of the NCPC apply for questions concerning domestic arbitration procedures, as well as the Rules of the Arbitral Chamber of the Chamber of Commerce of Luxembourg.

However, when it comes to sovereign entities, Luxembourg's courts respect international conventions such as the ICSID and New York Conventions, which provide procedural and substantive guidelines for arbitration involving sovereign entities, notably for what concerns:

- Jurisdictional Immunity Waiver:
  - Sovereign entities must consent to arbitration, often through explicit clauses in treaties or contracts.
  - Participation in arbitration implies a waiver of jurisdictional immunity.
- Execution Immunity Waiver:
  - A separate, explicit waiver of immunity from execution is required to enforce an arbitral award against state assets.

The waiver must be unequivocal, detailing the extent and conditions under which enforcement is allowed.

## **XVI. Investment Treaty Arbitration**

### **(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Yes, Luxembourg is a party to the ICSID Convention. The Convention's provisions mandate automatic recognition of awards, treating them as final judgments within member states. However, execution of awards is subject to domestic immunity rules. Luxembourg is also a signatory to the New York Convention for recognising and enforcing foreign arbitral awards.

In addition, Luxembourg is a signatory to other multilateral treaties concerning the protection of investments, including the European Convention on International Commercial Arbitration of 1961 and the Convention on Conciliation and Arbitration within the OSCE of 1992. It was also a party to the Energy Charter Treaty of 1994 but has since withdrawn.

### **(ii) Has your country entered into bilateral investment treaties with other countries?**

Yes, Luxembourg has entered into over 100 bilateral investment treaties with non-EU member states to promote and protect investments. Currently, all intra-EU BITs have been terminated.

### **(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?**

Yes, on 14 July 2022, the Luxembourg Court of Cassation rejected the enforcement of the Micula ICSID award, which had been rendered in 2013 in the case of *Ioan Micula, Viorel Micula, and others v. Romania*.

The Luxembourg Supreme Court overturned a prior decision by the Court of Appeal, which had upheld the enforcement of the award. The Court of Cassation ruled that, following Romania's accession to the European Union in 2007, the arbitration clause in the Sweden-Romania BIT became incompatible with EU law. Specifically, the court found that the arbitration agreement had been nullified as it contravened Articles 267 and 344 of the Treaty on the Functioning of the European Union. Consequently, it concluded that Romania's consent to arbitration under the BIT ceased to have legal effect from the date of its EU accession. The court further held that Romania had not waived its jurisdictional immunity.

## XVII. Resources

**(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

The New Code of Civil Procedure and the Arbitration Rules of the Luxembourg Chamber of Commerce play a central role in Luxembourg's legal framework. The Faculty of Law at the University of Luxembourg is actively engaged in research and publishing works on arbitration topics. Additionally, key organizations such as the think tanks of the Chamber of Commerce and the Luxembourg Arbitration Association (LAA) contribute significantly to the field.

**(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

The LAA holds each year the Luxembourg arbitration day, usually between March and April. Furthermore, both the University of Luxembourg and the Luxembourg Chapter of the Spanish and Ibero-American Arbitration Club ('CEIA') are actively involved in organizing events on arbitration-related topics, such as enforcement of awards, sanctions and arbitration and investment treaty arbitration. The University in collaboration with the LAA and the Luxembourg Chapter CEIA organise a minimum of three conferences per year.

## XVIII. Trends and Developments

**(i) Do you think that arbitration has become a real alternative to court proceedings in your country?**

There are notable efforts in promoting this alternative method of dispute resolution, which, although not widely used, is gaining popularity.

**(ii) What are the trends in relation to other ADR procedures, such as mediation?**

Mediation in Luxembourg, governed by the law of 24 February 2012, is available for civil and commercial disputes, with notable exceptions for cases involving non-disposable rights, public order provisions, and state liability for acts performed in the exercise of public authority. The legal framework defines mediation as a voluntary and structured process where parties seek to resolve disputes with the assistance of an impartial mediator. This process is strongly encouraged in family law matters, particularly for disputes arising from divorce or separation, including issues of parental authority and financial obligations.

