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Q&A

Q&A: Luxembourg Arbitration Guide

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Arbitration Q&A //

1. LEGAL FRAMEWORK

1.1 What is the relevant legislation on arbitration in Luxembourg jurisdiction? Are there any significant limitations on the scope of the statutory regime – for example, does it govern oral arbitration agreements?

The legislation that presides over arbitration in Luxembourg is predominantly contained within the Nouveau Code de Procedure Civile, colloquially known as the "NCPC". The comprehensive modernisation of Book III Second part of this code was achieved through a law enacted on the 19th of April 2023, which has been documented in the Luxembourg Gazette, particularly in the Memorial A n° 203 / 2023, published on the 21st of April 2023.

Influenced heavily by the principles of French law and the UNCITRAL model law (1985) on International Commercial Arbitration as amended, Luxembourg's arbitration legislation strives to uphold liberal and arbitration-friendly tenets. These directives, split across seven chapters, are set for assimilation into the broader framework of the NCPC.

Its principles are widely accepted in comparative law: they notably include inter alia a broad spectrum of disputable matters that can be settled by arbitration, the absence of strict formalism for the arbitration agreement, the principle of autonomy of the arbitration clause, the positive and negative effect of the principle of *competence-competence – whether a legal body has jurisdiction to rule on its own competence in matters before it* – as well as the obligation of disclosure on the arbitrator (economic links with companies, former mandates, appointments as an arbitrator or as a lawyer of a party involved) to minimise the risk of conflicts of interest.

Nevertheless, the legislation innovates on certain points by comparison with French law, notably by introducing an obligation of confidentiality, sanctioned by the award of damages. It also strengthens the powers of the *"juge d'appui"* or supporting judge and requires collaboration between the state judge and the arbitral tribunal to maximise the effectiveness of the arbitration proceedings.

The legislation also aims to extend the international jurisdiction of Luxembourg judges by giving them a jurisdictional head in the name of denial of justice. The arbitration award has the force of *res judicata* – a settled matter that may not be relitigated – regarding the dispute it resolves and, unless otherwise agreed by the parties to the arbitration, must include its rationale.

As for the recourse against the award, a distinction is drawn between awards issued domestically and those rendered overseas:

- Awards given within Luxembourg may be subjected to an annulment procedure under the new article 1238 of the NCPC, outlining six grounds for annulment. Articles 1243 and 1244 respectively, adopt the French law's revision system and deal with third-party opposition.

- For awards issued abroad, initiation of annulment proceedings is not permitted, but enforcement can be contested under the limited conditions provided for in article 1246 of the NCPC.

In terms of the enforcement of foreign awards, Luxembourg has provided its affirmation and ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted by a United Nations diplomatic conference in New York, on 10 June 1958 but entered into force on 7 June 1959) by the enactment of a law on 20 May 1983 (the Law of May 20, 1983 approving the New York Convention of June 10, 1958 on the Recognition and Enforcement of Foreign Arbitral Awards).

1.2 Does this legislation differentiate between domestic arbitration and international arbitration? If so, how is each defined?

The Nouveau Code de Procedure Civile («**NCPC**») does not differentiate, in essence, between domestic arbitration and international arbitration. It adheres to Luxembourg's revered jurisprudential tradition of embracing a homogenous approach to arbitration, thereby ensuring a uniformly consistent legal landscape, irrespective of the geographical origins or international nature of the dispute. This resonates harmoniously with Luxembourg's esteemed reputation as a commercially attractive nexus for international arbitration.

However, a formal distinction is made within Chapter VII of the NCPC concerning the recourses against awards rendered in Luxembourg or abroad. The central difference lies in the allowance for a revision or annulment of a Luxembourg-rendered award based on the very limited grounds listed in Article 1243 of the NCPC or as per Article 1246 of the NCPC. These former grounds for a revision predominantly include instances of fraud by one party or if the award is premised on falsified documents.

The grounds to reject the enforcement of an award in Luxembourg pivot on principles fundamental to the justice system and include violations of the right to defence, infringement of due process, or any decisions that conflict with public order. In essence, any award that overtly contravenes the principles of natural justice or Luxembourg's international public policy may be refused enforcement.

