



The Legal 500 & The In-House Lawyer  
Comparative Legal Guide  
Luxembourg: Arbitration

This country-specific Q&A provides an overview of the legal framework and key issues surrounding arbitration law in

**Luxembourg** including arbitration agreements, tribunals, proceedings as well as costs, awards and the hot topics concerning this country at present.

This Q&A is part of the global guide to Arbitration.

For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/arbitration/>



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**1. What legislation applies to arbitration? Are there any mandatory laws?**

The Luxembourgish law on arbitration was included in the Luxembourgish new Code of



Civil Procedure ('NCPC'), in the specific section dedicated to arbitration (title I, Book III, Part II), and ranges from Article 1224 to 1251 NCPC.

They constitute mandatory laws.

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

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

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


Luxembourg is also party to the European Convention on International Commercial Arbitration of 1961, the Washington Convention of 1965 and the Convention on Conciliation and Arbitration within the OSCE of 1992.

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

Luxembourg has not adopted the UNCITRAL Model Law as it has no specific law governing international arbitration other than those articles relating to arbitration which have been incorporated into the NCPC on 29 April 1806, and modified, in some cases, by the Grand Duchy Regulation of 8 December 1981. The provisions of the articles of the NCPC are quite similar to the provisions of the UNCITRAL Model Law, but a lot less numerous.

**5. Are there any impending plans to reform the arbitration laws?**

Luxembourg is currently working to implementing national measures to bring a fresh



impetus to consumer ADR, to comply with the Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes.

A Think Thank drafting committee is currently working on a bill requested by the Ministry of Justice to reform the national arbitration law and the NCPC clauses.

**6. What arbitral institutions (if any) exist? Have there been any amendments to their rules or are there any being considered?**

One possible body for arbitration in Luxembourg is the Arbitration Centre of the Chamber of Commerce of Luxembourg ('the Arbitration Centre'), which offers facilities and may handle institutional arbitration cases. The Arbitration Centre applies its own arbitration rules that are similar to the International Chamber of Commerce ('ICC') rules ('ICC Rules') and is governed by an Arbitration Council. Every arbitration initiated at the Arbitration Centre is governed by the arbitration rules of the Centre.

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

**7. What are the validity requirements for an arbitration agreement?**

Pursuant to Article 1226 NCPC, arbitration agreements can be made before the arbitrators, by deed before a notary or by written agreement. Arbitration agreements concluded ex ante are not required by law to be in writing, as long as evidence in writing can be provided showing that parties have agreed on a settlement by arbitration.

Article 1227 of the NCPC provides that the arbitration agreement must specify the intention of the parties to submit their dispute to arbitration, the subject of the dispute and the arbitrators' names in order to be valid.

**8. Are arbitration clauses considered separable from the main**

## **contract?**

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

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

Article 8-4 of the Arbitration Centre rules (version of 1 March 2014), however, expressly provides that the invalidity or inexistence of the underlying contracts does not make the arbitration agreement null and void.

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

There are no specific provisions in the NCPC relating to multiparty arbitration agreements. The requirements are the same as for a bilateral arbitration agreement.

In the case of a multi-party dispute, where more than two parties have different interests, article 1227 of the NCPC provides that they will have to reach an agreement to appoint three arbitrators, with the parties each appointing one arbitrator and the two party-nominated arbitrators selecting the tribunal chairman. Should they fail to do so, the president of the District Court will appoint the arbitrators on request of one of these three parties.

### **10. How is the law applicable to the substance determined?**

The parties to an arbitration may freely decide on the law applicable to the merits of the case, if they agree to deviate from the Luxembourg rules, or authorise the arbitral tribunal to decide as 'amiable compositeur' (ie, equitably).

There are no rules in the articles of the NCPC relating to arbitration on how the arbitral tribunal is to decide on the law applicable to the merits of the case if no such agreement between the parties exists. In practice, the arbitral tribunal will determine the applicable law applying the principles of private international law.

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

Anyone can compromise on rights freely disposable (Article 1224 NCPC). However, some matters are excluded from arbitration, for instance disputes in relation with (i) the status and legal capacity of natural persons, (ii) the conjugal relationship, (iii) the application for divorce or legal separation, (iv) the representation of incapacitated persons or missing persons (Article 1225 NCPC). Furthermore, disputes that are subject to a mandatory attribution of jurisdiction cannot be submitted to arbitration.

Any arbitration clause inserted in a pre-established contract concluded between professional traders and consumers is considered as an abusive clause, if it is not proven that such clause was specifically accepted.

**12. Are there any restrictions in the appointment of arbitrators?**

Parties may freely choose the arbitrators, provided that the arbitrators chosen are impartial, independent and that the parties have reached an agreement regarding the appointed arbitrators.

