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Enforcement of Judgments 2022

Luxembourg: Law & Practice
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LUXEMBOURG

Law and Practice

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1. IDENTIFYING ASSETS IN THE JURISDICTION

1.1 Options to Identify Another Party's Asset Position

In principle, Luxembourg law does not provide for any means to identify another party's asset position. Freezing orders and asset disclosure orders, in particular, are not publicly available information. However, certain remedies exist in order for a creditor to obtain useful information.

Disclosure of account information

Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters provides for a mechanism allowing a creditor who seeks to obtain an account preservation order to request that the debtor's account information shall be disclosed by the court. Such disclosure may however only be requested where a creditor has already obtained an enforceable judgment in a member state.

European account preservation orders shall prevent putting subsequent enforcement of the creditor's claim in jeopardy, for instance through the transfer or withdrawal of funds up to the amount specified in the preservation order.

Public registers

All Luxembourg companies are required by law to publish their balance sheets annually on the Luxembourg Business Register. The latter is publicly available. It is thus possible to obtain insight into the financial health of Luxembourg-based companies.

Furthermore, the Luxembourg Register of Beneficial Owners discloses, with certain exceptions, the identity of the ultimate beneficial owner of each company.

Obtaining information for future litigation

The Luxembourg New Code of Civil Procedure also provides for certain means enabling a party to future court proceedings to request the disclosure of certain information via summary or ex parte proceedings. In fact, the law provides that if there is a legitimate reason to establish, before any proceedings on the merits, proof of facts on which the solution of a future dispute may depend, legally admissible measures may be ordered at the request of any interested party, by means of an ex parte request or summons initiating summary proceedings. This procedure is commonly referred to as *référé probatoire*, which are summary proceedings for the presentation or establishment of the evidence of factual elements.

This provision does not define the type of information that may be disclosed, and therefore, it cannot be excluded that the asset position of another party may be requested by means of a *référé probatoire* if such information is relevant for a future dispute.

This is however not a "pre-trial discovery", as the information and/or documents for which disclosure is requested must be clearly identified by the applicant. The *référé probatoire* also does not enable a claimant to launch a "fishing expedition" into the defendant's documentation.

2. DOMESTIC JUDGMENTS

2.1 Types of Domestic Judgments

Judgments rendered by the Luxembourg courts vary in accordance with the procedure that has been initiated and the amounts in dispute.

Judgments given in default of appearance (jugements par défaut)

Where a defendant does not appear, but the document initiating the proceedings (eg, summons)

has been served on the defendant in person, the judgment is deemed to be contradictory.

However, in the case of default of representation where the summons have not been served on the defendant in person (eg, the summons have been served at the defendant's residence), the judgment is rendered in default of appearance. Judgments given in default of appearance give rise to an additional means of redress, ie, an opposition. An opposition allows the defaulting party to challenge, within a limited period of time, before the same judge, all the points that have been judged by default. A new inter partes judgment will be handed down.

Interlocutory judgments (jugements avant dire droit)

These are non-final judgments, either because they contain both provisions that decide on the merits and order a measure intended to prepare future debates (eg, an expert opinion), or because they do not contain any provisions deciding on the merits.

Final judgments and judgments subject to appeal (jugements rendus en dernier ressort et jugements appelables)

In principle, any judgment may be appealed unless otherwise provided for by law.

By way of example, according to the New Code of Civil Procedure, in civil and commercial matters, disputes arising to the amount of EUR2,000 are not subject to appeal.

Injunctive and interim relief (ordonnances de référé)

In cases of urgency, manifestly unlawful disturbance, or risk of loss of evidence, interim relief orders may be rendered by a court sitting in summary matters. These are interim judgments that never decide on the substance of a case.

Notarial deeds

Notarial deeds, ie, authentic acts issued by a notary public, are of great importance as they very often recognise or establish a right (for example, a property right) which could be the subject of future proceedings.

Acknowledgements of debt (reconnaissance de dette)

Luxembourg law also attaches importance to acknowledgements of debt, which are unilateral acts by which one person acknowledges being indebted to another person for a certain amount of money.

2.2 Enforcement of Domestic Judgments

In a non-insolvency context, various collection proceedings of unsecured debts may enable a creditor to recover his claim. Among the most commonly used procedures are the following.

