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MULTI-JURISDICTIONAL GUIDE 2013/14

DISPUTE RESOLUTION

VOLUME 1

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MAIN DISPUTE RESOLUTION METHODS

1. What are the main dispute resolution methods used in your jurisdiction to settle large commercial disputes?

The leading dispute resolution method is court litigation. In civil and commercial matters, the Luxembourg judiciary system is broadly adversarial. The parties, especially the claimant, have a control over the extent and the progress of the trial. However, courts also play an active role; they are responsible for making sure that the trial proceeds correctly (including within appropriate time-frames) and for trying the claims according to the applicable legal rule.

Any party must evidence the facts on which it bases its claim or its defence. The law does not define any standard of proof. In practice, courts tend to use the standard of proof beyond a reasonable doubt.

Arbitration and mediation methods are becoming more useful for commercial matters, particularly for cross-border disputes.

Both mediation and arbitration are often relied on in complex matters where the parties seek an alternative to judicial resolution, which is seen as longer and more expensive. Arbitration is generally faster (since a decision must be made within six months), cheaper, easier, more professional (the arbitrators are chosen in accordance with the matter) and can ensure improved confidentiality (the proceedings are not public, unlike judicial proceedings).

COURT LITIGATION

Limitation periods

2. What limitation periods apply to bringing a claim and what triggers a limitation period?

There are various limitation periods applicable to bringing a claim before a court.

The common limitation period is 30 years, which applies for all claims *in rem* as well as *in personam* (*Article 2262, Civil Code*).

Article 189 of the Commercial Code (*Code de Commerce*) applies a special time limit of ten years to obligations derived from trade, between professionals and between professionals and consumers, unless they are subject to a shorter time limit.

Limitation periods run from the date when the obligation fell due (in contracts), or when the damage occurred (in tort), and start from the end of the last day of the relevant period. However, these limitation periods can be suspended or interrupted (*Articles 2242 to 2259, Civil Code*).

Court structure

3. What is the structure of the court where large commercial disputes are usually brought? Are certain types of dispute allocated to particular divisions of this court?

Commercial disputes are usually brought before the District Courts (*Tribunal d'arrondissement*). Local Courts (*Justice de Paix*) can also deal with commercial matters, but only for smaller disputes estimated under EUR10,000 (*Article 3, Nouveau Code de Procédure Civile (NCPC)*).

Luxembourg has two District Courts, one for the Diekirch District and one for the Luxembourg District.

Article 547 and following of the NCPC provide the rules for the District Courts on commercial matters. There is no specific court for commercial matters. A special chamber of the District Courts, usually called the Commercial Court, deals with commercial matters and has specific rules of procedure. Civil procedure is essentially written and commercial procedure is oral and more informal.

In the Commercial Court, parties can choose to follow the civil procedure, even in commercial matters. The civil procedure is longer, but when the matter is complex it allows for a better defence.

The answers to the following questions relate to procedures that apply in the Local Courts and in the District Courts.

Rights of audience

4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers conduct cases in these courts?

Rights of audience/requirements

All lawyers, including trainee lawyers, regularly registered with the Luxembourg Bar Association have the right to conduct a case before the Commercial Court.

Country Q&A

Foreign lawyers

Foreign lawyers can conduct commercial cases before Commercial Courts if they prove their admission to a foreign bar association and are assisted by a local lawyer.

In addition, the parties can represent themselves.

FEES AND FUNDING

5. What legal fee structures can be used? Are fees fixed by law?

In Luxembourg, the main principle is that lawyers are free to determine their fees, which depend on the work required and the complexity of the case.

Therefore, the fees can be charged as hourly rates or be task-based. It is also possible to agree a flat fee in advance, which the lawyer must respect.

However, the European Lawyers' Deontology Code contains rules on fee structures. *Quota litis* agreements are prohibited. Therefore, all agreements based only on obtaining part of the proceeds gained, such as conditional or contingency fee agreements, are banned (*Article 3.3, Deontology Code*).

6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?

Funding

Litigation is usually privately funded and each party should cover its own legal expenses. However, each party can ask the court to charge the legal costs to the other party (*see Question 22*).

