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Luxembourg: Law and Practice

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BSP

LUXEMBOURG

Law and Practice

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BSP is an independent full-service law firm based in Luxembourg, committed to providing the very best legal services to its domestic and international clients in all aspects of Luxembourg business law. BSP's lawyers have developed expertise in banking and finance, capital markets, corporate law, dispute resolution, employment law, investment funds, intellectual property, private wealth, real estate and tax. In these practice areas, the firm's know-how, ability to work in cross-practice teams and swiftly adapt to new laws and regulations allow it to provide clients with timely and integrated legal assistance vital to the success of their business. The multidisciplinary litigation team of 14 people handles an array of litigation matters, from significant commercial matters to high-stakes international disputes. Building on the synergies from varied professional experiences and a rich tapestry of cultural backgrounds, the firm is well-equipped to address any legal challenges its clients may face.

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1. General

1.1 General Characteristics of the Legal System

The Luxembourg legal system is governed by the Constitution of the Grand Duchy of Luxembourg, promulgated on 17 October 1868, and functions as a parliamentary democracy. It embodies the principle of separation of powers among the executive, legislative, and judicial branches.

The Luxembourg system of law is based on civil law.

The Luxembourg civil procedure system is a mixed system, combining elements of adversarial and inquisitorial systems. Parties are free to initiate and shape the proceedings with their claims and defences, and they bear the burden of proving their claims. However, the courts play a role in directing the proceedings and gathering evidence, as needed. If the parties do not reconcile, the court will rule on the dispute by applying the relevant laws.

Regarding criminal proceedings, the system is highly inquisitorial, with the judge having broad powers to investigate the case for both the prosecution and the defence. The parties are therefore not directly obliged to conduct investigations in support of their claims.

Regarding civil matters, written submissions are required. However, oral arguments are permitted in lower courts and commercial cases before the district court.

1.2 Court System

The Luxembourg court system is two-tiered, distinguishing between judicial courts and administrative courts. Judicial courts hear civil, commercial, and criminal cases, organised into a three-tiered structure, as outlined below.

Judicial Courts

These courts deal with civil, commercial, and criminal matters and operate on a three-tiered structure.

The lower courts (Justice de Paix) and the district courts (Tribunal d'arrondissement)

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
The Court of Appeal reviews first-instance judgments rendered by the district courts in civil, commercial and criminal matters and judgments of the employment tribunals.

The Supreme Court (Cour de Cassation)
The Supreme Court has jurisdiction to review decisions of the Court of Appeal and certain other decisions that are not subject to further appeal. However, its scope is limited to questions of law.

The Administrative Courts
These courts have jurisdiction on matters related to administrative and tax disputes, and are organised into a two-tiered structure: the Administrative Tribunal and the Administrative Court of Appeal. The latter acts as the Supreme Court for administrative matters.

To commence proceedings in Luxembourg, a summons is issued to the counterparty, who has a term to appoint a lawyer. The term depends on the place of residence of the defendant.

In civil cases, once the matter is filed with the court, a magistrate is assigned to manage the case. The magistrate oversees procedural aspects, such as issuing notices for the submission of defence and reply briefs. When the case is deemed ready, a trial date is scheduled. The timeline to reach the pleadings stage typically ranges from 12 to 18 months, although this varies based on factors such as the number of parties involved, the complexity of the case, and the parties' willingness to expedite proceedings. Commercial cases, by contrast, are generally resolved more quickly.

1.3 Court Filings and Proceedings
In Luxembourg, court filings are not open to the public.

As a rule of law, proceedings must be open to the public, unless such publicity is dangerous to public order or morals, in which case the court must declare this in a judgment (Article 88 of the Constitution).

1.4 Legal Representation in Court
To practise as a lawyer in Luxembourg, one must be registered with the Luxembourg Bar Association. This also applies to EU lawyers who wish to practise in Luxembourg under their home country's professional titles.

If an EU lawyer is not registered with the Luxembourg Bar Association and wishes to provide legal representation in the Grand Duchy of Luxembourg, assistance by local counsel is required.

There are different categories of practising lawyers in Luxembourg, which are divided up into lists kept by the Luxembourg Bar. In written proceedings, a litigant must be represented by a fully qualified lawyer (*avocat à la cour*) (List I). Only lawyers qualified as *avocat à la cour* (List I) can represent parties before the Constitutional Court, the administrative courts, the Superior Court of Justice and the district courts sitting in civil matters, file briefs for such parties, and receive their exhibits in order to present them to the judge.

