Luxembourg

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1 Litigation – Preliminaries

1.1 What type of legal system does your jurisdiction have? Are there any rules that govern civil procedure in your jurisdiction?

Luxembourg is a civil law country and has a codified legal system largely based on the French codes. The rules governing civil procedure are laid down in the New Code of Civil Procedure (*Nouveau Code de Procédure Civile*, hereafter the "*NCCP*").

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

Luxembourg is divided into two judicial districts (Luxembourg and Diekirch). The District Courts (*Tribunal d'Arrondissement*) are the ordinary courts hearing all cases dealing with civil and commercial matters that are not attributed by law to another court. They also hear appeals against decisions rendered by the Magistrate's Courts that exceed the sum of EUR 2,000. Special chambers of the District Courts are dedicated to the various civil law matters.

Furthermore, jurisdiction for juvenile and guardianship matters is conferred to a special section of the District Courts. The Magistrate's Courts (*Justice de Paix*) have jurisdiction for civil and commercial disputes that do not exceed the sum of EUR 10,000. Decisions handed down by the Magistrate's Courts that do not exceed the sum of EUR 2,000 are not subject to appeal.

The NCCP also confers exclusive jurisdiction to the Magistrate's Courts without any limitation as to the financial stakes of the dispute in various specific matters, e.g. disputes with leaseholders or related to wages and pensions. Decisions rendered by the District Courts can be appealed before the Court of Appeal (*Cour d'appel*). The Court of Appeal has jurisdiction to make a new assessment of both the facts and the applicable legal provisions in its judgment. Appeals against judgments of the Court of Appeal may be filed before the High Court (*Cour de Cassation*). The High Court will only rule on matters of law (to the exclusion of facts). Alongside the Prosecutor-General's Office (*Parquet Général*), the Court of Appeal and the High Court form part of the Supreme Court of Justice (*Cour Supérieure de Justice*).

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

Ordinary civil proceedings are instituted by a writ of summons (*assignation* or *citation*) that has to be served on behalf of the applicant (claimant) by a bailiff upon the defending party. Except before the Magistrate's Courts, civil proceedings are normally in writing, and representation by a lawyer registered as *Avocat à la Cour* with the Luxembourg Bar is mandatory. The claimant normally files the document instituting the proceedings with the competent court together with the supporting documents after having them duly communicated to the opposing party's lawyer. The parties' lawyers will exchange written submissions and exhibits according to the timetable set by the court. Once the parties' arguments have been sufficiently developed, the court will order the closing of the examination period and set the date of the hearing for the oral pleadings. Arguments or grounds of defence that have not been set out in the written submissions are not admissible during the oral pleadings.

After the oral pleadings, the case is deliberated upon by the court which will set the date for the delivery of the judgment. The duration of first instance civil proceedings may vary depending on the number of parties involved and the complexity of the case, as well as the need for expert evidence. The usual length is between 12 and 30 months.

In urgent matters, parties may also start summary proceedings, where a court order may be obtained within a few weeks. However, a court order rendered by the judge sitting in summary matters will only have an interim or provisional effect pending final judgment in the case.

1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

Exclusive jurisdiction clauses are normally recognised by the Luxembourg courts as long as they are not contrary to any mandatory provision of national or international law.

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

The costs of civil court proceedings (*frais et dépens*) mainly include the claimant's bailiff costs, fees of a notary or an expert possibly appointed by the court, and witness and lawyer expenses (émoluments). Normally, the unsuccessful party is ordered by the court to pay the judicial costs. These costs do not, however, include lawyer fees. Normally, each party has to bear the costs of its own lawyer, except when a procedural indemnity (*indemnité de procédure*) is granted by the court to one of the parties (Article 240 NCCP). This procedural indemnity normally covers only a small portion of the total lawyer fees.