Third party attachments (saisie-arrêt)

This procedure enables a creditor to freeze any sums or assets in the hands of a third party that the latter owes to the debtor. A creditor may initiate an attachment without leave of the court if he holds a valid title against the debtor (eg, a foreign money judgment). Attachments may in principle only be initiated if the claim is certain, liquid, and payable.

Upon service of the attachment by a bailiff, the third party must no longer remit any funds or assets to the defendant. In order to initiate the second phase (the enforcement phase) of the attachment, the creditor must obtain an enforceable money judgment against the debtor. This can be achieved by the granting of an exequatur to an arbitral award yet to be rendered; in which case, as a matter of practice, the *saisie-arrêt* proceedings would be suspended pending the outcome of the exequatur proceedings.

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The validation judgment orders the third party to pay all assets to the claimant. As soon as the validation of the attachment has the force of *res judicata*, the third party hence needs to transfer all monies attached to the creditor. The judgment may also be declared provisionally enforceable in certain circumstances.

Conditional order for payment (ordonnance conditionnelle de paiement)

The conditional order for payment is a cost-saving and simplified procedure permitting a Luxembourg resident to bring an action for recovery of his claim not exceeding EUR10,000.

Order for payment issued upon an ex parte application (provision sur requête)

This procedure permits a creditor to recover a claim exceeding EUR10,000 that cannot be seriously disputed. The order for payment is issued on an *ex parte* basis and the debtor must be a Luxembourg resident.

Forced sale of tangible assets (saisie-exécution)

This procedure is carried out by a bailiff and enables a creditor to be paid out of the sale price of his debtor's attached assets. Only tangible movable properties may be subject to a *saisie-exécution*.

Seizure of immovable property/foreclosure (saisie-immobilière)

Foreclosure leads to the public auctioning of the defendant's real estate.

Periodic penalty payments (astreinte)

To ensure the enforcement of a decision by the losing party, a creditor may request in court that the decision be accompanied by periodic penalty payments. Periodic penalty payments cannot be ordered when a judgment is purely for payment of money. They are, however, particularly

effective in cases of affirmative obligations and negative obligations.

Other remedies available to a claimant may be the provisional appointment of a receiver for disputed assets, a European Order for Payment or the European Small Claims Procedure.

2.3 Costs and Time Taken to Enforce Domestic Judgments

Costs

Enforcement of a domestic judgment generates both lawyer's fees and procedural costs, but the amount of the fees incurred depends on the procedure at hand. Whereas each party must bear its own lawyers' fees, it is possible to seek a procedural indemnity in court. The latter is granted if the court finds that it would be inequitable for the winning party to bear all the costs.

However, in principle, a procedural indemnity never amounts to all the lawyer's fees and the legal costs that have been generated by the court proceedings.

Upon rendering the judgment, the court generally decides that the losing party must bear all the legal costs. In certain circumstances, the court may also decide that the parties must share the costs. Procedural costs notably include:

- bailiff costs, which include service of judgments necessary to render the latter enforceable;
- costs generated by measures of inquiry ordered by a court, such as an expert report if the judge requires clarification on one or more technical issues;
- barristers' fees (*émoluments*) which amount to approximately 0.1% of the amount in dispute.

Some collection proceedings generate fewer costs than others. In principle, third-party attach-

ments may be very efficient in practice, but can also incur considerable costs as they very often incur parallel court proceedings.

Conditional orders for payment, however, generate lower costs, as the legislature has implemented a cost-saving procedure for claims considered to be small.

Time

The time required to enforce a domestic judgment depends on the eagerness of the debtor to resist. If the latter pays its due or performs its obligations as ordered by the judgment, no collection proceedings need to be initiated by the creditor after service of the judgment.

However, where this is not the case, the various collection proceedings mentioned above may take several weeks or months.

2.4 Post-judgment Procedures for Determining Defendants' Assets

The third-party attachments as discussed in **2.2 Enforcement of Domestic Judgments** initiate a post-judgment procedure by which the attached third party (eg, a bank) makes a notification to the claimant about the substance of the assets attached (eg, the amounts held on a bank account, or the number of shares registered in the name of the defendant).