In oral proceedings (lower courts and commercial courts), the litigant may be represented by any lawyer, including those from List I, II (trainee lawyers or *avocat stagiaire*) or IV (foreign lawyers from the EU practising under their home country's professional title), or V or VI (law firms under the form of companies). Litigants may also be represented in certain cases by non-lawyers, such as their spouse or a family member.

In instances awaiting resolution within the Magistrate's Court (for claims amounting to less than EUR15,000) and in matters under consideration by the commercial chamber of the district courts, individuals can defend themselves without a lawyer.

2. Litigation Funding

2.1 Third-Party Litigation Funding

Despite the growing use of third-party litigation funding in Luxembourg, there are presently no explicit regulations governing this practice. As such, it is available to parties involved in legal proceedings, provided they adhere to the lawyers' ethical and legal obligations.

2.2 Third-Party Funding: Lawsuits

There are currently no specific restrictions on the kind of lawsuits eligible for third-party funding. Aside from the ethical and legal obligations of lawyers, any type of lawsuit can potentially be financed by a third party.

2.3 Third-Party Funding for Plaintiff and Defendant

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

The question of minimum and maximum amounts for third-party funding is entirely subject to the contractual agreement between the client and the funder, as there are no legal provisions specifying any threshold.

2.5 Types of Costs Considered Under Third-Party Funding

This is also open to negotiation, with no imposed restrictions on the types of costs that can be covered.

2.6 Contingency Fees

The internal regulation of the Bar prohibits lawyers' fees from being solely contingent on the outcome of a case. However, a success fee can be added to the base fees, provided this is mutually agreed and documented between the client and the lawyer.

2.7 Time Limit for Obtaining Third-Party Funding

As there are no existing regulations, there is no set time limit for securing third-party funding.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

There are no mandatory procedures parties must initiate before filing a lawsuit. However, parties can agree contractually to first attempt mediation or arbitration, or to provide notice prior to litigation.

3.2 Statutes of Limitations

The general statute of limitations for civil matters is 30 years, and 10 years for commercial matters. Certain cases have specific, shorter time frames as laid out in the Civil Code:

- ten years for construction-related matters;
- three years for salary payment claims'
- six months for annulling corporate resolutions;
- five years for recovering dividends; and
- three years for product liability claims.

The clock starts ticking on these time limits when the obligation falls due or when harm occurs in tort cases.

3.3 Jurisdictional Requirements for a Defendant

There are two ways to initiate a lawsuit depending on the subject matter: claimants can directly file their requests with the courts, or serve a writ 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 be initiated through a request.

For other cases, a writ of summons (referred to as a "citation" in lower courts and "assignation" in district courts) must be served by a bailiff.

Regardless of the method, the initial complaint must include specific information: the names and details of each party, the relevant court, a summary of facts, the nature of the claim, and the legal arguments put forth.

Once filed, the initial complaint establishes the "judicial agreement", which may not be subsequently amended by the applicant.

3.4 Initial Complaint

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Once filed, the initial complaint establishes the "judicial agreement", which may not be subsequently amended by the applicant.

3.5 Rules of Service

Depending on the required procedure that has to be followed to initiate a 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 sends the document instituting proceedings by registered post with acknowledgement of receipt.

3.6 Failure to Respond

Where a defendant does not respond to a lawsuit (ie, has not appointed a lawyer in civil matters before a district court or does not attend the hearing in person where representation by a lawyer is not mandatory), there are two options: if the legal notice initiating the legal action was personally delivered to the defendant, the resulting judgment will be considered adversarial; if not, the judgment will be deemed as default.

3.7 Representative or Collective Actions

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

This may change in the future as a bill of law is under discussion.

3.8 Requirements for Cost 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 New Code of Civil Procedure (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 seek an interlocutory decision to address specific claims, arguments, or questions before the court.

Additionally, a party can raise procedural objections concerning the case's admissibility, such as a lack of precision in the application or an absence of legal interest to act. Should the judge uphold such objections, the case will be dismissed without any examination of its merits.

