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International Arbitration 2025

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Luxembourg: Law and Practice & Trends and Developments

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LUXEMBOURG

Law and Practice

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KLEYR_GRASSO is an independent, full-service business and litigation law firm which has served international and domestic clients for over 30 years in Luxembourg. Its team of devoted legal professionals provides support across a broad spectrum of practice areas. Its Corporate and Finance Litigation team, in particular, has 20 years of experience in the recognition and enforcement of foreign arbitral awards and judgments in Luxembourg. Its litigation lawyers are frequently appointed to serve as lead counsel in local as well as international arbitrations, strengthening its position as a trusted partner in resolving complex legal matters. Its team assists clients in the enforcement of arbitral awards before the Luxembourg courts as well as in domestic and international commercial arbitration, including representation in both ad hoc proceedings and institutional arbitrations, such as the Arbitration Center of the Luxembourg Chamber of Commerce and the International Court of Commerce.

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1. General

1.1 Prevalence of Arbitration

Located at the heart of Europe and armed with a strong economy that attracts global investors and pushes companies to establish their corporate presence in its territory, Luxembourg presents itself as a highly favourable jurisdiction for international arbitration.

Particularly, following the introduction of the law of 19 April 2023 (the "Luxembourg Arbitration Law"), amending the Title I of Book III of the New Code of Civil Procedure (NCCP), which effects a large-scale reform of Luxembourg's legal framework for domestic as well as international arbitration and further aims to improve flexibility, speediness and confidentiality, Luxembourg has effectively enhanced its attractiveness as a seat of international arbitration matters.

Similarly to most jurisdictions, traditional litigation before courts remains the predominant recourse when a dispute arises in Luxembourg. However, over the past several years the number of arbitration cases has significantly increased by over 60%, of which over 85% pertain to international arbitration matters where at least one party is located outside of Luxembourg.

Given Luxembourg's standing as an international forum, parties most commonly resort to it for the enforcement of arbitral awards which has become a frequent and well-established occurrence. With its continuous efforts to promote itself as an arbitration-friendly jurisdiction, Luxembourg is increasingly serving as the seat for arbitral proceedings.

1.2 Key Industries

In Luxembourg, there are ongoing efforts to promote greater reliance on arbitration proceedings for disputes in the financial and banking sectors. In recent years, there has been an important increase in the number of contracts containing an arbitration clause and, as a result, international arbitration related to investment funds disputes has become an indisputable trend.

This is largely attributable to Luxembourg's expanding role as a global hub for the restructuring and management of such funds, its high concentration of cross-border transactions as well as its regulatory sophistication on the matter.

Specifically, Luxembourg is the largest investment fund centre in Europe with net assets under supervision of over EUR5,820.1 billion. The abundance of such funds undoubtedly triggers unavoidable disputes and therefore positions arbitration as an attractive mechanism of alternative dispute resolution due to its enforceability, privacy and flexibility.

1.3 Arbitration Institutions

The Arbitration Center of the Luxembourg Chamber of Commerce, also known as the Luxembourg Arbitration Center (LAC) was established in 1987 and serves as the principal arbitral institution in Luxembourg for the administration and resolution of domestic and international disputes. The LAC is managed by its Council and assisted in its work by the Secretariat.

The LAC operates pursuant to its own set of procedural rules, namely the Rules of Arbitration of the Luxembourg Chamber of Commerce (the "LAC Procedural Rules"). The LAC Rules, which draw inspiration from the arbitration rules of the International Chamber of Commerce (ICC), were most recently revised on 1 January 2020, and are available on its official website both in English as well as in French.

In addition to its primary function of administering arbitration proceedings, the LAC is also committed to promoting arbitration in Luxembourg and provides support to regional arbitration associations, such as the Think Tank for Arbitration and the Luxembourg Arbitration Association (LAA), a non-profit organisation dedicated to the promotion and development of arbitration practice in Luxembourg founded in 1996.

Apart from the LAC, prominent bodies such as the ICC, the London Court of International Arbitration (LCIA), the German Arbitration Institute (DIS) as well as the Belgian Centre for Arbitration and Mediation (CEPANI) are frequently employed in international arbitration cases in Luxembourg.

To further strengthen Luxembourg's collaboration with foreign arbitral institutions, the Luxembourg Chamber

of Commerce signed, along with the Belgian Center for Arbitration and Mediation (CEPANI), the Netherlands Arbitration Institute (NAI), the Dutch Arbitration Association (DAA) and the LAA, a co-operation agreement to promote arbitration in the Benelux area.

1.4 National Courts

In Luxembourg, there are no specialised courts expressly designated to adjudicate disputes related to international or domestic arbitration. Where an arbitration proceeding is pending, state courts are required to stay any identical cases submitted to them.

However, the Arbitration Law introduced in 2023 provides for the involvement of state courts in support of the arbitration process, particularly through the role of the supporting judge (*juge d'appui*), as set out in Articles 1229 and 1230 of the NCCP, which is inspired by French law. The Luxembourg provisions are also consistent with the United Nations Commission on International Trade Law of 1985 (the "UNICITRAL Model Law").

The supporting judge, who is the President of the District Court sitting as in summary matters (*Président du Tribunal d'arrondissement siégeant comme en matière de référé*), may be seized either by one of the parties, by the arbitral tribunal or by one of its members, and has jurisdiction where any of the following conditions are met:

- the seat of the arbitration is Luxembourg;
- the parties have agreed that the arbitration will be governed by Luxembourg procedural rules;
- the parties have expressly conferred jurisdiction upon the Luxembourg courts in matters related to arbitration; or
- the dispute bears a significant link with Luxembourg.

In addition, the supporting judge may also intervene in various aspects of the arbitral proceedings, in order to facilitate the process such as in the appointment of arbitrators (see **4.3 Court Intervention**) as well as in the issuance of interim and conservatory measures (see **6.2 Role of Courts**).

2. Governing Legislation

2.1 Governing Law

The Luxembourg rules governing arbitration are codified within a dedicated section of the NCCP, specifically in Articles 1224 to 1251, as amended by the Arbitration Law entered into force on 19 April 2023.