If the parties have signed an arbitration clause without having agreed on a procedure to appoint the arbitrators or where they encounter difficulties in choosing their arbitrators, the NCPC sets out rules to appoint three arbitrators. In such a situation, each party shall appoint one arbitrator and the two appointed arbitrators will then choose a third arbitrator (Article 1227 of the NCPC).

However, there might have contractual limitations, imposed by the parties. Indeed, parties are free to agree on such requirements and may furthermore agree to exclude certain categories of persons.

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.

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

Any person above 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 may act as an arbitrator. The Law does not contain any requirements or limitations with regard to education, nationality, experience or residence.

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

Where a party fails to appoint an arbitrator or if the two appointed arbitrators fail to designate the third one, the president of the District Court will appoint, on demand of any of the parties, the missing arbitrator.

### **15. Can the appointment of an arbitrator be challenged? What is the procedure for such challenge? Has there been an increase in number of challenges in your jurisdiction?**

The procedure regarding the challenge of an arbitrator is not described in the NCPC, but pursuant to case law and the position of some scholars, the procedure shall be the same as the procedure regarding the challenge of a judge. Challenges to arbitrators should be brought before the District Court. It is not permitted for the opposing party to object to the procedure initiated for challenge of the arbitrator.

According to case law, arbitrators may be challenged on the supplementary ground of failure to be impartial and independent.

To our knowledge, there have recently been some cases of challenges in Luxembourg.

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

According to Article 1251 of NCPC, a truncated tribunal is not regularly constituted and

### **13. cannot continue with the proceedings.**

**17. Are arbitrators immune from liability?**

There are no rules providing for arbitrators' immunity from suit under Luxembourg law.

**18. Is the principle of competence-competence recognised? What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?**

The principle of competence-competence is recognised in Luxembourg, although no specific rule directly addresses the allocation of competence between courts and arbitrators. The arbitral tribunal may rule on its own jurisdiction and may, for this purpose, examine the validity of the arbitration agreement.

If court proceedings are initiated despite an existing arbitration agreement, an objection to jurisdiction must be raised in *limine litis*. Should the opposing party fail to object to court proceedings, the court would not raise the matter independently, and the opposing party would be deemed to have waived the right to settle the dispute by arbitration proceedings. If the opposing party objects in *limine litis*, the court declares that it is not competent to hear the case.

**19. How are arbitral proceedings commenced? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?**

The law states that unless otherwise agreed by the parties 'the rules applying to the judicial proceedings will apply' (article 1230 of the NCPC). This includes the rules regarding the commencement of proceedings and limitation periods, if nothing has been provided regarding arbitration proceedings. Usually the arbitration process is started by sending an arbitration request to the opponent, and the limitation periods will depend on the law applicable to the substance of the case.

**20. What happens when a respondent fails to participate in the arbitration? Can the local courts compel parties to arbitrate? Can they order third parties to participate in arbitration**

## **proceedings?**

If a party fails to appoint an arbitrator, the President of the District Court will do so (article 1227 of the NCPC). The court order will then be notified within eight days to the defendant with notice to participate in the arbitration process.

Local courts, however, cannot compel parties to arbitrate.

The failure of a party to submit its defense, as required by article 1237 of the NCPC, does not prevent the arbitration proceedings from commencing.

### **21. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?**

States may in principle benefit from immunity against any legal action before the court of another country or an arbitral tribunal ('immunité de juridiction'), if they have not entered into an arbitration agreement (generally considered as a waiver). Yet, a state could still challenge the jurisdiction of an arbitral tribunal by arguing that it did not consent to have recourse to arbitration.

### **22. In what instances can third parties or non-signatories be bound by an arbitration agreement or award?**

In principle, the arbitration agreement only binds the parties (article 1243 of the NCPC) but Luxembourg case law has confirmed that in the event of the assignment of a contract or the stipulation in favour of a third party, the arbitration clause may be enforceable against a third party. Courts have also extended arbitration agreements to non-signatories in cases of group contracts where the parties would (i) have implicitly agreed to adhere to the arbitration agreement; (ii) would be linked to the master agreement (Tribunal d'arrondissement, Xème chambre, jugement civil n°115/2012 du 1er juin 2012).

In principle, parties which have an interest in the arbitral proceedings may join or intervene, unless otherwise provided in the arbitration rules agreed between the parties.



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

Arbitrators can grant interim relief if it is clear that the parties have agreed that interim measures are covered by the arbitration clause or the arbitration agreement. Arbitrators are entitled to order provisional or protective measures, such as conservatory measures to preserve evidence or prevent irreparable harm.

The arbitral tribunal may order, upon request of one of the parties, interim measures which must be enforced by an order of the president of the District Court. Unless otherwise agreed by the parties, the arbitral tribunal can request a warranty deposit for costs. Interim measures issued by arbitrators are enforceable by the District Court.

