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Parliament votes to reform Luxembourg arbitration law: what you need to know about the new law

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Arbitration law has been codified in Luxembourg since the Napoleonic era, but this is the first significant change to the law in many years. This eagerly anticipated reform ensures that Luxembourg's arbitration law is responsive to the realities of international commerce and the growing demand for efficiency in alternative dispute resolution. Luxembourg's arbitration law provides parties with options to resolve their dispute in a discrete, efficient and timely fashion while also ensuring recourse to the support of state courts when necessary.

The new law incorporates elements of French and Belgian law as well as provisions of the UNCITRAL model law on international commercial arbitration, thus bringing the procedural framework applicable to arbitration in line with international standards. In a departure from French law, the Luxembourg law does not distinguish between domestic and international arbitration but rather creates one coherent regime. This choice makes the law well adapted to the realities of arbitration in Luxembourg, which is typically international, and follows the UNCITRAL model that has been widely adopted by other countries in this respect.

Matters excluded from arbitration

The law prioritises giving parties access to arbitration in civil and commercial matters, while expressly excluding certain types of disputes from arbitration. No arbitration agreement may be made concerning the status and capacity of persons. Furthermore, disputes between professionals and consumers, employment

disputes and disputes relating to residential leases may not be subject to arbitration even after the end of contractual relations between the parties. Disputes arising from insolvency proceedings may also not be subject to an agreement to arbitrate, although the opening of insolvency proceedings does not prevent the application of existing arbitration agreements or the conclusion of such agreements during the course of the insolvency proceedings[1].

The arbitration agreement – validity and separability

The law broadly upholds the right of parties to have recourse to arbitration, even after proceedings before state courts have already been initiated.

Parties may enter into an arbitration agreement either by concluding an arbitration clause before any dispute arises in relation to their contract(s), or via an agreement to submit an existing dispute to arbitration (known as a compromis). The law formally recognises the separability and autonomy of the arbitration clause, meaning that its validity is not affected by the invalidity of the contract and vice versa. The law formally enshrines the principle of "competence-competence", meaning the arbitral tribunal is competent to rule on its own jurisdiction over a dispute.

If a dispute that falls within the scope of an arbitration agreement is brought before a state court, the court must decline jurisdiction unless it finds the subject matter of the dispute to be non-arbitrable, or the arbitration agreement to be manifestly null and void, or manifestly inapplicable. The state court may not, however, assert its lack of jurisdiction over a dispute on its own initiative[2].

Intervention by state courts – interim measures and the supporting judge ("juge d'appui")

Several provisions of the new law give parties the option of requesting the intervention of state courts to support resolution of their dispute throughout the arbitration process. As provided by Article 1227-4, the existence of an arbitration agreement does not preclude a party from applying to a state court for interim measures before the arbitral tribunal is constituted or when the tribunal cannot grant the requested measure, for example in the case of an attachment procedure or a constraint placed on third parties. Furthermore, an application for an interim, provisional or conservatory measure does not imply a waiver of the arbitration agreement.

To facilitate the progression of an arbitration, the law introduces the role of the supporting judge, or "*juge d'appui*". Pursuant to Article 1229, the supporting judge may be involved when:

- the designated seat of the arbitration is Luxembourg;
- in the absence of such designation, the parties have agreed to submit the arbitration to Luxembourg procedural law;
- the parties have agreed to the jurisdiction of Luxembourg courts over disputes relating to the arbitral proceedings; or
- there is a significant link between the dispute and Luxembourg.

The supporting judge is the president of the District Court designated in the arbitration agreement, or the President of the District Court of Luxembourg in the absence of a designation. The supporting judge plays an important role in resolving difficulties and disputes that may arise during the arbitration. According to Article 1230, their intervention may be requested by a party, the arbitral tribunal or a single member of the arbitral tribunal.

The law gives the supporting judge authority to intervene in disputes involving the tribunal, including:

- constitution of the arbitral tribunal, failing agreement by the parties or a decision by the person in charge of organisation of the arbitration (Article 1228-3);

- appointment of the arbitrator or arbitrators, failing agreement by the parties or a decision by the person in charge of organisation of the arbitration (Article 1228-4);

- settlement of any other disagreements relating to the appointment of arbitrators, failing agreement by the parties or a decision by the person in charge of organisation of the arbitration (Article 1228-4);

- settlement of disagreements concerning whether an arbitrator should be removed or recuse themselves due to legitimate doubts as to their impartiality or independence, or lack of required qualifications, if the person in charge of organising the arbitration does not settle the disagreement (Articles 1228-7 and 1228-8); and

- settlement of disagreements as to the reality of the motive for an arbitrator's decision to abstain or resign, if the person in charge of organising the arbitration does not settle the disagreement within one month following their impediment, abstention, or resignation (Article 1228-99).