Individuals who do not have sufficient financial means can be granted judicial assistance (*assistance judiciaire*), which means that the main expenses (that is, lawyer, bailiff or expert fees) are paid by the state.

Insurance

It is possible to subscribe for insurance to cover litigation costs (*protection juridique*). This insurance usually covers lawyer fees, bailiff fees and legal expenses.

COURT PROCEEDINGS

Confidentiality

7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?

Court proceedings are usually public. The principle of publicity is a general principle of law. However, in certain matters, such as criminal matters or matters concerning children, the court can order the hearings to be closed, so that only the parties and their lawyers can be present.

If the principle of publicity applies, everyone can be present during pleadings. However, documents disclosed during the procedure are not accessible to the public, including judgments, decisions or court orders.

Usually, only the parties involved in a case or their lawyers can ask for a copy of the full judgment, decision or order. However, any person can require access to case law concerning a specific matter or a particular decision by contacting the relevant body at the court. In principle, case law communicated this way does not mention the parties' names.

Pre-action conduct

8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?

Luxembourg law does not provide any pre-action conduct rules. However, if the parties agree that any dispute arising from a contract will be resolved by, for example, a mediator or a conciliator, the court will decline competence over the matter.

Main stages

9. What are the main stages of typical court proceedings?

Starting proceedings

The first stage in civil proceedings is usually initiated by a document stating the claims of the claimant, which must be served on the defendant. This document is served by a bailiff or a clerk from the court, depending on whether the document is a writ of summons or a summons. In most commercial cases, service by a bailiff is required to initiate proceedings.

Notice to the defendant and defence

Articles 153 and 154 of the NCPC set out details that must be included in the document to be served on the defendant, such as the:

- Date on which the document is served.
- Name, address and profession of the claimant if a natural person.
- Company's name, address of incorporation and the corporate form if a corporate body.
- Name and address of the claimant's lawyer.
- Name, address and signature of the bailiff who served the document.
- Way the pleading is served.
- Name, address and profession of the defendant, if a natural person.
- Company's name, address of incorporation and corporate form if a corporate body.
- Facts and remedies sought and/or damages including interest.
- Court to which the case will be brought and normally the date of the first hearing.

Country Q&A

Subsequent stages

District Court and the Court of Appeal. The stages in civil law proceedings are as follows:

- Issue of a writ (*assignation*) is served on the defendant by a bailiff.
- Exchange of written statements between lawyers and disclosure of documents.
- Exchange of witness and/or expert evidence in some cases.
- Closing of the pleadings.
- Trial.
- Handing down of the judgment.

Under written civil procedure, the defendant must instruct a lawyer, who will make a statement (*constitution d'avocat*) within 15 days from the service of the writ of summons (*Article 196 NCPC*).

Local Courts and Employment Courts. Civil law proceedings are as follows:

- Issue of a summons to the defendant by a bailiff (*citation*) or by the clerk of the court (*requête*), depending on the type of case.
- Court hearing of the parties and/or of their representatives.
- Handing down of the judgment.

Generally, after service, the defendant has eight days before the first hearing to prepare its defence (*Article 549, NCPC*).

As a principle, judges try to give strict guidance in terms of time frame, by issuing written notices or by calling parties before the courts to check the progress of the case, in order to have an exchange of written statements, documents and expert evidence within a reasonable time limit.

It is difficult to calculate the average duration of civil proceedings as it varies depending on the number of parties involved, and whether proceedings are at the court of first instance or on appeal.

Large commercial cases. In large commercial matters the claimant can choose the simplified commercial procedure or the civil procedure (*Articles 547 and following, NCPC*). These procedures apply as follows:

- If the claimant starts a simplified commercial procedure, the defendant can choose to plead alone or instruct a lawyer, who will inform the court at the first hearing that he represents the defendant. The lawyer must also ask for a further hearing. The parties can then disclose their documents.
- If the claimant chooses the written civil procedure, the lawyer will make a statement (*constitution d'avocat*) within 15 days from the service of the writ of summons. Subsequently, the parties exchange written statements and disclose documents before the pleading hearing.

INTERIM REMEDIES

10. What actions can a party bring for a case to be dismissed before a full trial? On what grounds must such a claim be brought? What is the applicable procedure?

