

Chambers

GLOBAL PRACTICE GUIDE

Definitive global law guides offering
comparative analysis from top ranked lawyers

Litigation

Luxembourg

Bonn Steichen & Partners

chambers.com

2019

Law and Practice

Contributed by Bonn Steichen & Partners

Contents

1. General	p.4	5.4 Alternatives to Discovery Mechanisms	p.8
1.1 General Characteristics of Legal System	p.4	5.5 Legal Privilege	p.8
1.2 Structure of Country's Court System	p.4	5.6 Rules Disallowing Disclosure of a Document	p.8
1.3 Court Filings and Proceedings	p.5	6. Injunctive Relief	p.8
1.4 Legal Representation in Court	p.5	6.1 Circumstances of Injunctive Relief	p.8
2. Litigation Funding	p.5	6.2 Arrangements for Obtaining Urgent Injunctive Relief	p.9
2.1 Third-party Litigation Funding	p.5	6.3 Availability of Injunctive Relief on an Ex Parte Basis	p.9
2.2 Third-party Funding of Lawsuits	p.5	6.4 Applicant's Liability for Damages	p.9
2.3 Third-party Funding for Plaintiffs and Defendants	p.5	6.5 Respondent's Worldwide Assets and Injunctive Relief	p.9
2.4 Minimum and Maximum Amounts of Third-party Funding	p.5	6.6 Third Parties and Injunctive Relief	p.9
2.5 Third-party Funding of Costs	p.5	6.7 Consequences of a Respondent's Non-compliance	p.9
2.6 Contingency Fees	p.5	7. Trials and Hearings	p.9
2.7 Time Limit for Obtaining Third-party Funding	p.6	7.1 Trial Proceedings	p.9
3. Initiating a Lawsuit	p.6	7.2 Case Management Hearings	p.9
3.1 Rules on Pre-action Conduct	p.6	7.3 Jury Trials in Civil Cases	p.9
3.2 Statutes of Limitations	p.6	7.4 Rules That Govern Admission of Evidence	p.9
3.3 Jurisdictional Requirements for a Defendant	p.6	7.5 Expert Testimony	p.9
3.4 Initial Complaint	p.6	7.6 Extent to Which Hearings are Open to the Public	p.9
3.5 Rules of Service	p.6	7.7 Level of Intervention by a Judge	p.10
3.6 Failure to Respond to a Lawsuit	p.6	7.8 General Timeframes for Proceedings	p.10
3.7 Representative or Collective Actions	p.6	8. Settlement	p.10
3.8 Requirement for a Costs Estimate	p.6	8.1 Court Approval	p.10
4. Pre-trial Proceedings	p.6	8.2 Settlement of Lawsuits and Confidentiality	p.10
4.1 Interim Applications/Motions	p.6	8.3 Enforcement of Settlement Agreements	p.10
4.2 Early Judgment Applications	p.7	8.4 Setting Aside Settlement Agreements	p.10
4.3 Dispositive Motions	p.7	9. Damages and Judgment	p.10
4.4 Requirements for Interested Parties to Join a Lawsuit	p.7	9.1 Awards Available to a Successful Litigant	p.10
4.5 Applications for Security for Defendant's Costs	p.7	9.2 Rules Regarding Damages	p.10
4.6 Costs of Interim Applications/Motions	p.7	9.3 Pre- and Post-judgment Interest	p.10
4.7 Application/Motion Timeframe	p.7	9.4 Enforcement Mechanisms for a Domestic Judgment	p.10
5. Discovery	p.7	9.5 Enforcement of a Judgment From a Foreign Country	p.10
5.1 Discovery and Civil Cases	p.7		
5.2 Discovery and Third Parties	p.8		
5.3 Discovery in this Jurisdiction	p.8		

10. Appeal	p.11
10.1 Levels of Appeal or Review Available to a Litigant Party	p.11
10.2 Rules Concerning Appeals of Judgments	p.11
10.3 Procedure for Taking an Appeal	p.11
10.4 Issues Considered by the Appeal Court at an Appeal	p.11
10.5 Court-imposed Conditions on Granting an Appeal	p.11
10.6 Powers of the Appellate Court After an Appeal Hearing	p.11
11. Costs	p.11
11.1 Responsibility for Paying the Costs of Litigation	p.11
11.2 Factors Considered When Awarding Costs	p.11
11.3 Interest Awarded on Costs	p.11
12. Alternative Dispute Resolution	p.12
12.1 Views on ADR in this Jurisdiction	p.12
12.2 ADR Within the Legal System	p.12
12.3 ADR Institutions	p.12
13. Arbitration	p.12
13.1 Laws Regarding the Conduct of Arbitrations	p.12
13.2 Subject Matter not Referred to Arbitration	p.12
13.3 Circumstances to Challenge an Arbitral Award	p.12
13.4 Procedure for Enforcing Domestic and Foreign Arbitration	p.12