Moreover, a case may be struck out if it is clear that it is no longer of interest to the parties or if the court believes that the parties are losing interest. This action can be initiated either by the court itself or upon the mutual request of the parties involved.

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
- involuntary intervention.

In a voluntary intervention, an interested third party may seek admission to the proceedings either through lawyer-to-lawyer communication or via an oral statement within an oral procedure. Notably, there is no need for the act of a bailiff for this kind of intervention.

The key criteria for voluntary intervention are that the intervener must be a third party with a legitimate interest in the case, and they must be someone who could have filed a third-party opposition against the eventual decision.

Involuntary intervention, on the other hand, occurs when an existing party to the proceedings compels a third party to join. This intervention must be initiated through a formal summons. The target for involuntary intervention is a third party who has an interest in opposing the final judgment and who could also have filed a third-party opposition against the prospective decision.

4.5 Applications for Security for Defendant's Costs

Pursuant to Article 257 of the NCPC, defendants may require that a bond be provided by the foreign plaintiff if the latter is not located in an EU member state, in a member state of the Council of Europe or in a state with which Luxembourg has entered into an international convention that exempts such a guarantee. 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 specific costs for interim applications or motions.

4.7 Application/Motion Timeframe

The timeframe will depend on the complexity of the case as there are no rules providing a specific timeframe. However, some procedures allow the plaintiff to obtain a decision fairly quickly (eg, under Article 933(2) of the NCPC, a creditor can obtain a court order requiring the debtor to pay a sum of money rather quickly).

5. Discovery

5.1 Discovery and Civil Cases

Under Luxembourg law, there is no discovery procedure in civil proceedings. Instead, the legal framework operates on an adversarial basis, obliging each party to timely and voluntarily submit essential evidence to substantiate their claims or defences.

In the pre-trial stage, a potential claimant has the option to gather specific documents or evidence via summary proceedings. The presiding summary judge has the authority to mandate the production of a particular document before the filing of a lawsuit. However, this is not an avenue for fishing expeditions; the claimant must clearly specify the required documents, such as a copy of an email exchanged between specified parties on a given date.

Additionally, claimants may collect written witness statements prior to any lawsuit.

During the lawsuit, the judge may ask the parties to clarify their position on relevant factual matters prior to closing the evidential phase. In doing so, parties are allowed to provide testimonial evidence to bolster their respective positions.

5.2 Discovery and Third Parties

The holder of a pertinent document, whether an opponent or a third party, may be compelled to produce it during the proceedings. To initiate this, a formal request can be made to the court, specifying the necessity of the particular document for substantiating one's position. As stated in **5.1 Discovery and Civil Cases**, fishing expeditions are not permitted.

Upon receipt of the request, the court undertakes a verification process. It assesses the likelihood that the document exists, is in the possession of the named individual, and holds relevance to the case's resolution. The court has discretionary authority to either grant or deny the disclosure request.

Reasons for denial could include the document's lack of relevance to the case at hand, its status as privileged or confidential information, or the overly broad nature of the request.

5.3 Discovery in This Jurisdiction

Luxembourg does not have the concept of discovery commonly found in common law jurisdictions. The burden of proof lies squarely with the party making the allegation, consistent with the adversarial principle that underpins the legal system.

5.4 Alternatives to Discovery Mechanisms

Please see **5.1 Discovery and Civil Cases**.

5.5 Legal Privilege

Communications between an independent lawyer and their 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 official by their nature. Notably, in-house lawyers are not afforded this professional secrecy.

5.6 Rules Disallowing Disclosure of a Document

Article 287 of the NCPC allows a third party, ordered by a judge to produce a document, to challenge this decision by invoking a legitimate reason. This avenue for opposition is open to both the third party and the parties directly involved in the proceedings. As Luxembourg does not have a discovery process, a party is generally only required to disclose documents that strengthen its position and is not obligated to disclose documents that would damage its position.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Judges, particularly the presidents of district or labour courts, have discretionary power to issue interim measures under specific circumstances. This discretion is typically based on the urgency, obviousness, and incontestability of the claims.

First, Article 933(2) allows a judge to rapidly issue an order directing a debtor to pay a creditor when the obligation is clearly established. This process is not contingent on 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 their claim.

Second, the NCPC introduces two types of summary procedures for evidence collection:

- summary procedure (*référé probatoire*) (Article 350 of the NCPC); or
- summary procedure (*référé prevue*) (Article 350 of the NCPC).