This notification, issued after the validation judgment, is called the *déclaration affirmative* and provides the claimant with a precise indication of the debtor's assets held with the attached third party. It may give rise to contention between the claimant and the third party.

2.5 Challenging Enforcement of Domestic Judgments

Absence of service

A judgment may only be enforced if it has been served on the losing party by a bailiff. Enforce-

ment may thus be challenged by a defendant if no such service took place.

Recourse against penalty payments

If a defendant is permanently or temporarily unable, in whole or in part, to comply with the sentence on the merits, the judge who ordered penalty payments may order its cancellation upon the defendant's *ex parte* request. The idea is that it would be unjust, if the defendant can no longer comply with the main sentence, to continue to apply periodic penalty payments.

Objection to formal notice to pay (opposition à commandement)

If a claimant holds an enforceable title (eg, an enforceable judgment), he may serve the defendant with a formal notice to pay as a means to enforce the judgment. Formal notices to pay also constitute necessary preambles for the performance of the forced sale of movable assets (*saisie-exécution*).

The defendant may challenge the notice if:

- it contains a formal irregularity; or
- the creditor's claim is already extinguished (eg, the debtor has paid his debt – a set off).

Absence of an effective title to perform a third-party attachment

The Luxembourg courts have recently had the opportunity to express their views on the effects over time (*actualité*) of an enforceable title. In a 2018 decision, a Luxembourg court decided that it may be possible that an attachment was initially carried out on the basis of a title which is no longer effective because of the occurrence of new facts such as the extinction of the obligation established in the title (by payment, netting or novation), or even the effects of a new law.

Thus, a judgment may lose its force in the course of successive events which bring to light ele-

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ments which establish that the judgment has been satisfied.

2.6 Unenforceable Domestic Judgments

Declaratory actions

A judgment can only be enforced if it carries an actual order on the defendant to pay or for specific performance. Hence, declaratory actions will not give rise to a judgment that may be enforced against the losing party, as these actions merely intend to have something found or confirmed by the court, such as a certain interpretation of a contract or a purely factual circumstance. For instance, a party could seek the court's confirmation that no wrongdoing has been committed in order to prevent a potential tort claim.

Interlocutory judgments

Interlocutory judgments are non-final decisions and therefore may not be enforced.

Exercise of appeal or opposition

A judgment (with certain exceptions such as immediate enforcement notwithstanding appeal, called *exécution sur minute*) may not be enforced if an appeal or an opposition has been filed by the defendant. These means of redress have a suspensive effect.

Hence, a creditor is no longer authorised to initiate or pursue enforcement measures. Nonetheless, a creditor may take conservatory measures to ensure a future enforcement.

The creditor may do so by means of a preventative attachment (*saisie-conservatoire*), which enables him to freeze assets of the debtor. Hence, when a court of appeal confirms the first-instance judgment by confirming the creditor's claim, the creditor may enforce on the frozen assets.

2.7 Register of Domestic Judgments

There is no central register containing civil and commercial judgments.

However, with certain exceptions, Luxembourg case law is available on the website *justice.public.lu*. Judgments are generally anonymised and only the names of the lawyers appear publicly. With the exception of the parties' names, the judgments are not otherwise altered or redacted.

A debtor may not request a judgment to be removed from this platform, even if he has paid his due.

3. FOREIGN JUDGMENTS

3.1 Legal Issues Concerning Enforcement of Foreign Judgments Possible Legal Issues

The enforcement of a foreign judgment in Luxembourg depends on the country of origin of the judgment.

Once a foreign court decision has been rendered enforceable in Luxembourg, the creditor may initiate several collection procedures to recover his claim with Luxembourg-based assets of the debtor. Third-party attachments are frequently initiated in that context and cause the debtor's assets to be frozen. The debtor may therefore initiate court proceedings to get the attachment order lifted by the court.

Applicable Provisions

EU judgments

The enforcement of a judgment rendered by a member state of the European Union is regulated by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("recast Regulation").

As the United Kingdom is no longer a member of the European Union, all judgments rendered by English courts referring to court proceedings initiated after 31 December 2021 are no longer subject to the recast Regulation. UK judgments are therefore enforced either according to national procedural law, or according to international conventions to which both the UK and Luxembourg are contracting states.