The Law establishes mandatory provisions governing the conduct of arbitration. These include the matters that can be submitted to arbitration, the circumstances under which an arbitral award might be set aside, the enforcement of arbitration awards by an order of the President of the District Court, as well as the matters that are expressly excluded from arbitration.

Historically, the arbitration framework in Luxembourg was primarily inspired by French law. Presently, the Luxembourg Arbitration Law is also significantly influenced by the UNICITRAL Model Law which has been transposed in over 100 countries and aims to harmonise arbitration law internationally.

Although the Luxembourg Arbitration Law and the UNICITRAL Model Law are largely aligned, certain nuances persist. For instance, the 2023 Arbitration Reform introduced a maximum duration of six months for the conduct of arbitral proceedings, a procedural requirement that is not foreseen by the UNICITRAL Model Law.

2.2 Changes to National Law

On 19 April 2023, Luxembourg undertook a reform of its arbitration law, aimed at modernising the existing legal framework and better aligning it with the expectations of market actors as well as international standards in alternative dispute resolution. The new text applies, in principle, to arbitration agreements concluded subsequent to 25 April 2023.

The reform introduced significant innovations aiming at enhancing the efficiency of arbitral proceedings. Among other things, the new text introduces the role of the supporting judge (see **1.4 National Courts**) as well as creates a swift legal framework where the maximum duration of the arbitral proceedings is set, in principle, to six months.

3. The Arbitration Agreement

3.1 Enforceability

In accordance with Article 1227 of the NCCP, the decision of parties to submit a dispute to arbitration is formalised in an arbitration agreement that may be concluded in the form of either an arbitration clause (*clause compromissoire*) concluded prior to any dispute, or a separate arbitration agreement (*compromis*) agreed upon subsequent to the emergence of the dispute.

There are no specific formality requirements that are imposed with respect to the form of such agreements, which may therefore be made verbally.

In this respect, the LAA regularly holds seminars aimed at raising awareness among practitioners and scholars regarding the essential elements to be included in arbitration clauses with a view to ensuring clarity and minimising the risk of future disputes or procedural uncertainties relating thereto.

3.2 Arbitrability

Under the Luxembourg Arbitration Law, the majority of civil and commercial matters may be validly referred to arbitration provided that it concerns rights that are at a person's free disposition.

In particular, pursuant to Article 1224 of the NCCP, disputes relating to the status and legal capacity of persons as well as matters concerning missing persons are excluded from the scope of arbitration.

Moreover, Article 1225 of the NCCP establishes that disputes pertaining to lease agreements, disputes between employers and employees as well as disputes arising between professionals and consumers are not subject to arbitration.

Lastly, Article 1226 of the NCCP expressly foresees that the commencement of insolvency proceedings does not affect the validity of arbitration agreements irrespective of whether those agreements were concluded prior to or following the commencement of such proceedings.

Nonetheless, disputes concerning the conduct or administration of the insolvency proceedings themselves may not be referred to arbitration.

3.3 National Courts' Approach

State courts in Luxembourg respect the principle of party autonomy and apply the law chosen by the parties in their arbitration agreement. In the absence of such choice of law, the courts will apply the law they consider most appropriate in view of the circumstances of the case, taking into account relevant connecting factors (Article 1231 NCCP).

National courts consistently uphold and enforce arbitration agreements which reflects Luxembourg's status as a jurisdiction that is supportive of international practices as well as its commitment to effectively integrate arbitration into its legal system.

Accordingly, national courts will decline jurisdiction over a dispute that falls within a valid arbitration agreement, unless the agreement is null and void due to the non-arbitrable nature of the dispute, or if it is manifestly null and void for any other reason to be determined by the court.

Where a valid arbitration clause exists, a defendant's failure to raise an objection to the state court's jurisdiction at the commencement of the proceedings shall be regarded as a tacit waiver of the arbitration agreement. It is for this reason that the party wishing to raise an objection with respect to the court's jurisdiction must do so at the very outset of the proceedings – ie, in limine litis (see **5.5 Breach of Arbitration Agreement**).

3.4 Validity

The Luxembourg Arbitration Law expressly recognises the separability of arbitration agreements, as enshrined in Article 1227-2 of the NCCP. Pursuant to this principle, an arbitration clause is deemed to constitute an autonomous agreement, distinct and independent from the underlying contract in which it is embedded.

Consequently, the validity of the arbitration clause remains unaffected by any finding of nullity, voidness or rescission of the principal contract, thus safeguard-

ing the arbitral tribunal's competence to rule on its own jurisdiction as well as to prevent dilatory tactics.

It is equally pertinent to point out that this principle finds additional confirmation in Article 5 (4) of the LAC Rules which expressly empowers the arbitral tribunal to uphold the validity and enforceability of the arbitration agreement regardless of any allegation that the underlying contract is non-existent, null and void or otherwise invalid.

4. The Arbitral Tribunal

4.1 Limits on Selection

There are no specific limitations on the parties' autonomy to appoint arbitrators, provided that the designated arbitrators are natural persons who are not deprived of their civil rights. In instances where a legal person is designated as an arbitrator, it solely has the power to appoint a natural person to carry out the arbitral mandate.

Thus, there are no requirements regarding the arbitrator's qualification nor the necessity of a specific licence, educational background or prior experience.

It should be noted in this respect that where the parties have elected to refer their dispute before the LAC, Article 10.8 of its rules provides that the Council is to appoint arbitrators having regard to the nature of the dispute, the applicable law and the language of the procedure.

4.2 Default Procedures

The parties to an arbitration may designate the arbitrators directly or by reference to an arbitration institution's procedural rules or procedural regulations that govern the appointment process.

Likewise, the parties are free to determine the number of arbitrators. In the absence of such an agreement however, the Luxembourg Arbitration Law provides that the arbitral tribunal shall be composed of a panel of three arbitrators.

In particular, Article 1228-4 of the NCCP outlines four possible scenarios with respect to the appointment of arbitrators.

Firstly, where a sole arbitrator is to be appointed and the parties fail to reach an agreement on their identity, the appointment of the sole arbitrator shall be made by the person or authority that is responsible for the organisation of the arbitration, or failing that, by the supporting judge.