Bonn Steichen & Partners is an independent full-service firm based in Luxembourg. Its lawyers can assist with all aspects of Luxembourg business law and, with a partner-led service as a hallmark, the firm's attorneys have developed particular expertise in banking and finance, capital markets, corporate, data protection and privacy, dispute resolution, labour law, investment funds, real estate and tax. The multidisciplinary dispute resolution team of 12 people handles an array of disputes relating to international M&A, tax,

commercial, private equity, funds and real estate matters. It is very flexible and reactive in tackling sophisticated litigation, especially in shareholder disputes and corporate matters, with real estate litigation also a prominent part of its practice. Bonn Steichen & Partners is known for handling institutional and ad hoc arbitration cases, and regularly acts within the framework of enforcement proceedings. Recently, several cases of enforcement of awards against foreign states have been and are being handled.

Authors



Fabio Trevisan is a partner and the head of the dispute resolution practice, whose work focuses on a wide spectrum of commercial, corporate and financial litigation and arbitration. He has over two decades of experience in managing and conducting litigation for clients in almost all sectors. Fabio has covered all forms of dispute resolution – including litigation, mediation and arbitration – as well as general banking, corporate and commercial dispute resolution. He has 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. Fabio has also developed a reputation in connection with his work related to real estate matters. He is a director of the Association des Entrepreneurs et Dirigeants Italo-Luxembourgeois and a member of the Union des Avocats Européens, the Associazione Internazionale Giuristi di Lingua Italiana, the International Bar Association and the Bar Council (from 2004-05 and 2010-2013).



Laure-Hélène Gaicio-Fievez is a partner who focuses on arbitration, general commercial, insolvency and litigation. She advises on a wide range of domestic and international arbitration proceedings, and has already published various articles, primarily in that field.

1. General

1.1 General Characteristics of Legal System

The Luxembourg legal system is governed by the Constitution of the Grand Duchy of Luxembourg, promulgated on 17 October 1868. It is a parliamentary democracy. The executive power, the legislative power and the judicial power are therefore separated from each other.

The Luxembourg system of law is based on civil law.

The Luxembourg judicial civil procedure is a mixed system. Parties are free to determine the contours of the proceedings with their respective claims and defences and are masters of their destiny by the burden of having to allege and demonstrate the facts that support their claims. They are free to present their defence. However, the courts give the necessary impetus to the proceedings as regards their conduct and the

collection of evidence, if needed, and, unless they reconcile the parties, they rule on the dispute submitted to them by applying the relevant rules of law.

With regard to criminal proceedings, the system is a highly inquisitorial system, in which the judge is endowed with important powers intended to enable him to carry out his own investigations for the prosecution and for the defence. The parties are therefore not directly obliged to conduct the investigation in support of their claims.

Regarding civil matters, written submissions are required. However, before the Lower Courts and the District Court sitting in commercial matters, oral argument may be used.

1.2 Structure of Country's Court System

The court system is twofold, with a distinction made between Judicial Courts and Administrative Courts.

Judicial Courts sit in civil, commercial and criminal matters and are organised on the basis of a three-tier structure:

- The *Justice de Paix* (hereafter the Lower Courts) and the *Tribunal d'arrondissement* (hereinafter the District Court). Lower Courts have jurisdiction in civil and commercial matters that do not exceed EUR10,000 and also sit as police courts (*Tribunal de Police*). The Employment Tribunals (*Tribunal du Travail*) are also organised at the level of the Lower Courts. Appeals against the decisions of the Lower Courts are filed with the District Courts, except the decisions of the Employment Tribunals which are filed directly with the Court of Appeal. The District Courts have jurisdiction to rule on disputes above EUR10,000 in civil and commercial matters. The District Courts also sit as criminal courts (*Chambre correctionnelle et Chambre criminelle du Tribunal d'arrondissement*).
- The Court of Appeal hears recourses against first-degree judgments rendered by the District Courts in civil, commercial and criminal matters and judgments of the Employment Tribunals.
- The Supreme Court (*Cour de Cassation*) has jurisdiction to review decisions of the Court of Appeal and certain other decisions that are not subject to any further appeal. Review by the Supreme Court is restricted to questions of law.

