

VIAC CAN Newsletter for the CEE region

ARBITRATION IN LUXEMBOURG IN A NUTSHELL

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1. Where are the arbitration provisions included: Civil Code, Arbitration Act? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)? When were the arbitration provisions last amended / updated?

Following the reform of Luxembourg's arbitration law enacted in 2023, Articles 1224 to 1249 of the New Code of Civil Procedure (NCCP) contain the provisions governing arbitration. These provisions create one set of rules that do not distinguish between domestic and international arbitrations, save with respect to enforcement. The relevant section of the NCCP is divided into seven chapters: (i) arbitrability; (ii) the arbitration agreement; (iii) the arbitral tribunal; (iv) the judge in support of arbitration; (v) the proceedings before the arbitral tribunal; (vi) the arbitral award; and (vii) the enforcement of awards and legal remedies.

Luxembourg arbitration law is essentially inspired by French arbitration law, and the UNCITRAL Model Law.

2. What are the main requirements for a valid arbitration clause?

To be valid and enforceable, an arbitration clause must concern disputes regarding rights that be freely disposed of and should not cover matters that are non-arbitrable under Luxembourg law. In particular, parties cannot agree to arbitrate matters pertaining to the status and capacity of persons and on the representation of incapable persons (Article 1224 NCCP).

Furthermore, disputes between professionals and consumers, employers and employees, and disputes concerning residential leases are also non-arbitrable (Article 1225 NCCP). Likewise, disputes regarding claims arising out of insolvency proceedings are also non-arbitrable (Article 1226 NCCP).

Luxembourg law recognizes the severability of arbitration clauses. Nullity of the contract does not result in nullity of the arbitration clause and vice versa (Article 1227-2 NCCP).

3. Do the national arbitration rules have any particularities (e.g. mandatory provisions) that should be mentioned or emphasised?

The 2023 reform of Luxembourg's arbitration law created the office of the judge acting in support of the arbitration. The judge's mandate is often subsidiary to that of the institution administering the arbitration proceedings and serves to assist the parties and the tribunal in the organisation and conduct of the arbitral process.

The Luxembourg judge acting in support of the arbitration is competent where the seat of the arbitration is in Luxembourg. Alternatively, the said judge is competent where (i) the parties have agreed that the arbitration be subject to Luxembourg procedural law; (ii) the parties have consented to the jurisdiction of the Luxembourg courts with respect to disputes regarding the arbitral process; (iii) there is a significant link between the dispute and Luxembourg; and (iv) one of the parties is exposed to a risk of denial of justice (Article 1229 NCCP).

Another significant feature of Luxembourg arbitration law is that parties cannot waive the action for annulment (Article 1236 NCCP). Regarding the enforcement of awards, Luxembourg law recognizes that awards produce *res judicata* effect as soon as they are rendered (Article 1232-3 NCCP). Measures of execution can be adopted provided that the party seeking execution has obtained an exequatur order. Challenges against the exequatur order do not have suspensive effect (Articles 1241 and 1248 NCCP).

4. Is an arbitral award immediately enforceable if the place of jurisdiction is in that country? What about foreign arbitral awards? How long does it usually take to enforce a foreign award?

Both awards rendered in Luxembourg and foreign awards are immediately enforceable in Luxembourg. In both circumstances, the party seeking enforcement should apply to the President of the District Court (normally of the City of Luxembourg) for an exequatur order (Articles 1233 and 1245 NCCP). The application is made *ex parte*. The exequatur order is normally rendered within a week.

As a result of the reform of Luxembourg arbitration law in 2023, awards produce *res judicata* effect as soon as they are rendered (Article 1232-3 NCCP). Neither the action for annulment (in respect of awards rendered in Luxembourg) nor the appeal against the exequatur order (in respect of foreign awards) have suspensive effect (Articles 1241 and 1248 NCCP). Enforcement proceedings may, therefore, proceed despite the challenge against the award or the exequatur order, unless the Court of Appeal decides otherwise.

This change was introduced with a view to speed up the execution of arbitral awards, which was subject to delays in the past due to the suspensive effect of the challenge against the exequatur order under the old arbitration law. Given the fact that this change is quite recent, we are not yet in a position to assess the time it will usually take to enforce a foreign award.

Exequatur of foreign awards may be refused only if the award is tainted by one of the grounds for the annulment of exequatur orders (1245 NCCP). An order refusing exequatur may be appealed to the Court of Appeal within a month from the date on which it was served to the party seeking enforcement (Article 1245 referring to Article 1235 NCCP). The order conferring exequatur may be appealed to the Court of Appeal within a month from the date on which the order was served to the respondent (Article 1246 NCCP).

The recognition and enforcement of foreign awards may be opposed for any of the grounds listed in any applicable international convention (notably Article V of the New York Convention). Where no convention applies, recognition and enforcement may be opposed for one of ten grounds including the six grounds for the annulment of awards rendered in Luxembourg (Article 1238 NCCP – see under section 5 below), plus the following:

- after the award has been rendered, it transpires that it was obtained through fraud;
- if decisive documents withheld by another party have surfaced;
- if the award was made based on documents that a court has found to be forgeries; and
- if the award was based on testimony that a court found to be false.

5. What court decides on an annulment claim and how many instances are there? How broad are the grounds for annulment? What is the success rate of annulment claims?

Exequatur of awards rendered in Luxembourg may be refused only if the award is tainted by one of the grounds for the annulment of awards (Article 1234 NCCP). An order refusing exequatur may be appealed to the Court of Appeal within a month from the date on which it was served to the party seeking enforcement (Article 1235 NCCP). The order conferring exequatur is not subject to a challenge distinct from the action for annulment against the award (Articles 1236-1237 NCCP).

The grounds to annul an award are exhaustively enumerated in Article 1238 of the NCCP:

- the arbitral tribunal has wrongly decided that it has or that it lacks jurisdiction;
 - the arbitral tribunal was improperly constituted;
 - the arbitral tribunal exceeded its mandate;
 - the award is contrary to public policy;
 - the award is not reasoned, unless the parties have dispensed the arbitrators from giving reasons;
- and
- there has been a violation of the due process rights of defence.

The decisions of the Court of Appeal may be appealed before the Court of Cassation on points of law only.

Luxembourg has not often been the seat of arbitrations. This is due mainly to the fact that, prior to the reform introduced in 2023, Luxembourg's arbitration law was out of date. Actions for the annulment against awards are even less common. It is, therefore, not possible to comment on the success rate of annulment claims.

6. What national arbitration institution is the most important, and which foreign arbitral institution is the preferred institution?

The Arbitration Centre of the Luxembourg Chamber of Commerce is the main arbitral institution in Luxembourg. It was launched in 1987. Over the course of the last 35+ years, it has developed its own institutional system and its own Arbitration Rules, which draw, however, inspiration from the ICC Rules of Arbitration.

The majority of cases referred to the Arbitration Centre are corporate and general commercial disputes. The Arbitration Centre has been administering a relatively modest but increasing number of cases.

The preferred foreign arbitral institution is the ICC in Paris, followed by CEPANI and DIS.