Secondly, when a panel of three arbitrators is to be appointed, each party shall proceed to designate one arbitrator, and the two appointed arbitrators shall jointly designate the third arbitrator. Should a party fail to appoint an arbitrator within one month, or if the two appointed arbitrators fail to designate the presiding arbitrator within one month, the appointment shall be made by the authority overseeing the arbitration proceedings, or in the absence thereof, by the supporting judge.

Thirdly, in cases involving more than two parties, where the parties fail to agree on the composition of the arbitral tribunal, the appointment shall be made by the authority responsible for administering the arbitration or, in the absence of such authority, by the supporting judge.

Finally, any other disputes regarding the appointments of the arbitral tribunal shall be resolved by the authority responsible for administering the arbitration, or, in absence of such authority, by the supporting judge.

4.3 Court Intervention

Under the Luxembourg Arbitration Law, state courts and more specifically the supporting judge may intervene in the appointment of arbitrators solely in derogation of the default procedure which foresees that it is in the parties' discretion to select the arbitrators that will decide on the dispute (see **4.2 Default Procedures**).

As previously noted, the institution of the supporting judge represents a novel feature introduced by the 2023 arbitration reform, which confers upon the President of the District Court the authority to exercise limited and targeted interventions during the arbitra-

tion proceedings with the aim of facilitating the overall arbitration process.

For instance, where the parties are unable to agree on the appointment of arbitrators and in the absence of an administering authority, it falls within the competence of the supporting judge to do so in order to enable the proceedings to resume.

Moreover, in cases where the arbitration agreement is deemed null and void due to the non-arbitrable nature of the dispute or for any other reason the arbitration agreement is manifestly null and/or inapplicable, the supporting judge shall issue a decision declaring that no appointment of arbitrators shall be made. This decision is however subject to an appeal.

As such, the intervention of the supporting judge is reserved solely for instances where it is necessary in order to ensure the continuation of the arbitration proceedings.

4.4 Challenge and Removal of Arbitrators

Prior to accepting their mandate, arbitrators must disclose in a timely manner, any circumstances likely to raise legitimate doubts regarding their impartiality and/or independence. Similarly, the designated arbitrators are required to promptly notify the parties of any such circumstances that may arise subsequent to their appointment.

Under Article 1228-7 of the NCCP, an arbitrator may only be challenged and ultimately be recused in cases where their impartiality and/or independence is put into question or where the parties establish that the arbitrator does not meet the necessary qualification requirements set by the parties to the proceedings.

Article 1228-8 of the NCCP provides that the recusal of an arbitrator shall be carried out following the unanimous agreement of the parties. Where such unanimity cannot be reached, the recusal of the arbitrator in question shall be determined by the administrative authority, or in the absence thereof, the supporting judge who shall be seized within one month from the discovery of the litigious facts.

4.5 Arbitrator Requirements

As provided under the Luxembourg Arbitration Law, arbitrators are required to maintain independence and impartiality throughout the proceedings. Accordingly, any behaviour that may raise legitimate doubts as to the arbitrator's impartiality and/or independence may constitute valid grounds for the designated arbitrator's recusal.

The LAC Rules, that are applicable in disputes submitted before the relevant institution, offer further clarifications detailing the specific requirement concerning the independence and impartiality of the arbitrators.

Specifically, Article 10.10 of the LAC Rules provides that before their appointment, prospective arbitrators shall:

- sign a statement of acceptance, availability, impartiality and independence;
- disclose in writing to the secretariat any facts or circumstances which might be of such nature as to call into question the arbitrator's independence in the eyes of the parties; and
- any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality.

Further, in case a circumstance arises in the course of the arbitration proceedings that is of such nature as to put into question the arbitrator's impartiality and/or independence, the arbitrator shall inform the secretariat in writing in due course.

5. Jurisdiction

5.1 Challenges to Jurisdiction

The Luxembourg Arbitration Law recognises the principle of competence-competence in Article 1227-2 of the NCCP pursuant to which the arbitral tribunal is empowered to decide on its own jurisdiction, including any challenges with respect to the existence and/or validity of the arbitration agreement.

5.2 Circumstances for Court Intervention

State courts refrain from addressing issues of jurisdiction of an arbitral tribunal, acknowledging that such intervention would go beyond their judicial powers.

Nonetheless and despite having been the subject of a debate by the Luxembourg legislature, the Luxembourg Arbitration Law affirms the negative effect of the competence-competence principle as influenced by Swiss law, which allows the national judge to intervene even in cases where the arbitral tribunal has already been constituted.

Article 1227-3 of the NCCP provides, more specifically, that where a dispute falling within the scope of an arbitration agreement is brought before a national court, the state court is required to decline its jurisdiction, save where the arbitration agreement is void due to the non-arbitrable nature of the dispute or the fact that the arbitration agreement is manifestly null and inapplicable for any other reason.

This provision was included by the legislature with the purpose of safeguarding the interests of the weaker party (*partie faible*) that is less economically empowered, and ensures that there is judicial oversight of the proceedings in determined cases.

Lastly, state courts do not undertake a review of negative rulings on jurisdiction issued by arbitral tribunals. Case law on the matter affirms that the content of an arbitral ruling is the product of the arbitrators' reasoning and reflects their understanding and knowledge.

5.3 Timing of Challenge

The Luxembourg Arbitration Law, and more specifically Article 1227-3 of the NCCP, does not foresee a specific timeframe within which the parties have the right to challenge the jurisdiction of the arbitral tribunal.

5.4 Standard of Judicial Review for Jurisdiction/Admissibility

The standard of judicial review with respect to jurisdiction and admissibility is de novo under the Luxembourg Arbitration Law.

5.5 Breach of Arbitration Agreement

When a party initiates proceedings before a state court in violation of an existing arbitration agreement, the state court does not, of its own motion, declare its lack of jurisdiction. Rather, it is incumbent upon the opposing party to raise such an objection in limine litis.

Where no such objection is raised, the opposing party shall be deemed to have consented to the court's jurisdiction, thereby effectively waiving the right to submit the dispute to arbitration.

Indeed, it is well established case law that arbitral jurisdiction remains entirely voluntary and may be waived by the parties at any time. State courts' lack of jurisdiction resulting from a valid arbitration agreement is not a matter of public order but rather a matter of private law. As a result, the arbitration clause will be deemed waived where the objection is not raised in limine litis by the defendant.