The Administrative Courts have jurisdiction on matters related to administrative and tax disputes, and are organised under a two-tier structure with the Administrative Tribunal and the Administrative Court of Appeal. The latter sits as the Supreme Court for administrative matters.

1.3 Court Filings and Proceedings

In Luxembourg, court filings are not open to the public.

As regards the proceedings, they shall be public, except in cases where the law requires that they be secret. However, the court may order that they be held in closed session if public discussion leads to scandal or serious inconvenience.

1.4 Legal Representation in Court

To practise as a lawyer in Luxembourg, it is mandatory to have obtained registration on one of the lists of a Bar Association established in the Grand Duchy of Luxembourg. This also applies to a European lawyer who wishes to practise in Luxembourg under his or her original professional title.

Where a lawyer who is a national of another Member State of the Community carries out legal representation or defence activities in the Grand Duchy of Luxembourg, without being registered with the Bar Association in the Grand Duchy, he must act in concert, depending on the matter, either with a lawyer in the court or with a lawyer practising before the court seized.

In addition, in written proceedings, a litigant must be represented by a lawyer qualified as *avocat à la cour*, ie, a lawyer who must be registered on List I. Please note that the lawyers qualified as *avocat à la cour* are the only ones entitled to represent the parties before the Constitutional Court, the administrative courts, the Superior Court of Justice and the District Courts sitting in civil matters, to file briefs for such parties, to receive their exhibits in order to present them to the judge.

In oral proceedings, the litigant may be represented by any lawyer, ie, List I (*avocat à la cour*), II (trainee lawyer – *avocat stagiaire*) or IV (lawyer practising under his original professional title), or even V or VI (these latter applying to law firms). He may also be represented by a number of persons who are not lawyers (for example, his spouse or a member of his family).

2. Litigation Funding

2.1 Third-party Litigation Funding

In Luxembourg, there are currently no specific rules concerning the financing of a dispute by a third party. Consequently, the financing of a dispute by a third party is available to the parties to the proceedings, subject to compliance with the lawyer's ethical or legal obligations.

2.2 Third-party Funding of Lawsuits

There are currently no specific restrictions on lawsuits for which third party funds are available, therefore it is to be considered that subject to the lawyer's ethical or legal obligations, any type of lawsuit is available for third party funding.

2.3 Third-party Funding for Plaintiffs and Defendants

In view of the above, the financing of a judicial procedure by a third party is available to both the plaintiff and the defendant.

2.4 Minimum and Maximum Amounts of Third-party Funding

This is entirely a matter of what will be contractually agreed between the client and the funder, as no legal provision provides thresholds.

2.5 Third-party Funding of Costs

Third party funding costs will depend on what is provided for in the contract. It may include legal fees.

2.6 Contingency Fees

The internal regulation of the Bar prohibits lawyers' fees from being fully contingent on the outcome of a case. A success fee may be added to capped fees as agreed with the client.

2.7 Time Limit for Obtaining Third-party Funding

There is no compulsory time limit.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

Parties to a lawsuit are not required to initiate a specific procedure apart from commercial matters where a prior notice should be sent before initiating any proceedings. Filing a lawsuit. Parties may, however, freely provide in an agreement that they will endeavour to settle any dispute through a mediation procedure/arbitration, or that any lawsuit will be subject to the prerequisite that notice must be given first.

3.2 Statutes of Limitations

In principle, the statute of limitations in civil matters is 30 years and ten years in commercial matters. There are specific matters for which shorter statutes of limitations are provided for by the Civil Code (ie, ten years for construction matters, three years for the payment of salary). The starting point of the statute of limitations is the day when the obligation becomes due (or when the harm occurred in tort cases).

3.3 Jurisdictional Requirements for a Defendant

Unless otherwise provided for, defendants are primarily sued before the court of the place where they are domiciled. If the defendant has neither a known domicile nor residence, the claimant may use the court in the place where he is domiciled or any one court of his choice if he is domiciled abroad.

Traders (individuals and companies) may be sued, at the discretion of the non commercial claimant, either before the commercial or civil courts. For general civil matters, individuals may only be sued before the civil courts.

Individuals with full legal capacity and legal entities with a legal personality may be subject to a lawsuit in Luxembourg.

3.4 Initial Complaint

There are two means to initiate a lawsuit depending on the subject matter: a claimant must directly file their request with the courts; or they may have to serve their writs of summons through a bailiff.