Before a full trial, a court can order settlement of a dispute to prevent a further deterioration of the situation and to preserve the rights of a party, such as ordering protection or the establishment of evidence.

There are also summary proceedings (*procédures de référé*) that allow a party to preserve his rights before a full trial (*see Question 12*).

These interim remedies can only be adopted if there is a real need or urgency, based on specific grounds. In addition, the court can restrict the period of validity of an interim measure or limit its effect to specific assets or acts.

Some of these measures can be ordered without adversarial hearings. In these proceedings, the court receives a request from a party for an interim order, and gives a decision based on the information given by that party. Other measures (such as appointing an expert or ordered provision) are subject to the adversarial principle and the judge orders the interim measure if the request is not seriously disputed.

11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?

The defendant cannot apply for an order for the claimant to provide security for costs.

12. What are the rules concerning interim injunctions granted before a full trial?

Availability and grounds

Luxembourg law recognises several kinds of interim injunctions, such as:

- **A measure of inquiry (Article 350, NCPC).** Before any lawsuit, if there is a legitimate reason to retain or establish proof of facts that the case depends on, the President of the District Court can order any legally permissible measures of inquiry (without the need to show emergency or absence of serious protest). This legitimate reason must be evidenced beyond a reasonable doubt by the claimant. The President of the District Court makes the order after calling the defendant to an adversarial hearing. The order can be appealed within 15 days of its service. If the judgment is made due to the defendant's default, the defendant can also oppose it.
- **An injunction for a creditor (Article 919 and following, NCPC).** If a debtor resides in Luxembourg, the creditor can ask for a court order instructing the debtor to pay the debt if the debtor's obligation is not seriously in dispute, which

must be proven by the claimant beyond a reasonable doubt. The president of the District Court will make this order if the creditor supplies the documents needed to justify the obligation. The order will be made without an adversarial hearing. The debtor can oppose the order within 15 days of service of the order.

- **A mandatory or prohibitory injunction (Article 932, NCPC).** In urgent cases, the president of the District Court can order any necessary measure which, beyond a reasonable doubt, is not seriously contested or causes any disagreement. The judge will make the order after calling the defendant to an adversarial hearing. The order can be appealed within 15 days of service of the order. If the judgment is made due to the defendant's default, the defendant can also oppose it.
- **A preservation or repair order (Article 933 and following, NCPC).** To prevent any imminent damage or unlawful nuisance whose risk of occurrence has to be proved beyond reasonable doubt, the president of the District Court can order a protective measure. The defendant will be called to defend it. The order can be appealed within 15 days of service of the order. If the judgment is made due to the defendant's default, the defendant can also oppose it.

Prior notice/same-day

In Luxembourg, the judge can sign the order without delay and send the order promptly before registration, but not on the same day as the hearing (*Article 938, NCPC*).

In urgent cases, the judge can order that the execution of the judgment will be possible with a copy of the judgment only (*la minute*) (*Article 938, NCPC*).

Mandatory injunctions

In strict interpretations of Luxembourg legislation, the judge is not competent to pronounce an execution of an obligation to do something (*obligation de faire*) (*Case law of the Luxembourg Court 25.October 1994, 29, 395*). However in urgent cases mandatory injunctions are available (*see above, Availability and grounds*).

Rights of appeal

Interim orders are appealable within 15 days from their service.

13. What are the rules relating to interim attachment orders to preserve assets pending judgment or a final order (or equivalent)?

Availability and grounds

Attachment by garnishment (*saisie arrêt*). This is governed by Articles 693 to 718 of the NCPC. Any creditor can, by private or authentic title, attach (*saisir-arrêter*) in the hands of a third party (*garnishee*), the sums and assets belonging to its debtor, or oppose their release (*Article 693, NCPC*). There are two stages in the attachment procedure:

- A provisional phase, where the attachment is put on the assets of the debtor, usually based on a court order of the competent court.
- A validation phase, where the attachment is validated by the competent court and the assets or the proceeds of their sale are transferred by the garnishee to the creditor.