It follows, therefore, that state courts uphold the parties' autonomy and accordingly interpret the absence of a timely objection as the parties' intention to submit the dispute to the state courts' jurisdiction.

5.6 Jurisdiction Over Third Parties

As a general principle, an arbitration agreement produces effects only inter partes, and therefore is binding only vis-à-vis the parties who explicitly consented to it.

Notwithstanding the above-mentioned principle, Article 1231-12 of the NCCP provides mechanisms for the involvement of third parties through intervention and joinder.

On the one hand, intervention allows a third party, by means of a written request, to participate in the arbitration proceedings. On the other hand, joinder allows an existing party to the arbitration to request the inclusion of a third party. This is however contingent upon the existence of a submission agreement between the parties involved as well as the third party, and subject to the arbitral tribunal's approval.

Moreover, it is widely accepted that third parties may be drawn into arbitral proceedings in cases involving a chain of contracts containing interconnected arbitration clauses or in instances where the piercing of the corporate veil doctrine is invoked.

Finally, the LAC Rules also foresee the joinder of third parties in the arbitration proceedings in Article 6.

6. Preliminary and Interim Relief

6.1 Types of Relief

Under Article 1231-9 of the NCCP, the arbitral tribunal may order the parties to take any interim or conservatory measures it deems appropriate with the exception of attachment proceedings, which remain exclusively within the jurisdiction of the state courts.

In this respect, the arbitral tribunal may modify, complete, suspend or retract an interim or conservatory measure and can likewise order the requesting party to provide a guarantee for the granting of interim relief.

Should the arbitral tribunal subsequently decide that the interim or conservatory measure should not have been granted, the party that requested that measure shall be held liable for all the costs and damages resulting from its enforcement.

The LAC Rules provide in Article 20.1, that any party requesting conservatory or interim measures which cannot await the consultation of an arbitral tribunal may submit a request to the Secretariat.

6.2 Role of Courts

Article 1227-4 of the NCCP authorises a party to an arbitration, even where a valid arbitration agreement is in place, to apply for interim relief before the state courts. Such recourse is, however, only available in cases where the arbitral tribunal has not yet been constituted, or if it appears that the arbitral tribunal cannot grant the requested measures due to the factual or legal impediments (such as in circumstances where one of the parties involved in the provisional measures is not a party to the arbitration proceedings).

Such a request does not imply a waiver of the arbitration agreement.

It should also be emphasised that the Luxembourg Arbitration Law does not foresee the use of emergency arbitrators.

For reference, the LAC Rules foresee in Appendix III the intervention of an emergency arbitrator that must respect the same requirements with regards to impartiality and independence and whose decision shall take the form of a written and reasoned order.

6.3 Security for Costs

At present, the Luxembourg Arbitration Law does not contain any express provision conferring upon arbitral tribunals the power to authorise security for costs.

Accordingly, and unless the parties to the arbitration proceedings have agreed otherwise, there are no obstacles that would prevent the arbitral tribunal from requesting a security deposit for costs.

With respect to judicial proceedings, a general principle enshrined in Article 257 of the NCCP provides that, upon request raised in limine litis, claimants not domiciled in Luxembourg may be required to advance payment to secure potential costs and damages they may be liable to bear in the event their claim is ultimately denied.

7. Procedure

7.1 Governing Rules

The Luxembourg NCCP contains a dedicated section on arbitration, set forth in its Book III that is divided into seven chapters, encompassing Articles 1224 to 1249.

This legislative framework governs all matters relating to arbitration in Luxembourg, including both arbitral proceedings as well as the recognition and enforcement of foreign arbitral awards.

7.2 Procedural Steps

The arbitration framework in Luxembourg does not set out mandatory procedural steps required by law. It is the parties that determine the procedural steps in accordance with the arbitration rules they have chosen to govern the dispute.

7.3 Powers and Duties of Arbitrators

Under the Luxembourg Arbitration Law, arbitrators enjoy the same status and authority as state judges

presiding over judicial proceedings. Accordingly, they are bound by strict duties of impartiality and independence (see **4.5 Arbitrator Requirements**).

Prior to their appointment, arbitrators are required to disclose, in accordance with Article 1228-6 of the NCCP, any actual or potential conflict of interest and inform the parties, in due course, of any circumstance that might raise legitimate doubts as to their impartiality. This obligation persists during the entirety of the arbitral process in order to ensure procedural fairness as well as the integrity of the arbitrator's role.

7.4 Legal Representatives

There are no specific provisions set forth in the Luxembourg Arbitration Law regarding the qualifications or other formal requirements for legal representatives in arbitration proceedings.

In practice, during the arbitration process, arbitrators commonly draw upon internationally recognised standards and practices, such as those reflected in the International Bar Association's Guidelines on Party Representation in International Arbitration, to guide the conduct of legal representation.

8. Evidence

8.1 Collection and Submission of Evidence

The Luxembourg Arbitration Law does not prescribe specific rules for the gathering and submission of evidence in arbitration proceedings. Accordingly, the parties are free to organise this aspect of the proceedings in the manner they deem appropriate.

Nonetheless, it is common practice for the parties, along with the arbitral tribunal during procedural conferences, to define certain procedural aspects of the arbitration. This typically includes deciding whether a discovery phase will be conducted, setting the conditions under which witness statements are admissible, as well as establishing the modalities regarding the examination of the witnesses.

As certain procedural gaps may arise, it is common practice to refer to international guidelines as a source of inspiration. Soft law instruments, such as the International Bar Association's Rules on the Taking of Evidence in International Arbitration are often used to provide practical guidance where national law remains silent.

In jurisdictions like Luxembourg that follow the civil law tradition, and where practices such as the cross-examination of witnesses are not formally provided for, these guidelines offer a practical framework and assist both legal practitioners as well as the parties to an arbitral process.

8.2 Rules of Evidence

According to the Luxembourg Arbitration Law, it is incumbent upon the arbitral tribunal to carry out investigative measures.