The Lower Courts require that lawsuits pertaining to employment matters, lease agreements and applications for an injunction to pay take the form of a request and that they are filed directly with the courts. The District Courts require that certain unilateral actions are initiated through a request.

Lawsuits on other matters will be filed in the form of a writ of summons (“*citation*” before the Lower Courts and “*assignation*” before the District Courts) after having been served by a bailiff.

In both cases the initial complaint must contain certain pieces of information, specifically the names and full particulars of each party, the relevant court before which the parties should appear, the summary of the facts, the nature of the claim and the legal arguments proposed to solve the litigation.

The initial complaint constitutes the so-called “judicial agreement”, which may not be amended by the applicant after it has been filed.

3.5 Rules of Service

Depending on the required procedure that had to be followed to initiate the lawsuit, the defendant will be notified either by a bailiff (writ of summons) or by the court’s clerk (request).

Where the defendant is domiciled abroad, the bailiff complies with the relevant applicable provisions and sends the document instituting proceedings by registered letter with acknowledgement of receipt.

3.6 Failure to Respond to a Lawsuit

Where a defendant does not respond to a lawsuit (i.e. he has not appointed a lawyer in civil matters before the District Court or he does not attend the hearing in person where the representation by a lawyer is not mandatory), a judgment by default will be issued.

3.7 Representative or Collective Actions

In Luxembourg, it is not possible to launch a class action. Nevertheless, several defendants with a common interest may bring a joint claim.

This may change in the future for consumers.

3.8 Requirement for a Costs Estimate

There are no requirements to provide clients with a cost estimate of the potential litigation at the outset.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

The Luxembourg procedural code (NCPC) gives the judge sitting in summary proceedings general powers to order, in urgent matters, any interim measures to which there is no compelling objection or which are justified by the existence of a dispute (Article 932 al. 1 of the NCPC)

This judge may also order any conservatory or remedial measures that are necessary either to prevent imminent damage or to put an end to a manifestly unlawful disturbance (Article 933 al. 1 of the NCPC).

4.2 Early Judgment Applications

A party may indeed request an interlocutory decision, insofar as claims, arguments or questions remain to be dealt with and considered by the court seized (for example, a judgment which rules on the applicable law or determines the applicable national provisions and repositions the case for debate on the merits or a judgment which declares the action not to be time-barred).

A party may also raise certain procedural objections on the admissibility of the case (for example, where the subject matter of the application is not sufficiently precise, where there is no legal interest to act) before any other defence on the merits. If the judge decides in favour of the exception, this will prevent any discussion on the merits and the application will be declared inadmissible.

Furthermore, it is possible to obtain the surrender of the case. Indeed, when the case is no longer of interest to the parties, or when the court is under the impression that the parties are losing interest, it may be struck out and removed from the list.

This measure of judicial administration may be taken at the request of both parties or at the initiative of the court.

In this context, Articles 77 and 222 of the new Code of Civil Procedure provide for the cancellation of sanctions when the parties do not comply with the procedural acts imposed on them.

4.3 Dispositive Motions

There are no dispositive motions that are commonly made before trial.

4.4 Requirements for Interested Parties to Join a Lawsuit

The procedural rules applicable in Luxembourg effectively provide for the possibility for a third party to join an ongoing procedure.

There are two types of interventions:

- voluntary intervention; and
- forced intervention.

Voluntary intervention is the act by which an interested third party requests to be admitted to the proceedings. Voluntary intervention is carried out by an act of lawyer to lawyer or by an oral statement in the context of an oral procedure. Currently there exists conflicting case-law as to if a bailiff act is required or not.

This procedure is only admissible from those who could form a third party opposition against the decision. The in-

tervenuer must be a third party and must have a legitimate interest to justify its participation in the proceedings.

Concerning forced intervention, this is the case where one of the parties to the proceedings forces a third party to enter the proceedings. To be admissible, the forced intervention must take the form of a real summons.

Forced intervention can only be directed against a third party who has an interest in opposing the judgment and who could make a third party opposition against the decision to be taken.

4.5 Applications for Security for Defendant's Costs

Pursuant to Article 257 of the new Code of Civil Procedure, defendants located in Luxembourg (nationals as well as certain foreigners to whom this right has been granted by a treaty) may require that a bond be provided by the foreign plaintiff. Subject to this exception, there are no rules allowing the defendant to order the plaintiff to pay a sum of money as security for the defendant's expenses.