The Lugano Convention on jurisdiction and enforcement of judgments in civil and commercial matters of 16 September 1988 contains provisions which are very similar to the recast Regulation but applies to European States that are not member states of the European Union, such as Switzerland and Norway.

Non-EU judgments

Luxembourg is a contracting state to the Hague Convention of 30 June 2005 on Choice of Court Agreements (the “Choice of Court Convention”). The Choice of Court Convention provides for certain applicable rules regarding the enforcement of a foreign judgment, if the agreement matter of the dispute contains a jurisdiction clause giving exclusive jurisdiction to one of the contracting parties.

Other contracting states include China and the United States of America. Recognition and enforcement of judgments under this convention shall take place without a review of the merits of the judgment rendered by the court of origin, provided that the judgment is also enforceable in the state of origin.

As the UK is also a contracting party to the Choice of Court Convention, the latter may be useful for the enforcement of UK judgments in Luxembourg.

Domestic law (the New Code of Civil Procedure)

If no bilateral agreement between Luxembourg and a third country is in place, the enforcement of foreign judgments in Luxembourg will be subject to national law and, more specifically, the New Code of Civil Procedure.

3.2 Variations in Approach to Enforcement of Foreign Judgments

When deciding on the enforcement of a foreign judgment, Luxembourg courts will apply the relevant international conventions or treaties. However, their approach does not fundamentally differ based on the type of judgment for which enforcement is sought.

Depending on the applicable instrument though (recast Regulation, international convention, or domestic law), the judges intervene at different moments in time. If the recast Regulation is applicable, the court never intervenes to grant enforcement, but may be called to render a decision to refuse enforcement once the EU judgment has already been served on the defendant and the latter seeks to challenge the enforcement.

3.3 Categories of Foreign Judgments Not Enforced

Violations of Luxembourg Public Policy

Foreign judgments

Whether the enforcement of a foreign judgment is sought on the basis of an international convention or domestic law, the courts will not grant enforcement if:

- the foreign procedure or decision has violated the rights of defence and due process norms;
- the foreign decision contravenes Luxembourg public policy;
- the foreign decision has been rendered subsequent to an evasion of Luxembourg law (*fraude à la loi*).

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This is a non-exhaustive list, and the court may refuse the exequatur on other grounds.

EU judgments

A judgment rendered in a member state which is enforceable in that member state shall be enforceable in any other member states without any declaration of enforceability being required.

However, if a defendant applies for the refusal of enforcement once he has been served with the certificate provided for by the recast Regulation and the judgment itself, enforcement of the judgment may be challenged by the defendant. If the defendant succeeds in demonstrating the grounds of refusal provided for by the recast Regulation (eg, violation of public policy), enforcement may be refused by the Luxembourg court.

Certain Types of Foreign Judgments Will Not be Enforced

A Luxembourg court will not render a judgment enforceable if the foreign judgment is not enforceable in its country of origin.

As regards exequatur judgments issued by English courts, there may be an order for payment contained in such judgment. Such judgment cannot be enforced in Luxembourg on the basis of the principle that an exequatur judgment cannot be the object of a further exequatur (*exequatur sur exequatur ne vaut*).

Under the recast Regulation, a judgment rendered in a member state ordering a provisional, including a protective, measure will be enforced in another member state if certain criteria are met. In particular, where a measure has been ordered by the court of another member state without the defendant being summoned to appear in court, proof of service of the judgment must be provided in order for the judgment to be enforceable in Luxembourg.

Stay of Proceedings

If the enforcement of a foreign judgment is sought on the basis of an international convention, the New Code of Civil Procedure states that the Luxembourg Court of Appeal may order a stay of proceedings if the foreign judgment has been subject to an appeal in the state of origin. The foreign judgment will thus not be enforced as long as the stay of proceedings has not been lifted by the Luxembourg court.

3.4 Process of Enforcing Foreign Judgments

As stated in **2. Domestic Judgments** and **3. Foreign Judgments**, the procedure applied by the Luxembourg courts to enforce a judgment depends on the underlying applicable legal provisions: the recast Regulation, international conventions, or domestic law.

The recast Regulation

Where the recast Regulation applies, judgments are not subject to an enforcement procedure as such. The enforcement is meant to be automatic and is not subject to a declaration of enforceability. A judgment which is enforceable in one member state shall be enforceable in any other member state according to the same conditions as domestic judgments.