In addition, when damages founded on tortious liability are granted by the court, the lawyer fees of the claimant may be considered as being part of the damages he has suffered, so that the defendant will be ordered to bear them. Similarly, in matters of contractual liability, certain decisions have admitted the recovery of lawyers' fees, but the case law is not yet fully settled. Furthermore, when the judicial action brought against one party is considered as obviously unfounded, the claimant might also be ordered by the court to pay the lawyer fees of the defendant in full on the basis of an abuse of process.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?

Apart from the lawyer's obligations to comply with its anti-money laundering duties, there are no particular rules about funding litigation in Luxembourg. Litigation funding should therefore be permissible as long as it does not put the party's lawyer benefitting from it into a situation of conflict of interest between the interests of his client and those of the funder(s). Fee arrangements based completely on the outcome of a dispute (*quota litis pact*) are, however, prohibited for Luxembourg lawyers. Fees should normally be fixed based on account of the importance and complexity of the case, the amount of work done by the lawyer, the notoriety and the experience of the lawyer as well as the final outcome of the case.

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

In Luxembourg, the principle of "no pleas by prosecutor" applies. However, the assignment of claims or the subrogation of rights is normally possible, except for claims to uphold purely personal rights (*droits strictement personnels*), such as usufruct rights, habitation rights, authorisations or concessions granted by the public authorities, *etc.* As explained in response to question 1.6, there are no constraints in principle on third-party litigation funding.

1.8 Can a party obtain security for/a guarantee over its legal costs?

A financial guarantee for costs and damages may be granted by the court upon application by the defendant when the claimant has his domicile or habitual residence outside of a Member State of the European Union, a Member State of the European Council, or a country with which Luxembourg is bound by an international convention providing for an exemption of such a guarantee (Article 257 NCCP). The amount of the guarantee is determined by the court.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

In Luxembourg, there are no pre-trial obligations. For instance, a claimant is not obliged to try to find an amicable solution or to enter into negotiations with the opposing party before initiating legal proceedings. In ordinary civil proceedings, the proceedings are instituted by a writ of summons that is served on behalf of the claimant by a bailiff upon the defendant.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

The ordinary limitation period (*prescription*) for civil claims in contract and in tort is 30 years. The right to claim extinguishes after the 30-year period has elapsed. Several provisions of the Civil Code also provide for shorter limitation periods (*e.g.* two years for lawyer's fees, three years for wages, five years for lease payments, five years for action for annulment of contracts, two or 10 years for warranty claims against architects and construction companies, depending on whether minor or major works are concerned, *etc.*). For many shorter limitation periods applicable to demands of payment (*e.g.* claims for payment by merchants, claimants and lawyers), there is, after expiry, only a rebuttable presumption that payment has been made. Limitation periods are normally calculated in days and treated as substantive law issues.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

Ordinary civil proceedings are commenced by a writ of summons that is served on behalf of the claimant by a bailiff upon the defendant. Various provisions of the NCCP also provide for the introduction of different types of civil claims by way of an application filed with the court's registry. Except for civil proceedings that remain unilateral during a first stage (*e.g.* application in *exequatur*), the application is notified by the court's registry to the defendant by postal services. The deemed date of service is the date where the document instituting the proceedings is hand-delivered to the defendant or delivered to his domicile. Unless a different procedure is laid down in an international instrument, the service outside Luxembourg is carried out by the bailiff sending a copy of the writ of summons by registered mail with acknowledgment of receipt to the defendant's domicile or residence. If a foreign country does not recognise the service by postal services, the service is carried out through its diplomatic or consular agents.

In the majority of cases, the rules laid down in Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 or in The Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, will be applicable for service outside Luxembourg.