4.6 Costs of Interim Applications/Motions

There are no such costs for interim applications/motions.

4.7 Application/Motion Timeframe

This will depend on the complexity of the case as there are no rules providing a specific time period. It should be noted, however, that some procedures allow the plaintiff to obtain a decision fairly quickly (e.g. Article 933 para. 2 allows the creditor to obtain a debtor's order to pay a sum of money quickly).

5. Discovery

5.1 Discovery and Civil Cases

Under Luxembourg law, there is no disclosure procedure, as such, in civil proceedings. In accordance with the adversarial principle, it rests with each party to file in due time and on a voluntary basis the necessary evidence to justify its claims.

A claimant who contemplates the initiation of a lawsuit may seek evidence or specific documents through summary proceedings. The summary judge may, before any lawsuit is filed, appoint an expert or issue an injunction to produce a document. However, in regard to the latter, this may not be a fishing expedition and the claimant must specifically detail the information he requires (for example a copy of an email exchanged between such and such on a specific date).

A claimant may also gather written witness statements prior to any lawsuit.

In the course of a lawsuit, the judge may also ask the parties to take a position on any factual issues that may be relevant

before the instruction phase is closed. Parties may offer evidence for their allegations through testimony.

5.2 Discovery and Third Parties

We may request that the person who holds an exhibit produce it in the proceeding. The person who holds such documents may be our opponent or a third party. In both cases, we can address the court by saying that in order to justify our position in the proceeding, we need a particular document (again as provided above, no fishing expedition will be permitted).

After verifying that there is a certain probability that the document actually exists, that the person is actually in possession of the document, and that the document is indeed relevant to the resolution of the dispute, the court may order the disclosure of such document.

5.3 Discovery in this Jurisdiction

As set out above, Luxembourg does not know of discovery. The burden of proof lies on the person who alleges a fact.

5.4 Alternatives to Discovery Mechanisms

Please see 5.1 Discovery and Civil Cases.

5.5 Legal Privilege

Communications between an independent lawyer and his client are protected by professional secrecy as provided for under the law which regulates the profession of lawyers, and under the Criminal Code. Communications between independent lawyers are in principle deemed confidential, unless such communications have been labelled as official or are to be considered as official by their nature. In-house lawyers are not covered by the professional secrecy rules.

5.6 Rules Disallowing Disclosure of a Document

Article 287 of the new Code of Civil Procedure allows a third party who is ordered to issue a document to take a position on the application concerning him. He can apply to the judge who rendered the decision to ask him to revoke or amend the decision. To do so, the third party in the proceedings must invoke a legitimate reason to oppose the forced production of documents. It should be noted that this remedy is also available to the parties to the proceedings.

In regard to a party to the proceedings, as Luxembourg does not know of a discovery process, a party will only disclose documents that support its position. It is not required to disclose documents that would damage its position.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

There are several procedures allowing a judge hearing an application for interim measures (in particular the president of

the District Court or the president of the Labour Court) to pronounce specific measures in certain particular circumstances. The power of the judge in summary proceedings is based on some or all of three notions, namely the urgency, obviousness and incontestability of the claims.

First, Article 933(2) provides that the judge may grant a provision to the creditor in all cases where the obligation is not seriously questionable. The idea of the provision is to allow a creditor of a sum of money to obtain a decision quickly which orders the debtor to pay the said sum of money. This summary provision is not subject to the condition of urgency. The proceedings on the merits sometimes take a very long time, and the creditor would then have to wait until the end of the proceedings to be able to recover his claim.

Secondly, the Luxembourg new Code of Civil Procedure also provides for a summary investigation measure which includes two summary proceedings:

- summary procedure (*référé probatoire*) 350 NCPC; and
- summary procedure (*référé prevue*) 933 NCPC.

These are two procedures where one needs to collect evidence to use in a trial on the merits.

With regard to the probationary summary proceedings (*référé probatoire*), it is not necessary to prove an emergency.

The idea is that the judge hearing the application for interim measures merely orders an investigative measure. Ordering an investigative measure does not decide anything regarding the merits of the dispute.

There is an important limitation under Article 350 of the new Code of Civil Procedure: proceedings must not already have been brought on the merits. Probationary summary proceedings are preventive summary proceedings, ie, before any trial.

Under Article 932 of the new Code of Civil Procedure, the judge may also order in summary proceedings all measures which are not seriously contested or which are justified by the existence of a dispute.