In the provisional phase, a creditor can only attach the assets of the debtor if he has a title evidencing his rights against the debtor (for example, a notary deed, court judgment or foreign judgment declared enforceable in Luxembourg). If the creditor does not have a title, the attachment requires authorisation by a Luxembourg court. This is obtained by filing an ex parte petition with the competent court. If the judge finds that the claim appears certain as to its substance and amount, beyond reasonable doubt, he will authorise the attachment by making an attachment order. The judge will not review the merits of the claim.

In the validation phase, before validating the attachment the court must check that there is a title establishing the existence and amount of the claim. If the assets of the debtor were not attached based on an existing title but on an attachment order, the court will have to review the merits of the claim before validating the attachment. If the court does not believe that the claim is certain beyond reasonable doubt, it will refuse to validate the attachment and declare it void. The attachment will then be lifted.

Restraint order (*saisie conservatoire*). This can be requested in the District Court in an emergency. The court can order a seizure of movable assets and order the claimant to provide security or prove his solvency.

A restraint order is enforceable even if the defendant decides to appeal or oppose the court order.

Prior notice/same-day

In urgent cases, the President of the Court can authorise an attachment on a day-by-day (*de jour à jour*) and hour-by-hour (*d'heure à heure*) basis and attach furniture and personal effects (*Article 550, NCPC*). However, the President of the Court cannot make the attachment on the same day as the hearing.

Main proceedings

The competent judge is the judge with jurisdiction in the residence of the debtor or the judge with jurisdiction in the residence of the garnishee (*Article 694, NCPC*). When all the parties have their residence in Luxembourg (claimant, debtor and garnishee), the Luxembourg judge is competent during the provisional phase and the validation phase.

However, Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation) and the EFTA Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1988 (Lugano Convention), provide that a state can proceed with the provisional phase while another state is competent to proceed with the validation phase.

Preferential right or lien

When the competent court validates an attachment and the assets are transferred by the garnishee to the creditor, the creditor acquires a preferential right. Preferential creditors take priority over other creditors except those that have a prior security.

Damages as a result

The attachment is an important measure because the debtor has no further access to his assets. The claimant can be considered liable for loss suffered by the debtor as a result of the attachment, if the judge decides that the claimant was not

entitled to the attachment for various reasons (for example, the claimant cannot provide any title establishing the existence of or evidence supporting the amount of his claim). The court can order the guilty claimant to pay damages to the debtor (*Article 1383, Civil Code*)

Security

The claimant must provide title evidencing his rights against the debtor (a notary deed, court judgment or foreign judgment declared enforceable in Luxembourg), but it is not necessary to provide security.

14. Are any other interim remedies commonly available and obtained?

There are no other interim remedies commonly available.

FINAL REMEDIES

15. What remedies are available at the full trial stage? Are damages just compensatory or can they also be punitive?

At full trial stage, the available remedies are:

- Allocation of damages.
- Injunction to comply with contractual obligations.
- Injunction to repair in nature (that is, to fulfil obligations that have not been met).
- Enforcement.
- Injunction to do something or to stop doing something.

Damages are only compensatory. Their amount depends on the extent of the losses that must be proved beyond a reasonable doubt.

EVIDENCE

Disclosure

16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

Disclosure of documents and evidence enable each party to prepare its defence and legal arguments (*Article 64, NCPC*). Courts have to make sure that the supporting documents have been exchanged in due time so that each party has the opportunity to prepare its case.

Article 279 and following of the NCPC set out the rules concerning disclosure of documents. The parties must disclose in due time (usually at least five days before the court hearing in the case of oral proceedings and as soon as possible in the case of written proceedings) all the documents that they intend to use during the proceedings. Otherwise, if submitted too late, a supporting document may be excluded from the trial, meaning that the court will not take it into consideration.

The adversarial principle is a cornerstone principle of Luxembourg law. It means that the judge only considers documents or evidence disclosed by the parties (*Article 65, NCPC*). However, the parties do not have to disclose the legal documents they rely on for making their case (such as case law or doctrine on which the case is based).

Privileged documents

17. Are any documents privileged? If privilege is not recognised, are there any other rules allowing a party not to disclose a document?

Privileged documents

The main principle is that all documents can be disclosed to allow each party to prepare its defence. However, some documents are confidential by nature, such as correspondence:

- Between lawyers and their clients.
- Between lawyers. This generally includes all "without prejudice" documents. However, lawyers can exclude certain correspondence from this rule if they expressly mention that a letter, for example, will be treated as official.