Pursuant to Article 1231-8 (1) of the NCCP, the arbitral tribunal may hear any individual, including the parties to the arbitration, unless the applicable foreign law governing the proceedings provides otherwise. Furthermore, where a party holds evidence material to the dispute, the arbitral tribunal may, under the conditions it deems appropriate, order its disclosure.

In addition, Article 1231-8 (2) of the NCCP foresees that where a party to the arbitration intends to rely on a document held by a third party to the proceedings, it may, upon the arbitral tribunal's invitation, request that the third party be summoned before the supporting judge in order to obtain the production of the document in question.

8.3 Powers of Compulsion

The arbitrator's direct powers of compulsion to order the production of documents or require the attendance of witnesses is not foreseen under Luxembourg Arbitration Law.

The LAC Rules are equally silent on the matter and do not provide for any further clarification regarding the arbitrator's powers of compulsion.

9. Confidentiality

9.1 Extent of Confidentiality

Luxembourg Arbitration Law foresees that arbitration proceedings are conducted with strict confidentiality, subject only to derogation where the parties have expressly agreed otherwise. Accordingly, the arbitrators are bound by a duty of confidentiality and may not disclose any information that was revealed in the course of the proceedings or during their deliberations.

In the event that a party initiates an appeal to set aside an arbitral award or an appeal against an exequatur order, the content of the proceedings becomes de facto part of the public record.

10. The Award

10.1 Legal Requirements

Article 1232 of the NCCP foresees the legal requirements for arbitral awards in Luxembourg.

In principle, the arbitral award is issued in writing, and a duly signed original is delivered by the arbitral tribunal to each of the parties. Upon its issuance, the award is final and acquires the authority of res judicata. Consequently, and in accordance with Article 1232-3 of the NCCP, the award is not subject to an appeal by any of the parties.

Save where the parties have expressly waived this requirement, the arbitral award must be duly reasoned (Article 1232-2 of the NCCP).

Unless otherwise agreed between the parties, the arbitral award is to be rendered by a majority decision of the appointed arbitrators and signed by all of them. In the event that an arbitrator refuses to sign the award, their refusal must be expressly mentioned therein. This will not affect the award as such, which will produce the same legal effects as if it had been duly signed by the entire panel (Article 1232-1 of the NCCP).

Upon issuance of the final award, the arbitral tribunal is divested of its authority with respect to the dispute it was called upon to determine. The parties may, however, within three months following the award's delivery, request from the arbitral tribunal an interpretation of the award as well as the correction of any material omissions or errors therein. The parties may further request that the arbitral tribunal supplement the award in the event that it has failed to consider a claim put forth by one of the parties.

In the event that that the arbitral tribunal is unable to reconvene with respect to any of the above matters, Article 1232-4 of the NCCP provides that it is the supporting judge that will bear those functions.

Finally, the arbitration reform has introduced a default time frame for the rendering of the award. Article 1231-6 of the NCCP provides that in the absence of a time limit expressly stipulated in the arbitration agreement, the arbitral tribunal is required to render its award within six months from the date on which the last-appointed arbitrator formally accepted their mandate.

10.2 Types of Remedies

The types of remedies that arbitral tribunals may award are not explicitly delineated in Luxembourg Arbitration Law. The arbitral tribunal is bound to apply the remedies foreseen by the law applicable on the merits of the case.

However, concerning the award of damages, punitive damages are not foreseen under Luxembourg law. Therefore, an award granting punitive damages would have to be set aside for being in violation of public policy.

10.3 Recovering Interest and Legal Costs

The Luxembourg Arbitration Law does not contain a specific provision with respect to recovering interest. Accordingly, the recovery of interest is determined with respect to the law applicable to the dispute.

Pursuant to Luxembourg procedural law, and in the absence of a prior agreement between the parties, the allocation of costs falls within the discretion of the arbitral tribunal that takes into account the circumstances of the case as well as the ultimate outcome of the proceedings.

Accordingly, the arbitral tribunal may, at its own discretion, order each party to bear its own costs, or even direct that solely one of the parties bears the entirety of the costs.

11. Review of an Award

11.1 Grounds for Appeal

Arbitral awards rendered in Luxembourg are not subject to appeal in any form, thereby reflecting their binding and final nature.

The only recourse available to parties against an arbitral award rendered in Luxembourg is an application for annulment (*recours en annulation*) before the Luxembourg Court of Appeal pursuant to Article 1237 of the NCCP as well as an application for review (*recours en revision*) pursuant to Article 1243 of the NCCP.

In accordance with Article 1238 of the NCCP, an arbitral award can be annulled for one of the following reasons:

- the arbitral tribunal wrongly declared itself competent or incompetent to rule on the proceedings;
- the constitution of the arbitral tribunal was irregular;
- the arbitral tribunal rendered an award without complying with its terms of reference;
- the award violates public policy;
- the arbitrators, except where the parties have waived this requirement, failed to motivate the award rendered; or
- there has been an infringement to a party's right to defence.

An application for annulment is only admissible where the award can no longer be challenged before the arbitral tribunal. Such an application must also set forth the entirety of the grounds upon which the application for annulment is based.

Article 1243 of the NCCP also allows the parties to file an application for review of the award rendered by the arbitral tribunal in one of the following circumstances:

- subsequent to the rendering of the award, it becomes apparent that the award was obtained through fraud committed by the prevailing party;
- following the rendering of the award, it appears that decisive evidence was withheld by the other party;
- the award was rendered on the basis of evidence recognised, after the fact, as false by the court; or
- following its rendering of the award, the arbitral tribunal recognises that the award was based on testimonies, affidavits or sworn declarations that were false.

11.2 Excluding/Expanding the Scope of Appeal

Under the Luxembourg Arbitration Law, the parties cannot exclude or expand the scope of appeal or challenge under the national law.

11.3 Standard of Judicial Review

The courts do not rule on the merits of a dispute submitted to arbitration, even in the context of judicial review. The sole exception to this principle involves a matter of public policy or where an allegation of fraud is made by one of the parties.

12. Enforcement of an Award

12.1 New York Convention

Luxembourg formally ratified the New York Convention through the enactment of the Law of 20 May 1983.

According to the reservation made by Luxembourg, the New York Convention applies on a reciprocal basis to the recognition and enforcement in Luxembourg of arbitral awards made in the territory of another contracting state.