In order to render the EU judgment enforceable in another member state, the claimant has to serve certain documents on the Luxembourg-based defendant:

- a copy of the judgment in question;
- the certificate provided for by the recast Regulation and certifying that the judgment is enforceable.

Hence, the claimant does not have to seek enforcement by means of judicial proceedings. The judge may however be called to intervene if the defendant challenges the enforcement.

Enforcement of a foreign (non-EU) judgment in Luxembourg

Where Luxembourg has signed an international convention with the country of origin of the judgment, the enforcement requirements are determined by that convention.

However, it is not clear whether enforcement of a foreign judgment, where an international convention not explicitly referred to by the New Code of Civil Procedure is applicable, should be sought by means of an ex parte request or summons served by a bailiff.

The procedure provided for by the Choice of Court Convention provides for certain basic rules. For instance, a judgment shall be recognised and enforced only if it is enforceable in the country of origin. No review of the merits of the judgment is allowed, and the court shall be bound by the findings of fact of the court of origin.

Enforcement proceedings according to the New Code of Civil Procedure

Where neither the recast Regulation nor any other international convention applies, a judgment creditor needs to seek enforcement according to the provisions of domestic law. The granting of an exequatur (judicial declaration of enforcement) by the District Court is subject to the following requirements:

- the foreign court order must be enforceable in the country of origin;
- the court of origin must have had jurisdiction both according to its own domestic laws and to the Luxembourg conflict of jurisdiction rules;
- there must be regularity of the procedural rules in light of the laws of the country of origin;

- the foreign procedure and decision must not have violated the rights of defence and due process norms;
- the foreign court must have applied the law which is designated by the Luxembourg conflict of laws rules, or, at least, the order must not contravene the principles underlying these rules;
- the considerations of the foreign order as well as the judgment as such must not contravene Luxembourg international public order;
- the foreign order must not have been rendered subsequent to an evasion of Luxembourg law (*fraude à la loi*).

The judgment creditor needs to initiate legal proceedings by way of summons. It is also necessary to submit an authenticated, translated copy of the foreign judgment in combination with a declaration from which it appears that the foreign judgment is enforceable in the country of origin.

3.5 Costs and Time Taken to Enforce Foreign Judgments**Costs**

Lawyer's costs and legal costs must be distinguished. In particular, the amount of the lawyer's costs depends inter alia on the complexity of the case, the time spent and the outcome of the case.

Where the recast Regulation is applicable, and provided that the enforcement is not challenged by the defendant, the costs incurred should remain relatively low as no judicial proceedings take place.

However, in order to seek the enforcement of a foreign judgment according to domestic law or an international convention, judicial proceedings are necessary and generate higher costs.

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Time

The recast Regulation

The procedure provided for by the recast Regulation is intended to be rapid. In practice, the certificate provided for by the recast Regulation is completed by the country of origin.

As the enforcement of the EU judgment only requires service of the judgment and the standard certificate, this procedure is immediate upon service.

Exequatur proceedings: domestic law and international conventions

In the context of exequatur proceedings, the proceedings before the Luxembourg courts are either initiated via ex parte request (in general, where an international convention is applicable) or via summons (where domestic law applies).

- *Ex parte request*: this procedure does not include, in a first stage, an adversarial debate. A decision is generally rendered quickly, more or less after one week. Upon service of this decision on the defendant, the latter may appeal the decision within one month from service if the defendant is resident in Luxembourg and two months if not. An appeal may take between one and two years.
- *Summons*: if the claimant has to serve summons on the defendant in order to request enforcement of the foreign decision, an adversarial debate takes place and a judgment is rendered less quickly. The first-instance proceedings may take up to two years, and appeal proceedings may take another one to two years.

3.6 Challenging Enforcement of Foreign Judgments

Foreign judgments

The law expressly provides that it is always possible to appeal a judgment which has granted enforcement to a foreign judgment. The deci-

sion of the court of appeal may also be appealed against in cassation.

In particular, the defendant may demonstrate that the necessary requirements for enforcement are not met.

EU judgments

If the recast Regulation is applicable, enforcement of the EU judgment will not have to be sought in court. However, the defendant on whom the certificate provided for by the recast Regulation has been served may challenge the enforcement before the President of the Luxembourg District Court sitting in summary proceedings.