This principle of confidentiality between lawyers and their clients means that a seizure at a lawyer's office must be performed in the presence of the chairman of the Luxembourg Bar Association or one of his representatives.

In addition, in criminal law, lawyers are bound by the principle of the secrecy of inquiry, which prevents them from disclosing any information about the inquiry.

Other non-disclosure situations

Some other documents are confidential by nature, such as correspondence between the client and his doctor or between the client and his bank. Lawyers can exclude certain letters from this rule if the clients agree to produce these documents before the court in order to assist their case.

Examination of witnesses

18. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?

Oral evidence

Witnesses of fact can give oral evidence or submit written evidence (*attestation testimoniale*). In commercial matters, it is more usual to produce written statements, but as a written statement is not adversarial, the parties can also complete this statement by making an evidence request. If an evidence offer is accepted by the court, the witnesses are named as witnesses for a cross-examination inquiry, and the two parties can question the witnesses, even if the judge directs the inquiry.

Right to cross-examine

The right to cross-examine witnesses of fact does exist (*see above, Oral evidence*). The judge can normally hear anyone, but Luxembourg law excludes the evidence of the children in divorce proceedings (*Article 405, NCPC*).

As a matter of timing, the witnesses are heard in special hearings, following an intermediary court judgment ordering the witness hearing.

Third party experts

19. What are the rules in relation to third party experts?

Appointment procedure

Third party experts can be appointed by the court on its own initiative or at the request of a party. If a party wants an expert to be named to assess a situation, it must make an evidence offer by expert. This must set out the specific remit of the expert and propose a named expert. The other party can refuse the proposed expert and propose another one.

The parties may apply for the appointment of an expert at any stage during the litigation (even for the first time before the appeal judge).

The court will only appoint an expert when his conclusions could be relevant to resolving the case.

Role of experts

The role of the expert is to provide a technical explanation or clarification about the case to the court. Because of this, the expert must be independent and impartial, to give as neutral an opinion as possible.

Experts can have one of three different tasks:

- Making a simple statement.
- Giving specialist advice.
- Giving specialist expertise.

Right of reply

Strictly speaking, there is no cross-examination of an expert. However, the parties are usually heard by the expert, and they can give him all relevant documents that can be useful for the best understanding of the situation.

In addition, if a party considers the expert evidence to be unsatisfactory or thinks some details are not clear, it can ask for an expert lecture. This allows each party to ask the expert questions about the document produced in court.

Further, a party can respond to an expert by asking for another expert opinion, if it considers that the first opinion is not, for example, impartial. Such a request may be submitted at any stage of the litigation (even for the first time before the appeal judge).

Fees

Usually, as the expert opinion is required before the final judgment, the judge orders one party (usually the one who asked for the expert) or the two parties to pay an advance towards the expert's fees. At the end of proceedings, the expert fees are normally paid by the unsuccessful party, as these fees are considered legal fees.

APPEALS

20. What are the rules concerning appeals of first instance judgments in large commercial disputes?

Which courts

In relation to large commercial disputes, a District Court judgment can be appealed within 40 days of the judgment service date to the Appeal Court.

Grounds for appeal

The appeal deed must contain the grounds for appeal, which must be based on fact or law. An appeal can only be made if the first decision causes grievance to the appellant.

Time limit

The appeal is served on the opponent who is invited to take a lawyer to represent him before the Appeal Court. The lawyer informs the appellant by lawyer statement (*constitution d'avocat*) that he represents the defendant. The appellant must file his appeal with the clerk and the court gives each party a timetable to respond to each other's arguments.

When the parties consider the case is sufficiently instructed, the instruction is closed and a date is scheduled for pleadings. As the procedure is essentially in writing, the parties do not usually need to plead orally.

The Appeal Court's decision can still be subject to cassation. However, the grounds for cassation are very restricted, as only a violation of law or a non-respect of form (substantial form or form required to avoid nullity) allows cassation.

CLASS ACTIONS

21. Are there any mechanisms available for collective redress or class actions?

Class actions are not permitted in Luxembourg.

COSTS

22. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs?