**24. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence?**

Luxembourgish law does not provide for specific rules of evidence or discovery for arbitration proceedings and consequently the general provisions of the NCPC will be applicable unless otherwise provided by the parties (article 1230 NCPC).

The arbitration court may order the parties to disclose certain documents, may order interim measures, issue preventive evidentiary injunctions (article 350 NCPC) or emergency evidentiary measures (article 933 NCPC), but no arbitration decision may bind a third party. In commercial matters, private documents, accepted invoices, correspondence, balance sheets or witness statements are often submitted as evidence (article 109 of the Commercial Code).

**25. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings?**

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.

**26. How are the costs of arbitration proceedings estimated and allocated?**

According to 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. In practice, however, a party can request that the unsuccessful party bears the costs of the arbitration (ie, the fees and expenses of the arbitrators and costs of the administering authority).

**27. Can pre- and post-award interest be included on the principal claim and costs incurred?**

Yes they can.

**28. What legal requirements are there for the recognition of an award?**

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

Unless the parties have agreed on any limitations, the tribunal can order the same relief as state judges.

**29. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?**

Punitive damages are contrary to Luxembourg public order and could lead to the voidance of the award under article 1244 NCPC. Generally speaking, any remedies or relief ordered by the arbitral tribunal can only be enforced with the intervention of a judicial authority (article 1242 NCPC).

**30. Can arbitration proceedings and awards be appealed or**

## **challenged in local courts? What are the grounds and procedure?**

An arbitration award can only be challenged on the grounds for annulment that are listed in article 1244 of the NCPC.

Specific time limits are applicable in order to file an application to declare the award null and void. This action must be filed within one month from the notification of the award or from the discovery of the fraud (article 1246 of the NCPC).

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

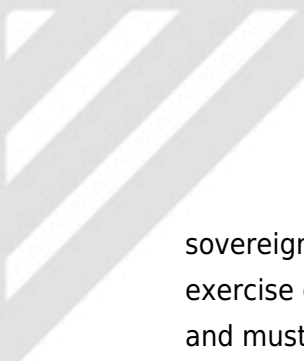
Article 1231 of the NCPC provides that the parties may exclude the possibility of an appeal on the merits.

### **32. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?**

Luxembourg is party to the European Convention on State Immunity of 16 May 1972 (Basel), which states that 'no measures of execution or preventive measures against the property of a contracting state may be taken in the territory of another contracting state except where and to the extent that the state has expressly consented thereto in writing in any particular case.' (Article 23 of the Convention).

Luxembourg did not issue any recent law regarding State immunity, in respect of the Yukos case, contrary to France and Belgium. Furthermore, Luxembourg is not a party to the United Nations Convention on Jurisdictional Immunities of States and their Property but is party to the EU Convention.

As a matter of clarity, Luxembourgish courts have been recently questioned on this issue. Numbers of decisions are expected to be issued on the next months and years but as for the moment, it is safe to conclude that Luxembourg recognises the immunity of



sovereign states against enforcement on their sovereign assets, i.e, used for the exercise of their sovereignty. This notion varies according to the specific circumstances and must be analysed on a case by case analysis.

**33. To what extent might a third party challenge the recognition of an award?**

If a third party is affected by the decision, it can intervene by a tierce opposition to dispute a decision rendered without it being a party to the proceedings.

**34. Have there been any significant developments with regard to third party funding recently?**

Third-party funding is virtually unknown in Luxembourg. However, there are no legal or regulatory obstacles to third-party financing in Luxembourg.

**35. Is emergency arbitrator relief available? Is this frequently used?**

Emergency arbitrator relief is not available in Luxembourg.

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

The ICC Rules provide for simplified or expedited procedures for claims. They are not often used.

**37. Have measures been taken by arbitral institutions to promote transparency in arbitration?**

No.

**38. Is diversity in the choice of arbitrators and counsel (e.g. gender,**

**age, origin) actively promoted? If so, how?**

Diversity in the choice of arbitrators and counsel is not actively promoted in Luxembourg.

**39. Have there been any developments regarding mediation?**

Mediation has been used for several years in social, family, certain administrative and criminal matters.

There is now specific legislation on civil and commercial mediation introduced on 24 February 2012. The new law, Mediation in Civil and Commercial Matters has introduced mediation in both civil and commercial matters into the NCPC (articles 1251-1 to 1251-24 of the NCPC). The law transposes in Luxembourg Directive 2008/52/CE on mediation in civil and commercial matters.

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

In the recent case *Corporación Mexicana de Mantenimiento Integral v. Pemex-Exploración Y Producción*, No. 13-4022 (2d Cir. Aug. 2, 2016), Luxembourg court recognized and blocked the enforcement of a US\$300 million ICC award against a Mexican state oil and gas company which had been 'set aside' or annulled by a court in Mexico, the place of arbitration, on the ground that the award was contrary to public policy.