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

Several pre-action interim remedies are available in Luxembourg. Through interlocutory proceedings (*référé*), a party may obtain protective or other provisional orders from the President of the District Court, or the judge replacing him, in order to cease a manifestly unlawful disturbance, prevent the destruction of evidence or prevent an immediate risk of harm. Pending the

outcome of a dispute, a receiver (*séquestre*) over assets may also be appointed through summary proceedings. In cases of emergency, the judge sitting in summary matters may order all measures which do not encounter any serious challenge or which the existence of a dispute justifies. Interlocutory proceedings may also be used to obtain a provisional order for payment (*référé-provision*) when the obligation to pay is not seriously disputable. Various forms of protective procedures are also available under Luxembourg law in order to obtain security for a claim, *e.g.* the third-party seizure proceedings (*saisie-arrêt*), the commercial conservatory seizure (*saisie conservatoire commerciale*), or the EAPO in cross-border situations within the European Union. The attachment procedure may normally be launched on the basis of an enforceable order or an authorisation from the President of the District Court or the judge replacing him, on an *ex-parte* basis.

3.3 What are the main elements of the claimant's pleadings?

Firstly, the claimant has to show that he is entitled to and has legal interest in bringing an action before the court against the defendant. The facts upon which the claim is based shall also be clearly stated and be justified by pieces of evidence or exhibits. Furthermore, the claimant shall clearly indicate the object or purpose of his request (*objet de la demande*) and the legal grounds upon which the latter is based.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Possibilities to amend the object of the claimant's request (*objet de la demande*) are limited, and it is generally accepted that the document instituting the proceedings forms the judicial contract (*contrat judiciaire*) between parties. However, new legal means are normally admissible at every stage of the proceedings.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

The claimant may withdraw his claim at all stages of the proceedings by a withdrawal of proceedings (*désistement d'instance*) or a withdrawal of claim (*désistement d'action*). A withdrawal of proceedings only terminates the ongoing proceedings and does not prevent the claimant from bringing a new claim before court on the same basis, whereas the withdrawal of action definitely extinguishes the right on which the claim was based. However, once the defendant has submitted his first means of defence, an incidental claim or a counterclaim, the withdrawal of proceedings needs to be accepted by the defendant who has a right of refusal under certain conditions. An acceptance by the defendant of a withdrawal of action should normally not be required, regardless of the stage of the proceedings.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

In his statement of defence, the defendant should firstly raise any possible pleas of lack of jurisdiction and inadmissibility of the claim. Furthermore, the defendant should seek to prove that the facts and the legal means on which the claim is based are inaccurate. A counterclaim or request for set-off are normally admissible.

4.2 What is the time limit within which the statement of defence has to be served?

In ordinary civil proceedings, when the case has been filed with the court's registrar and allocated to the competent chamber, the court will set a deadline for the defendant to submit his statement of defence. Normally, a time period of six to eight weeks is allocated to the defendant and an extension might be granted upon request.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

The defendant may, under certain circumstances, summon a third party to join the proceedings (non-voluntary intervention) and request, for instance, that the latter should be ordered to hold him harmless in full or in part of any payment he could be sentenced to make to the claimant (*demande en garantie*).

4.4 What happens if the defendant does not defend the claim?

Where the defendant does not appear before the court to defend the claim after having been validly summoned, a judgment will be rendered in his absence. If the document instituting the proceedings was served personally upon the defendant, the judgment to be rendered will be deemed adversarial (*jugement reputé contradictoire*), whereas otherwise the judgment will be "in default" (*jugement par défaut*). Against a default judgment, there are normally two remedies available to the defendant: an opposition (*opposition*) before the same instance; and an appeal (*appel*) before the Court of Appeal. In contrast, only an appeal is admissible against a judgment deemed adversarial.

4.5 Can the defendant dispute the court's jurisdiction?

Under certain circumstances, the defendant may dispute the local (*compétence ratione loci*) and/or the material (*compétence ratione materiae*) competence of the court seized by the claimant.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

A third party may intervene in the proceedings on a voluntary basis or be summoned to join them. A voluntary intervention is admissible only if the third party would be entitled to bring third-party proceedings against the judgment to be rendered, which means that he must have a legitimate, personal and sufficient interest in the outcome of the case. The non-voluntary intervention is normally initiated by the defendant who has an interest in making the judgment to be rendered opposable to a third party, or who makes a warranty call against the third party (*demande en garantie*).