Luxembourg is equally party to a plethora of similar conventions that contemplate the recognition and enforcement of foreign arbitral awards such as the European Convention on International Commercial Arbitration of 1961, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965, also known as the Washington Convention, as well as the Convention on Conciliation and Arbitration within the OSCE of 1992.

12.2 Enforcement Procedure

Pursuant to Articles 1233 and 1245 of the NCCP, an arbitral award rendered in Luxembourg as well as in a foreign country may be enforced in Luxembourg upon the issuance of an exequatur order granted by the President of the District Court having territorial jurisdiction over the domicile of the party against whom enforcement is sought.

The exequatur of domestic arbitral awards may be set aside on the basis of six specific and limited grounds enumerated in Article 1238 of the NCCP, whereas the enforcement of foreign awards may be refused on the basis of the same six grounds as well as on four additional grounds foreseen in Article 1243-1 of the NCCP, such as fraud.

The order denying the enforcement of an arbitral award must be duly reasoned and may be appealed before the Luxembourg Court of Appeal. The appeal proceedings are adversarial and do not suspend the enforceability of the award except in cases where the enforcement of the award would be highly detrimental to one of the parties.

In instances where the enforcement and recognition of an award do not fall within the scope of an international treaty (such as the New York Convention), the Court of Appeal may not refuse the exequatur of an arbitral award except on one of the grounds in Article 1246 of the NCCP. For instance, a refusal may arise in cases where the arbitral award is contrary to public order or where it is revealed that the opposing party obtained the arbitral award through fraud.

12.3 Approach of the Courts

Luxembourg courts consistently uphold a stance in favour of arbitration and respect the principle of arbitration autonomy.

Accordingly, as evidenced by case law on the matter, national courts will solely decline to enforce arbitral awards in circumstances where there is a clear and manifest breach of public policy.

13. Miscellaneous

13.1 Class Action or Group Arbitration

Class action arbitration as well as group arbitration are not contemplated under Luxembourg Arbitration Law.

13.2 Ethical Codes

The arbitral framework in Luxembourg does not establish specific ethical codes or professional standards governing arbitral proceedings. Legal practitioners such as lawyers are bound by the Luxembourg Bar Association's ethical rules, which also encompass conduct in arbitration matters.

13.3 Third-Party Funding

There are no specific rules under Luxembourg law excluding the possibility of third-party funding of disputes. In practice, third-party funding is available to the parties in the course of the arbitration proceedings.

13.4 Consolidation

The Luxembourg Arbitration Law does not contain specific provisions regarding the consolidation of arbitral proceedings, and at the time of writing, no separate arbitral proceedings have been consolidated by a Luxembourg court.

13.5 Binding of Third Parties

As a general rule, third parties are not bound by an arbitration agreement or an arbitral award, as arbitration is founded on the consent of the parties.

Nonetheless, in circumstances where an arbitral award impacts third parties to the proceedings, Article 1244 of the NCCP foresees that a third party may oppose the award that was rendered during the arbitration proceedings.

Trends and Developments

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KLEYR_GRASSO

KLEYR_GRASSO is an independent, full-service business and litigation law firm which has served international and domestic clients for over 30 years in Luxembourg. Its team of devoted legal professionals provides support across a broad spectrum of practice areas. Its Corporate and Finance Litigation team, in particular, has 20 years of experience in the recognition and enforcement of foreign arbitral awards and judgments in Luxembourg. Its litigation lawyers are frequently appointed to serve as lead counsel in local as well as international arbitrations, strengthening its position as a trusted partner in resolving complex legal matters. Its team assists clients in the enforcement of arbitral awards before the Luxembourg courts as well as in domestic and international commercial arbitration, including representation in both ad hoc proceedings and institutional arbitrations, such as the Arbitration Center of the Luxembourg Chamber of Commerce and the International Court of Commerce.

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Introduction

Centuries ago, Benjamin Franklin famously queried "When will mankind be convinced and agree to settle their difficulties by arbitration?". In the modern era, international arbitration has not only responded to this question but has firmly established itself as one of the leading methods in both commercial and investment matters for resolving disputes across borders, recognised for its flexibility, neutrality and global enforcement.

In response to its growing significance, countries around the world have undertaken legal reforms and institutional improvements to meet arbitration standards, with Luxembourg being no exception.

Indeed, through the years, the Grand-Duchy of Luxembourg has taken notable steps in integrating arbitration within its legal know-how. By establishing a modern and robust legislative framework, Luxembourg has significantly enhanced its profile as a sophisticated and arbitration-friendly venue that regularly advocates for the use of arbitration in disputes, particularly in the financial sector.

Arbitration in Luxembourg

The use of arbitration in Luxembourg is deeply rooted in its legal history and is by no means a novel concept. Its origins can be traced back to the early 19th century, when the foundational principles governing arbitration were first incorporated into Luxembourg law through the decree of 29 April 1806, enacted as part of the Napoleonic Code of Civil Procedure, as well as the Geneva Protocol on Arbitration clauses ratified in 1927.

A more decisive shift occurred in 1939, when Luxembourg enacted legislation expressly recognising the legal force of arbitration agreements followed by further legislative refinement in 1981 which modernised the procedural rules governing the annulment and enforcement of arbitral awards.

Luxembourg has since become a party to a plethora of international instruments including the landmark 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States commonly known as the Washington Convention, established in 1965, the European Convention on International Commercial Arbitration of 1961, alongside a multitude of bilateral investment treaties and multilateral agreements, demonstrating Luxembourg's dedication to maintain an arbitration-friendly environment.

Nonetheless, in order to keep up with economic globalisation and the legislative reforms of arbitration in neighbouring countries, Luxembourg has very recently undertaken a thorough overhaul of its arbitration regime that has simplified arbitral proceedings and promises flexibility, efficiency as well as privacy, these being the main characteristics that render arbitration attractive in the first place.

A preparatory step towards the modernisation of arbitration procedures was first initiated by the Chamber of Commerce's new arbitration rules that came into force on 1 January 2020, and that apply to arbitration proceedings brought before the Luxembourg Arbitration Center (LAC), Luxembourg's main local institution with the competence of hearing arbitration disputes submitted to it.