There are two kinds of costs:

- **Legal expenses (*frais et dépens d'instance*) (Article 238, NCPC).** These include bailiff fees, clerk fees, expert fees, tax rights and fees resulting from preliminary investigation. These fees are usually chargeable to the unsuccessful party.
- **Compensation for proceedings (*indemnité de procédure*) (Article 240, NCPC) (in civil proceedings) and Article 194, Criminal Code (in criminal proceedings).** This covers fees which are not included in legal expenses and are essentially a part of the solicitors fees. These fees must be requested

Country Q&A

by the parties and are only allocated if a party proves that it is unfair for it to pay them. The unsuccessful party does not necessarily pay compensation for proceedings. A court sometimes decides that none of the parties has proved unfairness, and so does not allow compensation for proceedings to any of them.

23. Is interest awarded on costs? If yes, how is it calculated?

No interest is awarded on costs.

ENFORCEMENT OF A LOCAL JUDGMENT

24. What are the procedures to enforce a local judgment in the local courts?

If a debtor fails to comply voluntarily with a judgment, the claimant can enforce the judgment through compulsory enforcement (*exécution forcée*), which is usually performed by a bailiff. Compulsory enforcement is mainly used to recover money or to enforce performance of an act.

The claimant must wait until the judgment becomes enforceable, which means the time to lodge an appeal has passed. The claimant can then ask for an enforcement title, which he sends to a bailiff for compulsory enforcement. However, a judgment can in certain circumstances be immediately enforceable after the service date, if the judgment is made provisionally enforceable (*exécutoire par provision*). This is only granted if there is urgency.

CROSS-BORDER LITIGATION

25. Do local courts respect the choice of governing law in a contract? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?

Generally, a contract is governed by the law chosen by the parties (*Article 1134, Civil Code*). In cross-border litigation, Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I) applies and states that parties are free to choose the law applicable to their contract (*Article 3, Rome I*). This choice must be expressed or shown with reasonable certainty by the terms of the contract or the circumstances.

However, some restrictions can apply to certain consumer contracts. In this case, the parties' choice of law cannot deprive a consumer of the protection given to him by the mandatory rules of law of the country in which he has his habitual residence. In employment contracts, an employee cannot be deprived of the mandatory rules of law of the country in which he habitually carries out his work.

If the parties have chosen a non-EU member state law to govern a consumer contract, the Luxembourg Consumer Code applies if both:

- The consumer has his habitual residence in the EU.
- The contract was proposed, entered into and performed in an EU member state.

In addition, local courts apply Luxembourg mandatory rules (*lois de police*), irrespective of the law applicable to the contract.

26. Do local courts respect the choice of jurisdiction in a contract? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

Parties can agree that a foreign court will have jurisdiction to settle any disputes which have arisen, or which may arise, in connection with their contractual relationship. The Brussels Regulation provides that such an agreement must be in one of the following forms:

- In writing.
- In a form which the parties have established between themselves.
- In international trade, in a form widely known by the community in such circumstances (commercial custom).

However, in relation to insurance, consumer contracts and employment, the "weaker party" is protected. The autonomy of the parties to determine the courts with jurisdiction is therefore limited.

Luxembourg consumer protection provisions determine the jurisdiction of the consumer's residence when all of the following apply:

- The litigation involves parties residing in Luxembourg.
- The litigation is over a sale or services contract entered into with a private customer.
- Goods are to be delivered or services are to be performed in Luxembourg.

27. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction party to any international agreements affecting this process?

This matter is regulated by Regulation (EC) 1393/2007 on the service in the member states of judicial and extra-judicial documents in civil and commercial matters (Service Regulation). If a foreign party obtains permission from its local courts to serve proceedings on a party in Luxembourg, it must give the permission to a local bailiff. The local bailiff sends it to a bailiff in Luxembourg, together with an EU service form, which must be completed in one of the official languages of Luxembourg (French, German or Luxembourgish). The document must be sent by appropriate means, to ensure that the content of the document received is true and faithful, and that the information is easily understandable.

The Luxembourg bailiff then serves the document on the party residing in Luxembourg and sends back the EC service form to the local bailiff, with confirmation that service has been made.

The bailiff should accomplish all the formalities within one month of receipt. If he cannot, he must inform the transmitting bailiff that this is not possible.