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

When the consolidation of two or more sets of proceedings

(*jonction*) is ordered by the court, they will be ruled upon in one single judgment. Normally, the joinder of proceedings is ordered upon request of a party, especially when the cases are closely related or to prevent contradictory judgments.

5.3 Do you have split trials/bifurcation of proceedings?

The disjoinder of proceedings (*disjonction de l'instance*) might also be ordered by the court in the interest of a proper administration of justice.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

The District Courts comprise several chambers dedicated to different types of civil cases. The allocation of cases between the chambers is made by the President of the District Court.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The pre-trial judge (*juge de la mise en état*) has extensive powers during the examination period of the case: the judge will set the time limits for the exchange of the parties' written pleadings and may invite the lawyers to respond to grounds on which they have not pleaded; order joinders and disjoinders of proceedings; decide to hear the parties; appoint a technical expert; or order the transmission, delivery and production of documents, *etc.*

6.3 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

Where one of the lawyers pleading a case has not submitted a written statement within the given time limit, the pre-trial judge may go ahead and decide to close the examination period. Furthermore, when all of the parties' lawyers abstain from submitting their written statement within the given time limits, the pre-trial judge may, after requesting the lawyers' opinion, pronounce a reasoned dismissal order of the case. Finally, the court may, upon request of one party, impose a fine (*astreinte*) in conjunction with an order to enforce an obligation to act.

6.4 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

As explained in response to question 6.3, the pre-trial judge might decide to issue a reasoned dismissal order of the case when the lawyers continuously abstain from submitting their written statements.

6.5 Can the civil courts in your jurisdiction enter summary judgment?

The President of the District Court, or the judge replacing him, has jurisdiction to render summary judgments.

6.6 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

According to the NCCP, the courts have to stay the proceedings in three cases: *(i)* when the outcome of criminal proceedings may have an impact on the solution to be adopted by the civil court (*le criminel tient le civil en état*); *(ii)* when a defendant residing in a foreign country has not appeared and no certificate of service or delivery has been received; and *(iii)* during the time required to conduct a mediation agreed upon by the parties. Furthermore, the courts may decide to stay the proceedings during a certain time in the interest of a proper administration of justice.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

Under Luxembourg law, there is no disclosure procedure as such in civil proceedings. In accordance with the adversarial principle, it relies upon each party producing in due time and on a voluntary basis the necessary evidence to justify its claims. If a party abstains from communicating its supportive documents, the court may, upon request, issue an injunction. Furthermore, the court may, under certain circumstances and even in pre-trial proceedings, order the production of specific pieces of evidence in possession of the opposite party or a third party. However, fishing expeditions are not permissible under Luxembourg law; and, in order to succeed in his request, the claimant has to prove, *inter alia*, which specific piece of evidence is concerned, that it is likely that the piece of evidence exists and is in possession of the opposite or third party, and that it is relevant for the outcome of the dispute. There are no specific rules for the production of electronic documents.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

As explained in the response to question 7.1, there is no disclosure procedure as such in civil proceedings, and consequently there are no specific rules on privilege either. However, information, correspondence or written documents provided by a client to a lawyer for the purposes of legal advice or litigation are normally covered by the lawyer's obligation of professional secrecy.

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

As explained in the response to question 7.1, third parties may only be obliged to disclose specific pieces of evidence under exceptional circumstances.

7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

As explained in the response to question 7.1, there is no disclosure procedure as such in civil proceedings under Luxembourg law, but the production of specific pieces of evidence may be ordered by the court under certain circumstances.

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

As explained in the response to question 7.1, there is no disclosure procedure as such in civil proceedings. As a general rule, documents communicated during civil proceedings fall under the lawyers' obligation of professional secrecy and may only be used by them in the framework of the case in which they were actually disclosed. However, unless the parties are also bound by professional secrecy rules or contractual obligations of non-disclosure, they may use the disclosed documents in another context (as long as such usage remains legitimate and legal).