The LAC's initiative regarding the renewal of its rules of arbitration, alongside other developments such as the creation of the Luxembourg Arbitration Day by the Luxembourg Arbitration Association, a non-profit organisation founded in 1996, as well as Luxembourg's participation in a co-operation agreement in the Benelux area, laid the groundwork for the country's reconstruction of its arbitration regime and paved the way for the new arbitration law ultimately enacted in 2023.

Recent Developments: A New Legislative Era

Luxembourg enacted a new legislative framework governing arbitration through the law of 19 April 2023 amending the second part, book III, heading I of the New Code of Civil Procedure (the "New Arbitration Law"), which was the culmination of a comparative legal analysis undertaken over several years by legal practitioners such as lawyers, judges and law professors, who convened on a regular basis between 2013 and 2017. The 2023 reform was designed to position Luxembourg as a preferred arbitral seat by capitalis-

ing on its inherent multicultural as well as multilingual legal background and proceeded to introduce a liberal approach when dealing with arbitration.

As the result of this in-depth comparative legal analysis, Luxembourg has selectively incorporated the most effective elements from various jurisdictions, ultimately adopting a unique and forward-looking arbitration model.

General highlights of the 2023 reform

The New Arbitration Law has clarified several aspects that govern arbitration proceedings in Luxembourg.

Primarily, the 2023 arbitration legislation affirms that all natural persons may be parties to arbitration proceedings, provided that they have the legal capacity to dispose of their rights. With respect to legal entities, the law equally clarifies that their participation in the arbitration proceedings is permitted as long as they are represented by a natural person.

Moreover, the New Arbitration Law foresees that an arbitration agreement may take the form of either an arbitration clause (*clause compromissoire*) concluded prior to any dispute, or a separate arbitration agreement (*compromis*) agreed upon subsequent to the emergence of a dispute, without imposing any additional formal requirements. This implies that the agreement may, in principle, also be concluded orally, thereby demonstrating the flexible approach that was adopted regarding the validity of arbitration agreements that are first and foremost based on the parties' mutual consent. In addition, the law also recognises the principle of separability of the arbitration clause, which means that its validity is not affected by the invalidity of the overall contract.

Furthermore, drawing inspiration from Article 1706 of the Belgian Judicial Code, Article 1231-12 of the New Code of Civil Procedure (NCCP) foresees the capacity of third parties to intervene in the arbitral proceedings. The same provision also authorises the parties to invite a third party to participate in the arbitration process, provided that an arbitration agreement subsists between the third party and the existing parties to the arbitration and subject to the arbitral tribunal's approval.

In addition, the New Arbitration Law, in an effort to protect "weaker parties", expressly excludes certain subject matters from arbitration, such as disputes raised between professionals and consumers, employers and employees, as well as conflicts related to lease agreements. Most importantly, the law expressly excludes any dispute being submitted to arbitration having as its subject the status and capacity of persons.

The newly enacted legislation has also instituted a swift procedural framework, whereby the duration of the proceedings is, in principle, limited to a maximum period of six months.

Lastly, the New Arbitration Law affirms the confidentiality of the arbitration proceedings, unless the parties agree otherwise, thereby strengthening the core principle of privacy which underpins the arbitration process.

The institution of the supporting judge (juge d'appui)

Undoubtedly, the most prominent innovation introduced by the 2023 arbitration reform is the establishment of a State Court supporting judge (*juge d'appui*), as provided under Articles 1229 and 1230 of the NCCP, a mechanism drawing influence from both French arbitration law as well as from general principles of the United Nations Commission on International Trade Law model law commonly known as the UNICITRAL model law.

According to Article 1229 of the NCCP, which sets the conditions for the international jurisdiction of the Luxembourg judge, the President of the District Court sitting as in summary matters (*President du Tribunal d'arrondissement siégeant comme en matière de référé*) is vested with the ability to intervene in the arbitration proceedings in instances where Luxembourg has been designated as the seat for arbitration or:

- where the parties have agreed to conduct their arbitration proceedings in accordance with Luxembourg procedural rules;
- where the parties have expressly foreseen that Luxembourg national courts shall be competent

to hear any disputes arising from the arbitration proceedings; or
- where there exists a significant link between the dispute and Luxembourg.

This is a key introduction in Luxembourg arbitration law that has adopted a non-intervention approach, all while ensuring that the state judge supports the arbitration proceedings. Indeed, the supporting judge's function is not to oversee the merits of the case but to assist the parties in specific situations that could potentially slow down or create deadlocks in the course of the arbitration process.

Accordingly, the supporting judge seized by way of application (*requête*) may intervene, at the request of either a party, the arbitral tribunal or one of its members, in an auxiliary role and limited to circumstances expressly provided by law. As such the supporting judge may:

- resolve disputes concerning the appointment and/or recusal of arbitrators in cases where the parties fail to agree as well as in the absence of an administrative authority;
- order the production or disclosure of documents or evidence held by third parties; and
- extend the time limit for the rendering of the arbitral award in circumstances where no arbitral institution is entrusted with that authority.

It should further be noted that the supporting judge is always competent in cases where one of the parties may be exposed to a risk of denial of justice, thereby serving as a safeguard to ensure the equitable conduct of the proceedings.

As a result, the institution of the supporting judge is pivotal in ensuring a more effective procedural environment for the parties all while being strictly limited and foreseen by law.

Interim, conservatory and investigative measures

The New Arbitration Law addresses a formerly ambiguous area that concerned the parties' right to seek interim, conservatory and/or investigative measures either before the arbitral tribunal or state courts.

Inspired by French and Belgium law, Article 1231-9 of the NCCP provides that arbitral tribunals have the authority, unless the parties have agreed otherwise, to order interim and/or conservatory measures when deemed necessary. Article 1227-4 of the NCCP indicates, however, that where the arbitral tribunal has not yet been constituted or in instances where the arbitral tribunal is unable to grant the requested relief, a party may seek such relief from a state court.

There is however an exception in the arbitral tribunal's power to grant interim measures that concern attachment proceedings. The New Arbitration Law foresees, in this respect, that domestic courts are solely vested with the power to grant attachment orders.