The supporting judge may also intervene to:

- extend the duration of the arbitral tribunal's mission (limited to six months from the date the last of the arbitrators accepts their mandate or to a duration specified in the arbitration agreement), failing agreement by the parties or a decision by the person in charge of organising the arbitration (if authorised) (Article 1231-6);

- order the production of documents by third parties upon the request of one of the parties based on the invitation of the arbitral tribunal (Article 1231-8); and

- reconvene the arbitral tribunal after the award has been rendered, failing agreement by the parties to do so, for interpretation, correction or supplementation of the award (Article 1232-4).

Annulment and enforcement of arbitral awards

For the purposes of enforcement of an arbitral award, Luxembourg law does not distinguish between "international" and "domestic" arbitration awards but rather between arbitral awards rendered in Luxembourg and those rendered abroad. If Luxembourg is the seat of the arbitration, the award is deemed to have been rendered in Luxembourg (Article 1228)[3].

Awards rendered in Luxembourg[4] may be enforced using a simplified procedure:

- The party requesting enforcement will file its request for an order of exequatur before the District Court of the jurisdiction in which the award was rendered. This exequatur procedure is not adversarial and an order granting exequatur is not subject to appeal.

- Under Article 1234, the court may refuse to grant exequatur **only if the award is manifestly contrary to one of the grounds of annulment provided in Article 1238.**

- The order granting exequatur is not subject to any appeal separate from the appeal against the award. An order refusing exequatur must state the reasons for refusal and may be appealed before the Luxembourg Court of Appeal within one month of service of the order on the applicant. In the context of this proceeding, a party opposed to enforcement may bring an action for annulment of the award before the Court of Appeal.

- Under Article 1238, actions for annulment of an award must be made within one month of notification of the award and only on one of the limited grounds enumerated in the law (e.g. **the tribunal wrongly asserted its jurisdiction; the award is contrary to public order; or the tribunal failed to state reasons**).

- Without exception, the award may not be challenged, appealed, or subject to cassation proceedings before a state court. It may only be the subject of an action for annulment before the Court of Appeal. Any provision to the contrary shall be void (Article 1236).

- Application for review in order to have the award revoked and decided again may only be made on limited grounds e.g. the award having been tainted by fraud or based on evidence declared false after the award was made.

- Third parties may oppose an award before the court that would have had jurisdiction in the absence of arbitration.

Before the reform, parties were required to request the setting aside of an award before the district court, a decision which could then be appealed to the Court of Appeal. Given that under the reformed law, requests for annulment go directly before the Court of Appeal, the reform streamlines and accelerates the enforcement process. Dismissal of the action for annulment makes the award or the provisions of the award not censured by the Court of Appeal enforceable (Article 1242).

Awards rendered outside Luxembourg[5] may similarly be enforced in Luxembourg only through an order of exequatur granted by the President of the District Court within the jurisdiction in which the person against whom enforcement is sought is domiciled or resides, or failing this, within the jurisdiction where the award is to be enforced.

The decision on exequatur may be appealed within one month of notification. Insofar as recognition and enforcement is not governed by a treaty (such as the 1958 New York Convention or the ICSID Convention), the Court of Appeal may only refuse enforcement on the grounds enshrined in Article 1246. The first six grounds are the same as the ones that also apply to awards rendered in Luxembourg (Article 1238). However, Article 1246 adds four additional grounds on the basis of which awards rendered abroad may be refused enforcement (fraud; discovery of decisive documents; recognition of documents as false; recognition of testimonies as false after the award).

As provided in Article 1245, the exequatur order cannot be granted if the award is manifestly affected by one of the grounds for annulment provided for in Article 1246.

Other notable provisions

The reform makes it clear that, unless the parties have agreed otherwise, the arbitral tribunal has the authority to order provisional or conservatory measures and may require parties to provide adequate security to back their requests for such measures (Article 1231-9). The arbitral tribunal may also consent to the intervention of a third party in the proceedings (Article 1231-12).

Conclusion

The reform makes Luxembourg an even more attractive choice as a seat of arbitration. Luxembourg now has a modernised arbitration framework to match its status as a sophisticated, multilingual and multicultural legal centre.

Our expertise

Contact our Arbitration experts for any queries regarding the provisions of the new arbitration law and how they could potentially impact your activities.

[1] Chapitre I, art. 1224 – 1226.
[2] Chapitre II, art. 1227 – 1227-4.
[3] Chapitre VII.
[4] Art. 1233 et seq.
[5] Art. 1245 et seq.

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