28. What is the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction? Is your jurisdiction party to an international convention on this issue?

Luxembourg is party to the HCCH Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970 (Hague Evidence Convention).

The Hague Evidence Convention provides methods of co-operation for the taking of evidence abroad by letters of request, and by diplomatic or consular agents. The executing authority must take appropriate measures to obtain evidence by using compulsory means, to the same extent as required by its internal law (*Article 10, Hague Evidence Convention*).

Regulation (EC) 1206/2001 on co-operation between the courts of the member states in the taking of evidence in civil or commercial matters allows each EU member state to take evidence or to investigate directly in another member state. Usually, when a foreign jurisdiction needs to take evidence from a witness in Luxembourg, the foreign jurisdiction sends a request to the competent court in Luxembourg in one of its official languages (French, German or Luxembourgish), which takes the necessary action within 90 days after receipt of the request.

Enforcement of a foreign judgment

29. What are the procedures to enforce a foreign judgment in the local courts?

The procedure to enforce a foreign judgment depends on the origin of the judgment.

A judgment from an EU country is enforceable after a simplified procedure before the District Court. This is due to the Brussels Regulation, which sets out a presumption of regularity concerning judgments issued by EU member state courts. The District Court in Luxembourg can only check if the set of documents required is complete, without reviewing the merits of the case.

To make a judgment from a country outside the EU enforceable in Luxembourg, a request must be made to the President of the District Court for an *exequatur* order, which is made if the judgment (*Article 678, NCPC* and *Articles 2123* and *2128, Civil Code*):

- Is enforceable in the foreign country.
- Is handed down by a competent jurisdiction under Luxembourg conflict rules.
- Respects rules set out by case law.
- Respects the rules of law on the matter, under Luxembourg International Public Law.
- Does not violate Luxembourg public policy.

In addition, Luxembourg also applies the:

- EFTA Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1988.
- Convention of 1971 between Luxembourg and Austria on the recognition and the execution of judgments and authentic documents in civil and commercial matters.
- Treaty of 1961 between Belgium, The Netherlands and Luxembourg on jurisdiction, insolvency proceedings and the authority and execution of judgments, arbitration awards and authentic documents.
- HCCH Convention on the Law Applicable to Maintenance Obligations 1973.
- UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

ALTERNATIVE DISPUTE RESOLUTION

30. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Is ADR used more in certain industries? What proportion of large commercial disputes is settled through ADR?

The main ADR methods used to resolve large commercial disputes are arbitration and mediation.

Arbitration

Articles 1224 and following of the NCPC provide for arbitration proceedings.

The arbitration procedure is governed by common law. The decisions of the arbitrators can only be challenged before the District Court by a request of nullification, which is only possible on limited grounds (*Article 1244, NCPC*).

The arbitration award is binding on the parties and if the award is definitive, it is enforceable under the NCPC. Arbitration awards are made enforceable by the President of the District Court in which the arbitration award was made (*Article 1241, NCPC*). A foreign arbitration award can also be enforceable in Luxembourg, but only after proceedings before the District Court making the foreign arbitration award enforceable (*exequatur*).

Mediation

There is now specific legislation on civil and commercial mediation introduced on 24 February 2012. The new law, Mediation in Civil and Commercial Matters has introduced mediation in both civil and commercial matters into the NCPC (articles 1251-1 to 1251-24 of the NCPC). The law transposes (in Luxembourg), Directive 2008/52/CE on mediation in civil and commercial matters (with regard to certain aspects).

General principles. In civil and commercial matters, each dispute, with the exception of inalienable rights and liabilities, public policy provisions and acts and omissions for which the state is liable in the course of the exercise of public authority, can be subject to a conventional mediation or a judicial mediation.

The full or partial agreement reached between the parties during a mediation process has to be ratified by the judge in order to bind the parties and be enforceable as such.

Conventional mediation. Each party can propose to the other parties, independently of a judicial or arbitral proceeding a mediation process. The parties appoint a mediator by common consent.

Judicial mediation. A judge already presiding over a dispute can, at any time during the proceedings and when the parties agree or on his own initiative but with the consent of the parties, request the parties to undertake mediation. The parties appoint a mediator (*agrée*) by common consent.