If the latter rules that the EU judgment must be enforced in Luxembourg, the losing party may file an appeal against this decision. The decision to be rendered by the court of appeal may also be appealed (for exclusively legal reasons) in cassation, ie, the defendant has the possibility to challenge enforcement in three instances.

4. ARBITRAL AWARDS

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

Under Luxembourg law, enforcement of arbitral awards depends on whether the award at hand is domestic or foreign.

4.2 Variations in Approach to Enforcement of Arbitral Awards

Although the New Code of Civil Procedure foresees a set of provisions defining the enforcement procedure of arbitral awards, these internal provisions do not apply whenever a convention relating to the enforcement of arbitral awards, and which has been ratified by Luxembourg, is applicable.

Foreign arbitral awards

As regards foreign arbitral awards, enforcement is predominately governed by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards dated 10 June 1958 (the “New York Convention”), as this is applicable whenever an award of another contracting state is concerned.

In addition to the New York Convention, Luxembourg has ratified a range of other conventions, such as the European Convention on International Commercial Arbitration of 21 April 1961; the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) of 18 March 1965; and the Convention on Conciliation and Arbitration within the OSCE of 15 December 1992, all of which are applicable in expressly specified circumstances.

If none of the ratified conventions is applicable, the enforcement of a foreign arbitral award in Luxembourg is governed by the national rules set out in the New Code of Civil Procedure.

Domestic arbitral awards

Enforcement of domestic arbitral awards is exclusively governed by the provisions of the New Code of Civil Procedure. The law sets out the steps to be followed in order to make an arbitral award enforceable.

Depending on the origin of the arbitral award, the rules governing the enforcement change accordingly.

4.3 Categories of Arbitral Awards Not Enforced

Different categories of foreign arbitral awards have been denied exequatur in Luxembourg over the course of time.

Luxembourg courts also used to grant enforcement to arbitral awards that have already been nullified in their country of origin.

Furthermore, as for foreign judgments, in order for an arbitral award to be granted enforcement by a Luxembourg court, the award must be enforceable in its country of origin. If annulment proceedings have been initiated against the arbitral award in its country of origin, it is very likely that the Luxembourg courts will order a stay of proceedings regarding the enforcement proceedings in Luxembourg (Luxembourg Court of Appeal, 25 June 2015).

Following a judgment rendered by the European Court of Justice (“Achmea”, 6 March 2018, case C-284/16), it has been found that the interpretation of European Union law exceeds the power and jurisdiction of an arbitral tribunal, and international investment law may in particular not jeopardise the autonomy of European Union law.

It is therefore very unlikely that a Luxembourg court would grant enforcement to an arbitral award that violates the findings of this decision.

4.4 Process of Enforcing Arbitral Awards

Luxembourg law foresees different procedures when it comes to enforcing either a foreign or a domestic arbitral award under its jurisdiction. However, in any case, the enforcement of an award that is not voluntarily executed by the parties must be initiated by an application to the President of the District Court.

Enforcement of foreign arbitral awards

For the enforcement of an arbitral award rendered abroad, the exequatur proceedings set out in Article 1250 of the New Code of Civil Procedure must be followed.

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Pursuant to this article, the exequatur of a foreign arbitral award is granted by the President of the District Court seized by way of an ex parte petition.

The petition is brought before the President of the District Court where the party against whom enforcement is sought has his domicile or his residence. If the party has neither domicile nor residence in Luxembourg, the petition is filed before the President of the District Court of the place where the award must be executed.

The petitioner must elect a domicile in the district of the court seized and enclose with his request the original version of the arbitral award and of the arbitration agreement, or an authentic copy thereof.

In addition to these rules, the law expressly highlights that when an award has been rendered according to an international convention on the recognition and enforcement of foreign arbitral awards, the rules contained therein apply to all other aspects of the enforcement proceedings.

In principle, the President of the District Court renders a decision within a few days upon filing of the request. The decision will be notified by the court clerk to the Luxembourg lawyer of the applicant.

Enforcement of domestic arbitral awards

Unlike the procedure foreseen for foreign arbitral awards, the enforcement procedure of domestic arbitral awards is exclusively governed by the New Code of Civil Procedure.