It should also be noted that, in the event that it is subsequently decided that the interim measures should not have been granted, the New Arbitration Law provides for the party that applied for interim measures to be held responsible and ultimately bear any costs or damages related thereto.

The competence-competence principle

The New Arbitration Law further codifies in Article 1227-2 of the NCCP the positive aspect of the principle known as competence-competence, pursuant to which the arbitral tribunal is competent to decide on its own jurisdiction including on questions regarding the existence and/or validity of the arbitration agreement.

Nonetheless, Luxembourg, influenced by the Swiss approach on that matter, also foresees in Article 1227-3 of the NCCP the negative implications of the competence-competence principle by stating that state courts are not prevented from entering a decision on the issue of jurisdiction, in cases where the arbitration agreement is null and void due to the non-arbitrable nature of the dispute or if the agreement is manifestly null and inapplicable for any other reason.

This last provision was adopted with the express intention to safeguard the interests of the weaker party and prevent the risk of procedural inequities in cases where the economically dominant party would initiate arbitration proceedings prematurely, thereby circum-

venting judicial oversight and placing the weaker party at a disadvantage.

Limited recourse against arbitral awards

The New Arbitration Law provides for limited recourses against Luxembourg arbitral awards which may only be subject to annulment proceedings (*recours en annulation*) as well as application for review (*recours en revision*).

Annulment proceedings are provided for under Article 1237 of the NCCP and may be initiated before the Court of Appeal sitting in civil matters, on the basis of six grounds such as the absence of jurisdiction of the arbitral tribunal, violation of public policy or infringement of the rights of the defence. The annulment proceedings foreseen by Article 1237 of the NCCP do not, in principle, suspend the enforceability of the award in question.

An application for review may also be lodged, pursuant to Article 1247 of the NCCP, before the Court of Appeal for the revocation of an award. For such an application to be successful, one of four specific conditions must be satisfied such as fraud or where the award was rendered on the basis of false evidence.

Enforcement of arbitral awards

The enforcement of Luxembourg and foreign arbitral awards by a simplified exequatur procedure is foreseen in Chapter VII of the NCCP and more specifically in Articles 1233 to 1249.

Luxembourg and foreign awards may be enforced further to an ex parte application filed before the President of the District Court. Exequatur of Luxembourg awards may only be refused on the basis of six specific grounds foreseen in Article 1238 of the NCCP. Exequatur of foreign awards may be refused on the basis of the six grounds enumerated in Article 1238 of the NCCP but also on the basis of four additional grounds foreseen in Article 1246 of the NCCP, such as fraud.

The order granting or refusing the exequatur may be appealed before the Court of Appeal. Those proceedings are adversarial and do not suspend the enforceability of the award except if the enforcement of the award would be highly detrimental to a party.

For Luxembourg awards, the exequatur order cannot be appealed separately from an appeal against the award itself. For foreign awards, an application for review may also be filed against the exequatur order in case a fraud committed by the executing party is discovered after the expiry of the time limit to file an appeal against the order.

In sum, the recent legislative arbitration reform is both ambitious in scope and purposely designed to position Luxembourg as a competitive and attractive arbitral seat on a global scale.

Arbitration in Luxembourg's Investment Fund Industry

The Luxembourg investment fund industry is characterised by increasingly high sophistication. The Grand Duchy of Luxembourg stands in fact as the foremost domicile for investment funds within Europe and ranks as the second largest globally.

Driven by its ambition in this domain, Luxembourg continuously seeks to attract investment funds in its territory and to position itself as a leading domicile for such vehicles.

Having regard on the above, it is undoubtful that the presence of over 13,428 fund units in Luxembourg raises the likelihood of disputes arising in relation thereto.

Until recently, financial institutions adopted a conservative approach with respect to alternative methods of dispute resolution and therefore, disputes in the banking and financial sectors were predominantly brought before state courts through ordinary judicial proceedings. It was widely believed that the complexity of financial disputes and necessity of specialised expertise with respect to their regulatory framework made ordinary courts the most fitting choice for adjudicating such disputes.

Although this traditional point of view has not yet been entirely eclipsed, it is becoming increasingly apparent that arbitration is an emerging and appropriate

mechanism for the resolution of disputes, particularly in the investment funds sectors.

Indeed, an increasing number of contracts concluded in these matters now include an arbitration clause, thereby demonstrating the parties' clear intention to submit potential disputes to arbitral proceedings rather than before national courts.

This is largely due to the increasing sophistication of arbitration which is driven by noteworthy advancements in national legislation and practices that evolve more closely with contemporary legal trends and needs.

One important characteristic in this respect is the confidentiality of the arbitral process as well as of the deliberations of the arbitral panel, particularly with respect to the financial and banking sectors, where the preservation of professional secrecy and non-disclosure of sensitive information are vital.

Another key advantage lies in the rapidity of arbitration proceedings as opposed to proceedings brought before state courts. As previously noted, the New Arbitration Law provides, in principle, for a maximum duration of six months for the rendering of an award. This procedural celerity is particularly valued in the financial sector, known for its fast-paced nature. Moreover, arbitral awards are final and not subject to an appeal, as opposed to judicial decisions that can be appealed therefore extending the duration of the proceedings.

Finally, the parties' ability to appoint the arbitrators of their choice constitutes a significant advantage, as it enables them to choose professionals possessing a specialised expertise in the financial sector which enhances the technical quality of the proceedings and assures that the final award is rendered with a more pronounced awareness.

Accordingly, Luxembourg is expected to witness an increase in the number of financial disputes being referred to arbitration within its jurisdiction, reflecting the broader international shift towards alternative dispute resolution mechanisms in disputes arising in the investment funds sector.

In light of the recent legislative advancements, Luxembourg is undoubtedly well positioned to address such disputes through arbitration, offering parties a reliable forum for dispute resolution.

Conclusion

In conclusion, Luxembourg has made noteworthy progress in positioning itself as a rising seat for international arbitration. Its commitments to legislative modernisation, coupled with its open global integrated economy, have aligned Luxembourg with international best practices, standing confidently alongside well-established hubs such as London and Paris.

At present, the current focus lies on advancing the further integration of the financial sector in arbitration, which represents Luxembourg's main economic pillar, and further encourages stakeholders to embrace this mechanism with confidence.

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