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

One of the basic principles of evidence in Luxembourg is that the burden of proof lies upon the claimant who requests the performance of an obligation. Furthermore, a debtor has to prove that he has fulfilled his obligation. For legal acts relating to claims exceeding EUR 2,500, a notarial or private deed must be executed and testimonial evidence is normally not admissible against or beyond a written instrument.

8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?

According to the Civil Code, the recognised types of evidence that may be admissible are written, documentary, testimonial, presumptions, confessions and declarations under oath. For technical questions or proof of a foreign law, the parties may produce expert evidence or the court may appoint an expert.

8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?

As indicated in the response to question 8.1, testimonial evidence is normally not admissible against or where it goes beyond the content of written evidence. Indirect testimony on facts is also normally not admissible. The description of the facts to be proven by testimonial evidence must be sufficiently precise and relevant for the outcome of the proceedings. Witness statements shall be handwritten and certain mandatory particulars are foreseen by the NCCP.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

A party may instruct an expert unilaterally, but in the majority of cases the court will appoint its own expert upon request by one of the parties in order to ensure that the expert is independent and impartial. Court experts have to observe the rules of adversarial debate during the whole expertise procedure and owe their duties to the Court. Normally, when the parties submit concurrent expert evidence, the court may appoint another expert in order to assist it in developing an impartial opinion.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

As explained in the response to question 3.2, the President of the District Court, or the judge replacing him, sitting in summary matters, has jurisdiction to render protective, interim or provisional orders (*ordonnances de référé*) which may, under certain circumstances, be obtained on an *ex parte* basis. In ordinary civil proceedings, a distinction can be made between *(i)* final judgments (*jugements définitifs*) closing the proceedings by ruling on all the questions raised by the parties, *(ii)* partial judgments on the merits, and *(iii)* interlocutory judgments (*jugements purement avant dire droit*). An appeal is normally not admissible against purely interlocutory judgments that do not rule on the merits of a case and, for instance, only appoint a technical expert.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

As explained in the response to question 1.5, the unsuccessful party is normally ordered by the court to pay the costs of civil court proceedings (*frais et dépens*), which do not include lawyer fees. Furthermore, a procedural indemnity (*indemnité de procédure*) may be granted by the court to one party (Article 240 NCCP), which normally covers only a small portion of the total lawyer's fees. In addition, when damages founded on tortious liability are granted by the court, the lawyer fees of the claimant may be considered as being part of the damages he has suffered, so that the defendant will be ordered to bear them. Similarly, in matters of contractual liability, certain decisions have admitted the recovery of lawyer fees, but the case law is not yet fully settled. Furthermore, when the judicial action brought against one party is considered obviously unfounded, the court may award punitive damages and order the claimant to pay the lawyer fees of the defendant in full on the basis of an abuse of process.

9.3 How can a domestic/foreign judgment be recognised and enforced?

In ordinary civil proceedings, a domestic judgment becomes enforceable after having been served upon the opposing party by the claimant. Enforceability of a judgment of first instance is suspended when an appeal is brought against it (except when the provisional execution of a decision was ordered by the court). However, an appeal against a judgment rendered by the Court of Appeal has normally no suspensive effect and the judgment remains enforceable after having been served upon a party by the party seeking to enforce it. As regards foreign judgments, an *exequatur* procedure is normally required for their recognition and enforceability in Luxembourg, unless otherwise provided for by an international instrument.

9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

In ordinary civil proceedings and except where there is an extension on account of distance (*délai de distance*), the time limit for lodging an appeal is 40 days after the judgment at first instance has been served by a bailiff upon the opposing party. For default judgments, an appeal is admissible only after the 15-day time

limit for opposition has expired. The appeal is lodged through a writ of summons served upon the appellant of the other party.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

According to the NCCP, it is part of the judge's mission to reconcile the parties. A complete or partial reconciliation of the parties may be recorded in the minutes signed by the judge and the parties. Such minutes constitute an enforceable title.