Under Article 933 of the new Code of Civil Procedure, the judge may prescribe in summary proceedings the provisional or reinstatement measures necessary either to prevent imminent damage or to put an end to a manifestly unlawful disorder.

In addition, the judge may order seizure measures, in particular in the event of difficulties relating to the enforcement of a judgment (ie, protective seizure, garnishment).

6.2 Arrangements for Obtaining Urgent Injunctive Relief

In case of emergency, an *ex parte* petition may be filed. In such circumstances, a decision can be rendered within 48 to 72 hours.

If the normal procedure is followed, it can take a couple of weeks.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

There are a number of situations where a judge makes a decision without adversarial debate. The possibility of rendering a decision without an adversarial debate is a clear infringement of the adversarial principle and the rights of the defences.

Nevertheless, this possibility has been implicitly provided for in Article 66 NCPC: *“Where the law permits or requires that a measure be ordered without a party’s knowledge, the party shall have an appropriate remedy against the decision adversely affecting it.”*

6.4 Applicant’s Liability for Damages

The defendant may claim a certain amount of money if he considers that the action brought by the plaintiff against him is abusive. He can claim damages for abusive and vexatious proceedings on the basis of Article 1382 of the Civil Code.

However, damages may only be requested for damage suffered, for example lawyers’ fees. Luxembourg does not recognise punitive damages.

6.5 Respondent’s Worldwide Assets and Injunctive Relief

Luxembourg law does not provide for the possibility to grant injunctive relief against the worldwide assets of the respondent.

6.6 Third Parties and Injunctive Relief

A third party can be ordered to produce documents or evidence it may have in hand, to preserve such documents, assets, shares, etc. and not transfer them to a party, or to not proceed with works required by one of the parties.

6.7 Consequences of a Respondent’s Non-compliance

If a respondent fails to comply with the terms of an injunction, the applicant may request the intervention of a bailiff.

In oral proceedings, the instruction phase is mainly the responsibility of the parties, which shall inform the court when they consider that the case is ready to be pleaded. At the hearing scheduled for the pleadings, the parties will present their arguments orally.

Written proceedings are conducted under the supervision of a judge (*Juge de la mise en état*) who is in charge of the management of the case. Whenever written submissions are required during the instruction phase, the judge sets a time schedule that is to be followed by the parties. Each party must communicate with the other party and file its submissions with the court pursuant to the time schedule fixed by the judge.

Once it is considered that everything has been said, the instruction phase shall be closed. The court will then schedule a date for pleadings where each of the parties will be given the opportunity to orally plead the case. The court will then schedule a date at which a decision will be handed down.

7.2 Case Management Hearings

Shorter hearings are conducted in the same way as hearings in oral proceedings.

7.3 Jury Trials in Civil Cases

Jury trials are not available in civil cases in Luxembourg.

7.4 Rules That Govern Admission of Evidence

Unless otherwise provided for by the law, the burden of proof in civil matters is on the party that alleges a fact or a right. Documents serving as evidence may only be considered by the courts if they have been duly communicated to the other parties in due time and at least four days before the pleadings take place.

Parties may file a request to the court to seek specific documents which are considered to be relevant to the outcome of the litigation. Parties may also evidence their argument through testimony. The witnesses make their statements under oath.

7.5 Expert Testimony

The court and the parties may request an expert opinion. However, the judge is not bound by the expert’s findings or conclusions.

7.6 Extent to Which Hearings are Open to the Public

Court hearings are public, unless such publicity is dangerous to order or morality, in which case the court declares it by a judgment. In any case, all judgments must be rendered publicly.

7. Trials and Hearings

7.1 Trial Proceedings

In Luxembourg civil procedure law, a distinction must be made between written and oral proceedings.

7.7 Level of Intervention by a Judge

The powers of judges in the trial are strictly regulated by the Code of Civil Procedure. They therefore have a relatively small margin of discretion. However, they may order different investigative measures.

The decision is rendered at a later date.

7.8 General Timeframes for Proceedings

The duration of the trial depends on the type of procedure: the oral procedure (applicable in commercial matters) is, in principle, significantly shorter than the written procedure. The written procedure may be spread over a period of one to two years (not taking into account any appeals).

8. Settlement

8.1 Court Approval

The court's approval is not required to settle a lawsuit.

8.2 Settlement of Lawsuits and Confidentiality

The parties may require that the agreement they have reached remains confidential. A confidentiality clause should then be included in the agreement. In the absence of a confidentiality clause, the parties may freely use the agreement in support of a legal claim.