Mediators in Luxembourg are accredited by the Minister of Justice based on their training, competence and good character, ensuring the quality and professionalism of the process. Confidentiality is a cornerstone of mediation in Luxembourg, with strict rules preventing mediation communications from being used in subsequent judicial proceedings unless required to enforce agreements or for public policy considerations. Furthermore, mediation agreements suspend the statute of limitations while the process is ongoing, and any mediation clauses in contracts are binding, obliging courts or arbitrators to stay proceedings when such clauses are invoked.

Judges may actively encourage mediation during legal proceedings, provided the parties consent. In such cases, the mediation process is time-limited, typically lasting three months with the possibility of a one month extension. If the mediation proves unsuccessful, the original legal proceedings are resumed. Agreements reached through mediation can be homologated by a judge, thereby acquiring the status of legally enforceable instruments.

**(iii) Are there any noteworthy recent developments in arbitration or ADR?**

To modernise Luxembourg's arbitration framework and making the jurisdiction more attractive for international arbitration, a new arbitration law was enacted, effective from 25 April 2023, reforming the arbitration regime by amending the Civil Procedure Code.

Key aspects of the law include the inspiration from French law and the UNCITRAL Model Law, a liberal approach to arbitration, and the exclusion of certain disputes, such as lease, consumer and labour law, from arbitration. The law applies uniformly to both domestic and international arbitration.

Significant changes include a right to confidentiality, the introduction of a supporting judge to assist with provisional measures and tribunal constitution, and revamped procedures for the annulment of domestic awards and the recognition of foreign awards. The law also officially recognises arbitration institutions, such as the Luxembourg Arbitration Centre, which has updated its rules to accommodate modern practices, including emergency measures and simplified procedures for disputes below one million euros.

**(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?**

Luxembourg is in the process of introducing class action procedures through bill of law number 7650 on class actions, transposing EU Directive 2020/1828. This will finally allow a group of consumers to bring a single action against the wrongful conduct of a trader, thus avoiding costly and time-consuming individual actions. Additionally, the bill would be the first piece of legislation to expressly refer to third-party litigation funding.

As criticisms have been raised regarding impartiality, the supervision of such a private third party is explicitly stated, along with requirements for impartiality and a prohibition against influencing the client's decision-making process and obligations for non-profit organisations initiating actions to remain independent.

To this day, there is no clear timeline for its adoption, and the draft is still under discussion.

In the arbitration area, on 19 April 2023, Luxembourg's Chamber of Deputies passed a new arbitration law, incorporated into Articles 1224 NCPC. The new law aims at promoting Luxembourg as an attractive arbitration venue. The law adopts three key approaches:

- Drawing from existing norms, particularly French law and the UNCITRAL Model Law on International Commercial Arbitration.
- Establishing a liberal regime to facilitate arbitration.
- Rejecting the distinction between domestic and international arbitration.

As regards third-party litigation funding, Luxembourg remains relatively underdeveloped in this area.

However, as the litigation funding market develops in other EU jurisdictions Luxembourg is likely to join this trend. Indeed, at the EU level, the first incentives have appeared. For example, the European Parliament published a resolution on 13 September 2022, with recommendations to the Commission on responsible private funding of litigation. To this day the Commission has not yet taken a more detailed position regarding the initiative.

Ultimately, with the growing interest in the enforcement of arbitral awards against sovereign states in Luxembourg, it is expected that the relevance and use of third-party funding will increase further in Luxembourg. Investment loss and financial services disputes, as well as commercial arbitrations, seem to be the most fertile practice areas in Luxembourg for the use of third-party funding in the near future.

**(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?**

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.

**(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?**

Luxembourg enforces a robust sanctions regime aligned with its international and EU obligations, primarily under the Law of 27 October 2010 and EU regulations. These measures target terrorist financing and money laundering, imposing restrictions on financial activities, asset freezes and prohibitions on providing services to sanctioned entities. The CSSF also enforces sector-specific regulations.

EU sanctions are treated as part of Luxembourg's international public policy. Courts prioritise EU law, as affirmed by the *Cour de cassation*, and may refuse enforcement of arbitral awards that violate sanctions.