11 Alternative Dispute Resolution

11.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

The main alternative dispute resolution ("ADR") methods in Luxembourg for civil and commercial cases are arbitration, mediation, the Consumer Ombudsman and the Ombudsman. Arbitration can provide a faster resolution of national and international disputes and offers a certain degree of confidentiality. While in the past *ad hoc* arbitration has been used more often than institutional arbitration, parties nowadays seem to increasingly resort to institutional arbitration in their arbitration clauses. Conventional and judicial mediation may also be sought by the parties or by the judge. Mediation can be a very effective tool in the resolution of disputes between consumers and professionals, both of which may submit a complaint on goods and services purchased in Luxembourg to the Consumer Ombudsman. Finally, the Ombudsman receives and handles complaints of physical and legal persons against the public administration and mediates between them.

11.2 What are the laws or rules governing the different methods of alternative dispute resolution?

Arbitration and mediation are governed by Articles 1224 to 1251, and Articles 1251-1 to 1251-24 of the NCCP, respectively. In September 2020, the Luxembourg Government published a new bill aiming to reform the procedural framework applicable to arbitration and to adapt the latter to modern and international standards. The Ombudsman function was created by the Law dated 22 August 2003 establishing a mediator. The rules applying to the Consumer Ombudsman are set out in Articles 421-1 to Article 423-2 of the Consumer Code, as introduced by the Law dated 17 February 2016.

11.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

A resolution by arbitration may concern all disputes relating to freely disposable rights; matters involving the status and the legal capacity of persons, divorce, separation, *etc.* are thus excluded. Furthermore, parties cannot resort to arbitration *(i)* in areas where the mandatory competence of a national jurisdiction is foreseen, and *(ii)* where the arbitral award may have an "*erga omnes*" effect and consequently affect third parties. Conventional and judicial mediation on civil and commercial matters are authorised where they do not concern *(i)* rights and obligations which are not at the parties' disposal, *(ii)* public policy provisions (*ordre public*), or (*iii*) the State's liability for acts taken or omissions made in the exercise of its public authority. The Ombudsman exclusively intervenes in relation to conflicts between individuals and public authorities. Complaints with regard to financial services, travel agency services, postal and telecommunication services and water and energy supply fall outside the competence of the Consumer Ombudsman and are normally attributed to the respective national regulatory authority of the relevant sector.

11.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

If a mediation clause was validly agreed by the parties prior to the occurrence of the conflict, the court or the arbitrator must suspend the proceedings at the request of one of the parties and until the mediation is terminated. With the agreement of all parties, the court may also suspend ongoing proceedings and appoint a mediator. In case of a valid arbitration clause, the court before which an action is brought must decline jurisdiction upon request of one of the parties. Notwithstanding an arbitration clause, the President of the District Court, or the judge replacing him, normally remains competent to adopt interim measures.

11.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

In order for a national or foreign arbitral award to become enforceable in Luxembourg, the President of the District Court must issue an enforceability order or grant an *exequatur*, as the case may be. An action for annulment lodged before the competent court against the national arbitral award is also envisaged by Article 1244 of the NCCP. Grounds for annulment may include the violation of public policy or defence rights, the absence of a valid arbitration agreement, or the violation of the adversarial character of the arbitral award. As to the enforceability of mediation agreements, a homologation must be granted by the competent national court according to the procedure set forth by Articles 1251-21 to 1251-24 of the NCCP. The recommendations issued by the Ombudsman and the solutions proposed by the Consumer Ombudsman are not binding instruments.

11.6 What are the major alternative dispute resolution institutions in your jurisdiction?

Luxembourg's major ADR institutions include the Arbitration Centre of the Chamber of Commerce of the Grand-Duchy of Luxembourg, the Ombudsman, the Consumer Ombudsman, and the Centre of Civil and Commercial Mediation.

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