These are two procedures where one wants 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 establish urgency.

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 on the merits of the dispute.

There is an important limitation under Article 350 of the NCPC: proceedings must not already be brought on the merits. Probationary summary proceedings are preventive summary proceedings – ie, before any trial.

Under Article 932 of the NCPC, 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.

Article 933 allows the judge to implement provisional or reinstatement measures necessary to prevent immediate harm or to terminate a clear violation of the law.

In addition, the judge may order seizure measures, in particular in the event of difficulties relating to the enforcement of a judgment, such as protective seizures or garnishments.

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 should be followed, it can take from a couple of weeks to a few months.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

In specific situations, a judge may render a decision without an adversarial debate, a departure from the established adversarial principle and rights of defence. This is, however, implicitly allowed under Article 66 of the 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 Liability for Damages for the Applicant

If a defendant deems an action brought against them to be abusive, they can seek damages based on tort law, specifically Article 1382 of the Civil Code. Importantly, claims can only be made for actual damages suffered, such as lawyers’ fees; punitive damages are not recognised in Luxembourg.

6.5 Respondent’s Worldwide Assets and Injunctive Relief

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

6.6 Third Parties and Injunctive Relief

Third parties may be ordered to produce documents or preserve assets, shares, and so on. They can also be ordered to refrain from transferring these items to a party or from undertaking certain actions requested by one of the parties.

6.7 Consequences of a Respondent’s Non-compliance

If a party fails to comply with an injunction, the judgment typically stipulates fines (*astreinte*). Moreover, the judge who initially issued the order is also competent to handle issues related to its enforcement.

7. Trials and Hearings

7.1 Trial Proceedings

Luxembourg civil procedure law distinguishes between written and oral proceedings. In commercial oral proceedings, the instruction phase is mainly the responsibility of the parties, who may exchange written briefs but are not obligated to. The parties present their arguments orally during the scheduled hearing.

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 their 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.

An expert's report may be ordered ex officio by the court or ordered at the request of the parties, who must justify the need for it.

With the exception of special provisions (such as Article 1678 of the Civil Code), the judge may refuse to order an expert's report if they consider that it is not relevant to the resolution of the dispute.

An expert opinion may be used in summary proceedings, before any court proceedings, if it appears necessary to establish or safeguard evidence (Article 350 of the NCPC).

Witnesses can be involved in both oral and written proceedings.

7.2 Case Management Hearings

Shorter hearings are conducted in the same way as hearings in oral proceedings – ie, by the oral pleadings of the parties in open court.

7.3 Jury Trials in Civil Cases

Jury trials are not available 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 who 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 considered relevant to the outcome of the litigation. Parties may also evidence their argument through testimony. Witnesses provide testimony under oath.

In order to safeguard evidence from being destroyed or lost, parties can seek an interim measure from the judge, mandating specific investigative actions before the trial begins.

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 generally open to the public. However, should the court deem that public access poses a threat to public order or morality, it may opt for a closed hearing, a decision that would be declared by judgment. Regardless, all judgments are announced publicly. Transcripts of hearings are not made available.

7.7 Level of Intervention by a Judge

Judges' powers are strictly regulated by the NCPC, allowing them limited leeway. They may, however, order various investigative measures. Typically, decisions are not rendered immediately but at a subsequent 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. Written proceedings may last between one and two years, accounting for any appeals. On the other hand, oral proceedings usually see a span of 8 to 12 months between the initial referral and the delivery of a first-instance judgment.

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 remain 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

Settlement agreements are enforceable in the same manner as any other contract.

8.4 Setting Aside Settlement Agreements

A settlement agreement can be set aside in a number of cases, namely 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 the 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. Here are a few examples of remedies that can be sought:

- compensation in the form of damages;
- injunctions to either take action or refrain from certain actions; and
- injunctions to enforce the fulfilment of contractual obligations.

9.2 Rules Regarding Damages

Punitive damages are forbidden under Luxembourg law; the general rule is that a party can only be granted the amount of damages equal to the actual damage incurred. In contractual matters, parties can pre-emptively include clauses that stipulate the amount of damages in the case of breach. However, such clauses can be re-evaluated by the court.

Fines (that may increase over time) can also be levied by the court for non-compliance, should a party request this.