8.3 Enforcement of Settlement Agreements

In theory, it is not necessary to enforce the settlement agreement since an applicant will only request the discontinuance of the proceedings and the suit if the settlement agreement concluded between the parties has been fully executed.

In addition, the judge may also order measures to ensure the proper execution of the settlement agreement.

8.4 Setting Aside Settlement Agreements

A settlement agreement can be cancelled in a number of cases. It may be cancelled in the event of fraud or violence, or in the event that the settlement is based on documents that have been found to be forged.

9. Damages and Judgment

9.1 Awards Available to a Successful Litigant

A party may obtain either damages or compensation in kind in cases where this is possible. Where remedies in kind are possible, the courts will order this remedy first.

9.2 Rules Regarding Damages

Punitive damages are forbidden under Luxembourg law: the general rule is that a party can only be granted an amount of damages equal to the damage truly suffered.

In contractual matters, the parties are free to include (before any dispute arises) clauses indicating the amount of damages to be paid in the event of non-compliance with the parties' commitments. It should be noted, however, that such clauses may be re-evaluated by the court.

When a party so requires, the court may also order the execution of a measure under penalty of a fine (a fine that increases with the number of days of delay).

9.3 Pre- and Post-judgment Interest

At the request of the successful party, the court may effectively award interest based on the period before the judgment is rendered. The interest rate is set by law or possibly by contract. It should also be noted that interest only accumulates on sums of money.

Interest accrues from the date of formal notice, the filing of the legal claim or the occurrence of the damage.

9.4 Enforcement Mechanisms for a Domestic Judgment

A judgment is executed at the request of the applicant. To do so, the applicant may ask the court for the provisional execution of the judgment (in cases where it is authorised). In the event of refusal, it will be necessary to wait until the judgment can no longer be appealed. In any event, the judgment must be served on the opposing party.

9.5 Enforcement of a Judgment From a Foreign Country

Since the coming into force of Regulation Brussels I Bis, ie, since 10 January 2015, it is no longer necessary to turn to a Luxembourg judge in order to enforce a judgment rendered by a court of another EU Member State. A claimant may now directly turn to the relevant authorities of the place of enforcement. Therefore, a judgment of another Member State may now directly be entrusted with a Luxembourg bailiff in order to enforce it or to carry on a preventive seizure of assets.

Nevertheless, a prior formality will have to be completed. The judgment must be formally served to its recipient prior to carrying out any enforcement measure.

In the absence of an applicable international treaty (for some countries outside the European Union), the recognition and enforcement of foreign judgments must be sought from the competent court by means of a writ of summons.

10. Appeal

10.1 Levels of Appeal or Review Available to a Litigant Party

With regard to disputes falling within the jurisdiction of the courts, the District Courts hear appeals from judgments (the value of which exceeds EUR1,250) rendered at first instance by the *Justice de Paix*.

In addition, the Court of Appeal reviews cases already decided in first instance.

Finally, the Supreme Court reviews the judgments handed down by the courts and the Court of Appeal (only on points of law).

With regard to disputes falling within the jurisdiction of the Administrative Courts, the Administrative Court hears appeals from judgments rendered by the Administrative Court.

Furthermore, the Constitutional Court rules on the constitutionality of laws.

10.2 Rules Concerning Appeals of Judgments

In principle, all judgments can be appealed (subject to compliance with the applicable time limit), ie, all court decisions rendered by the courts and which definitively settle the relations between the parties in the proceedings.

In addition, some intermediate judgments (eg, a decision ordering an expert opinion) may also be appealed.

In order to appeal, a party must:

- have been a party to the proceedings leading to the adoption of this decision; and
- have an interest in lodging the appeal (ie, the judgment under appeal must have been prejudicial to its interests).

10.3 Procedure for Taking an Appeal

As a general rule, 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 increased for people living abroad with the additional time of 15 days.

10.4 Issues Considered by the Appeal Court at an Appeal

An appeal gives rise to a new instance, which implies in particular that the provisions adopted for the purposes of the

first instance, such as the choice of domicile, no longer apply for the purposes of the appeal, and the appeal procedure is subject to the procedural rules in force on the day of the appeal recourse.

The principle of devolutive effect is applied in the appeal procedure. As a result of this mechanism, the appellate court is required to reconsider all the points that have been debated before the first judge.

In addition, although it is not possible to add new requests, it is possible to add new arguments.