31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

The ADR methods under Luxembourg law are only applied if the parties agree to them, except in criminal matters in which the court can decide to apply one of the methods.

In certain matters, the court can suggest that the parties try ADR before a full trial, but they cannot compel the parties to do so.

32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege? Is ADR confidential?

Arbitration

Each party to an arbitration is free to provide all documents it considers necessary to its defence. However, disclosure of the document must be made at least 15 days before the end of the arbitration period (*Article 1237, NCPC*).

The Arbitration Centre of the Chamber of Commerce ensures confidentiality and discretion in the arbitration procedure.

Mediation

The main aim of mediation is to find an amicable agreement and the objective of the mediator is to help the parties to resolve their matter. The parties can communicate all documents or arguments they consider important, but an agreement can be reached without disclosure of documents.

As there are no specific rules governing mediation, there is no special duty of confidentiality. However, the mediation process is usually confidential.

33. How are costs dealt with in ADR?

Arbitration costs are not regulated. However, the arbitration rules of the Arbitration Centre of the Chamber of Commerce state that the arbitration award includes a decision relating to the costs of the arbitration and which party will bear them. These costs must include the arbitrator fees and expenses, administrative costs, expert fees and normal legal costs.

In mediation, the costs are usually dealt with by the competent body. Costs can vary significantly. The CMBL has a table of costs that can be consulted by parties interested in using mediation.

34. What are the main bodies that offer ADR services in your jurisdiction?

The main arbitration body is the Arbitration Centre of the Luxembourg Chamber of Commerce, created in 1987, which allows arbitrating parties to use its secretariat.

The main mediation bodies are the:

- CMBL, which helps the parties to negotiate an agreement and can be contacted by anyone (natural or legal persons) to resolve any civil, commercial or social dispute (*www.centre-mediation.lu*).
- The Commission of the Financial Sector (CSSF), which deals with complaints about financial organisations and is responsible for the prudential supervision of credit institutions and professionals from the financial sector (*www.cssf.lu*).
- Insurance Mediator, which deals with all kinds of insurance and issues non-binding opinions.
- Luxembourg Commission for Travel Disputes, which deals with fixed sum travel.

PROPOSALS FOR REFORM

35. Are there any proposals for dispute resolution reform? If yes, when are they likely to come into force?

There are no proposals for dispute resolution reform.

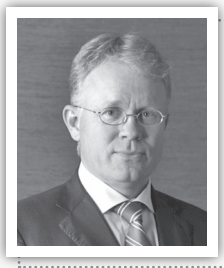
ONLINE RESOURCES

Legilux

W *www.legilux.public.lu/index.html*

Description. Legilux is the legal government gateway of the Grand-Duchy of Luxembourg. Legilux provides a free access to legislation applying to the Grand-Duchy of Luxembourg (the website is only available in French).

CONTRIBUTOR PROFILE



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Areas of practice. Dispute resolution and litigation; banking and finance; corporate and commercial; employment and pensions

Recent transactions

- Advises domestic and international clients in complex litigation cases and commercial law matters with cross-border aspects.
- Involved in banking dispute resolution and labour law related litigation.
- Recommended by the Legal 500 2013, Chambers 2013 and the 2013 edition of Best Lawyers Luxembourg for his expertise in Litigation.
- Over 10 years been continuously ranked among the top insurance lawyers in The International Who's Who of Insurance and Reinsurance Lawyers.

Languages. English, French, German and Luxembourgish.

Professional associations/memberships

- Association of Luxembourg Banking Lawyers (ALJB).
- Financial services section of the International Bar Association (IBA).
- Luxembourg Investment Fund Association (ALFI).
- The Association *Luxembourgeois des Compagnies d'Assurances* (ACA).

Publications

- *PLC Dispute Resolution multi-jurisdictional guide: Luxembourg (2009 to 2013).*
- *PLC Labour and Employee Benefits multi-jurisdictional guide: Luxembourg (2006 to 2013).*
- *Luxembourg Chapter of LBR's Dispute Resolution Law Review 2013.*
- *Luxembourg Chapter of LBR's Getting the Deal Through on Banking Regulations (2008 to 2013).*