Pursuant to Article 1241, a domestic arbitral award is rendered enforceable by an order of the President of the District Court in whose jurisdiction it was rendered. Enforcement is sought by either one of the arbitrators or one of the parties

to the dispute. The original version of the arbitral award must be filed with the court.

4.5 Costs and Time Taken to Enforce Arbitral Awards

Costs

Seeking the enforcement of an arbitral award creates lawyers' costs and legal costs. Legal costs are generally borne by the losing party, but costs may also be shared. They include:

- bailiff's costs for service;
- court fees in appeal proceedings which are calculated according to a tariff set by law.

Time

The duration of enforcement proceedings depends on the specific circumstances at hand and whether the enforcement regards a foreign or domestic award.

While an application to the President of the District Court for an enforcement order takes about one week, the length of enforcement proceedings can be drastically extended if the enforcement order is challenged.

Domestic awards

Domestic arbitral awards may only be challenged through an application for annulment. Opposition must be filed against the enforcement order of the President of the District Court. This may take up to one year to lead to a judgment. An appeal is always possible.

Foreign awards

As foreign arbitral awards cannot be annulled in Luxembourg, the party seeking to challenge the enforcement order must file an appeal against the enforcement order before the court of appeal. This may take between one and two years. It must however be noted that the appeal procedure in Luxembourg might be impacted by eventual annulment proceedings abroad.

4.6 Challenging Enforcement of Arbitral Awards

An award may only be enforced when the President of the District Court has granted an exequatur order. However, the procedure that must be followed in order to challenge the exequatur order fully depends on the origin of the arbitral award.

Whereas domestic arbitral awards may only be challenged via a request for nullification of the award itself, Luxembourg courts do not have the power to nullify foreign awards. Enforcement orders rendered by the Luxembourg courts may however be challenged.

Nullification of domestic arbitral awards

The District Court may nullify an arbitral award in a limited number of cases provided for by the New Code of Civil Procedure, where:

- the award violates public policy;
- the dispute was not allowed to be settled by arbitration;
- there was no valid arbitration agreement;
- the arbitral tribunal exceeded its jurisdiction or its powers;
- the arbitral tribunal has failed to rule on one or more points in the dispute and if the omitted points cannot be separated from the points that were ruled on;
- the award was made by an arbitral tribunal that was improperly constituted;
- there has been a violation of the rights of the defence;
- the award is not reasoned unless the parties have expressly agreed that the arbitrators may not give motivation;
- the award contains conflicting provisions;
- the award was obtained by fraud;
- the award is based on evidence declared false by an irrevocable court decision or on evidence recognised as false;

- since the date the award was rendered, a document or other evidence has been discovered which would have had a crucial influence on the award and which had been deliberately withheld by the opposing party.

The Luxembourg courts would not recognise an award if it is held by the criminal courts that the award or its exequatur have been influenced by the use of fraudulent means (Com, CAL-2018-00013, 2 December 2021).

However, a party may not seek a nullification of the arbitral award if it had knowledge, throughout the arbitration proceedings and without raising the matter, of the following points:

- the absence of a valid arbitration clause;
- that the arbitral tribunal has exceeded its powers;
- that the arbitral tribunal has not been properly constituted.

Foreign arbitral awards

The exequatur order may only be appealed before the court of appeal, as a foreign arbitral award cannot be annulled in Luxembourg.

The New Code of Civil Procedure provides three grounds which allow a judge to refuse the enforcement of a foreign award. These grounds are, however, subject to the provisions of international conventions that might be applicable.

According to the New Code of Civil Procedure, a judge may refuse the enforcement:

- if the award can still be challenged before arbitrators and if the arbitrators have not ordered its provisional enforcement notwithstanding an appeal;
- if the award or its enforcement is contrary to public policy or if the dispute could not be settled by arbitration;

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- if it is established that there are grounds for annulment in accordance with Article 1244, paragraphs 3 to 12 of the New Code of Civil Procedure.

If, however, the New York Convention is applicable, which is often the case, the Luxembourg courts may only refuse the enforcement of an arbitral award on seven limitative grounds which are expressly laid down by Article V of said Convention.

It should finally be noted that no distinction is made between partial and final awards when it comes to challenging their enforcement.

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