10.5 Court-imposed Conditions on Granting an Appeal

In principle, the court cannot impose any conditions when granting an appeal.

10.6 Powers of the Appellate Court After an Appeal Hearing

The Court of Appeal exercises its control in law and in fact over the judgments submitted to it. It can either confirm the decision rendered by the first judge, or reverse it (ie, annul it, reform it) in whole or in part.

In the latter case, it shall again decide on the substance of the debate.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

Legal costs (including in particular bailiff fees and the remuneration of any experts) are in principle borne by the party that loses the case. These costs do not include lawyer fees, which must be paid by each of the parties. Luxembourg does not have court fees.

In addition, at the request of a party, the judge may order the other party to pay procedural compensation.

11.2 Factors Considered When Awarding Costs

In determining the amount of the procedural indemnity, the judge must take into account the following elements:

- the financial capacity of the unsuccessful party;
- the complexity of the case;
- the contractual compensation agreed for the successful party; and
- the patently unreasonable nature of the situation.

11.3 Interest Awarded on Costs

There is no interest payable on the costs and expenses of the proceeding.

12. Alternative Dispute Resolution

12.1 Views on ADR in this Jurisdiction

Alternative dispute resolution methods are increasingly being used in Luxembourg. The different methods of alternative dispute resolution are as follows:

- arbitration;
- conciliation (Articles 70 to 72 of the new Code of Civil Procedure);
- mediation; and
- the ombudsman.

More specifically with regard to mediation, there is a specific institution (the *Centre de Médiation Civile et Commerciale* (CMCC)) which offers a voluntary process for the amicable resolution of civil, commercial or social disputes. It is an alternative to resolving disputes in court.

12.2 ADR Within the Legal System

The development of mediation in consumer disputes is currently undergoing a new development following the creation of the national service of the Consumer Ombudsman, by the law of 17 February 2016 introducing out-of-court settlement for consumer disputes into the Consumer Code.

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

It should be noted that the procedure before the Consumer Ombudsman is free of charge for all parties, which is a considerable advantage.

However, in theory, alternative dispute resolution methods are not mandatory.

12.3 ADR Institutions

In Luxembourg, there are a number of institutions specialising in mediation that process requests within a particularly short period of time:

- the Arbitration Centre;
- the CMCC;
- the Mediation Centre a.s.b.l. for family or matrimonial disputes and neighbourhood relations;
- the mediator for disputes between a natural or legal person governed by private law and an administration; and
- the Pro Familia Foundation.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitrations

In Luxembourg, arbitration is governed by Articles 1224 to 1251 of the new Code of Civil Procedure.

The regulations provided for in the above-mentioned articles contain only a few mandatory provisions. 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. Thus, Article 1224 of the new Code of Civil Procedure stipulates that only rights that the parties may freely dispose of may be subject to arbitration.

As for Article 1225 of the new Code of Civil Procedure, it sets out a number of matters for which arbitration is prohibited. These subjects mainly concern matters of status or capacity of individuals and family life. For example, it is prohibited to resort to arbitration in matters of alimony.

13.2 Subject Matter not Referred to Arbitration

As mentioned above, Article 1225 of the new Code of Civil Procedure lists a number of matters that cannot be submitted to arbitration.

These include cases relating to the status and legal capacity of individuals, marital relationships or the representation of persons with disabilities.

It should also be clarified that 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.

13.3 Circumstances to Challenge an Arbitral Award

Article 1244 of the new Code of Civil Procedure provides that an arbitral award may be contested before a District Court only by way of an action for annulment.

In particular, an annulment may be pronounced if the award is contrary to public order, if the award was obtained by fraud or if there has been a violation of the rights of the defence.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Article 1241 of the new Code of Civil Procedure provides that arbitral awards shall be enforceable by an order of the president of a District Court within whose jurisdiction the award was made. In this context, the judge will ascertain that such award is in compliance with Luxembourg public order.

As for foreign arbitral awards, they are rendered enforceable by the president of the District Court (to which an application is submitted), who shall observe in this respect the rules applicable to the enforcement of foreign judgments in accordance with a convention on the recognition and enforcement of such judgments (Article 1250 of the new Code of Civil Procedure).

Bonn Steichen & Partners

2, rue Peternelchen - Immeuble C2
L-2370 Howald
Luxembourg

Tel: +352 26025 1
Fax: +352 26025 999
Email: mail@bsp.lu
Web: www.bsp.lu

 BONN STEICHEN & PARTNERS
LUXEMBOURG LAW FIRM