9.3 Pre-judgment 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. Interest only accrues on monetary sums.

Finally, interest accrues respectively from the date of formal notice, the filing of the legal claim or the occurrence of the damage.

9.4 Enforcement Mechanisms of 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

With the enactment of Regulation Brussels I Bis effective from 10 January 2015, a judgment from another EU member state can be directly enforced in Luxembourg without requiring the approval of a Luxembourg court. The claimant can directly approach the relevant enforcement authorities, including bailiffs, for this purpose. This is in line with Article 36 of the Regulation, which endorses the mutual recognition of judgments between EU member states. However, the judgment must be formally served on the recipient before enforcement begins.

For countries outside the EU where no international treaty applies, the recognition and enforcement of foreign judgments (exequatur order) must be sought from the competent court by means of a writ of summons.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

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 of the peace.

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

Finally, the Court of Cassation 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 courts hear appeals from judgments rendered by the administrative court.

The Constitutional Court rules on the constitutionality of laws.

10.2 Rules Concerning Appeals of Judgments

In principle, all judgments can be appealed as long as they settle relations between the parties definitively, subject to compliance with the applicable time limit.

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 their 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 extended by an additional 15 days for those residing abroad.

10.4 Issues Considered by the Appeal Court at an Appeal

The appeal process in Luxembourg leads to a new instance, effectively restarting the case. As such, conditions set during the first instance, such as domicile elections, do not carry over, and the appeal procedure is subject to the procedural rules in force on the day of the appeal recourse. The appellate court applies the principle of devolutive effect, meaning it must reconsider all debated points from the initial trial. While new requests cannot be added to the case at this stage, new arguments can be introduced.

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 in Luxembourg holds the power to examine both factual and legal aspects of the cases brought before it. The court can opt to either affirm the decision made by the lower court or overturn it. Should the latter occur, the Court of Appeal will decide anew on the merits of the case.

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 who 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 proceedings.

12. Alternative Dispute Resolution (ADR)

12.1 Views of ADR Within the Country
Alternative dispute resolution methods are increasingly being used in Luxembourg. The different methods of alternative dispute resolution are as follows:

- arbitration (Articles 1224-1251 of the NCPC);
- conciliation (Articles 70 to 72 of the NCPC);
- mediation (Articles 1251-1 to 1251-24 of the NCPC); and
- the ombudsman.

For mediation, there is a specific institution (*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 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.

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 Civil and Commercial Mediation Centre for Civil, Commercial and Labour Disputes (*Centre de médiation civile et commerciale pour les litiges civils, commerciaux et du travail*);
- 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 Arbitration
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. 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.

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.

By default, three arbitrators are chosen; they have the power to determine whether they have the authority to hear the dispute, based on the existence, validity, and extent of the arbitration agreement. In addition, unless otherwise agreed upon by the parties, the arbitrators can issue interim or protective measures.

In the event of difficulties that cannot be resolved by the parties or the arbitral tribunal, the president of the relevant district court acts as a supervising judge to settle such disputes.

13.2 Subject Matters Not Referred to Arbitration

Article 1224 of the NCPC lists a series of matters that cannot be submitted to arbitration.

Article 1224(2) of the NCPC provides for a series of matters for which arbitration is prohibited. These subjects mainly concern matters of personal status, capacity, 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.

13.3 Circumstances to Challenge an Arbitral Award

According to Article 1236 of the NCPC, an award cannot be subject to opposition, appeal or cassation. An award may be contested by way of annulment (it can also be revised in limited cases) before the Court of Appeal.

In particular, an annulment may be pronounced if the award is contrary to public order, 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 1233 of the NCPC provides that domestic arbitral awards shall be enforceable by an exequatur order of the president of the 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 the relevant convention on the recognition and enforcement of such judgments (Article 1245 of the NCPC).

14. Outlook

14.1 Proposals for Dispute Resolution Reform

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.

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.

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.

14.2 Growth Areas

In recent years, a consistent trend has emerged in our ADR practice, particularly in the area of funds litigation. The success of Luxembourg's funds market has naturally led to a rise in disputes within this sector, a development we can measure tangibly. These disputes encompass a wide range of issues, including conflicts between investors and funds, disputes among asset management companies and limited partners, and various disputes involving service providers. Banks, in particular, frequently find themselves involved in such disputes.

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