This structure offers both a robust and fair mechanism for arbitration, reinforcing Luxembourg's commitment to uphold the integrity of the arbitration process.

1.3 Is the arbitration legislation in Luxembourg jurisdiction based on the UNCITRAL Model Law on International Commercial Arbitration?

The legislation draws from significant legal frameworks, most notably the UNCITRAL model law on International Commercial Arbitration and the arbitration-supportive French legislation. The primary aim of these legislative modifications is to foster an open environment conducive to the adoption of arbitration, and a liberal, arbitration-friendly legal environment. This allows for an efficient, flexible and internationally recognised approach to dispute resolution, enhancing the commercial attractiveness of Luxembourg as a hub for arbitration proceedings.

1.4 Are all provisions of the legislation in Luxembourg jurisdiction mandatory?

Luxembourg legislation on arbitration, as enshrined within the country's Nouveau Code de Procedure Civile («**NCPC**»), demonstrates an intricate balance between mandatory and non-mandatory provisions. This legislative approach aims to provide both a robust legal framework and sufficient flexibility for parties involved in the arbitration process.

The mandatory provisions within Luxembourg's arbitration legislation are crucial, as they form the bedrock of the arbitration process. They define essential aspects of arbitration, such as the inherent nature of arbitration, the principle of "*competence-competence*", the right of the defence, the adversarial principle and the rules governing the enforceability of arbitral awards. These mandatory provisions are not subject to change or negotiation by the involved parties and any deviation from them would render an arbitration agreement or award null and void.

On the other hand, Luxembourg's arbitration law also contains numerous non-mandatory or default ("*règles supplétives*") rules. These provisions allow parties considerable autonomy in tailoring their arbitration agreement to suit their needs and circumstances. Key aspects such as the arbitral procedure rules, the number of arbitrators, the language of the proceedings, and the place of arbitration can be stipulated according to the parties' mutual agreement. In the absence of such an agreement, the default provisions laid out in the legislation apply.

It is these non-mandatory provisions that provide the core attributes of arbitration - *autonomy, flexibility, and efficiency* - allowing parties to resolve disputes in a manner that best aligns with their preferences. It is important to note that while this provides an overarching understanding of Luxembourg's arbitration law, individual cases and circumstances can present unique nuances. Therefore, it is always recommended to seek professional legal advice when engaging in arbitration within Luxembourg's legal framework.

1.5 Are there any current plans to amend the arbitration legislation in Luxembourg jurisdiction?

There are no current initiatives to modify the arbitration legislation within Luxembourg. This is largely attributable to the recent implementation of a comprehensive legal framework enacted on 19th of April, 2023. This significant legislative development reflects the thoughtful deliberations and consensus of Luxembourg lawmakers, who deemed it necessary to bring about meaningful changes to the arbitration landscape. The provisions of this law have been carefully crafted and thoroughly examined to ensure they are fully attuned to the requirements and nuances of arbitration processes. Given these considerations, it is reasonable to surmise that any amendments of the current legislation in the near future are unlikely.

1.6 Is Luxembourg jurisdiction a signatory to the New York Convention? If so, have any reservations been made?

Luxembourg, a legal jurisdiction known for its commitment to international arbitration, became a signatory to the New York Convention

on the Recognition and Enforcement of Foreign Arbitral Awards. This significant milestone was achieved when Luxembourg ratified the convention through the enactment of the Law of 20 May 1983.

Luxembourg's adherence to the New York Convention comes with a discerning approach. While embracing the principles of this treaty, Luxembourg has made a reservation regarding reciprocity. This reservation signifies that the convention applies exclusively to the recognition and enforcement of awards granted within the territory of another contracting state, subject to the principle of reciprocity.

Luxembourg's legal framework in relation to the New York Convention, thus, embodies a balanced approach, ensuring the recognition and enforcement of foreign arbitral awards within the scope of reciprocal relationships. This commitment underscores Luxembourg's dedication to fostering international arbitration as a reliable and dynamic means of resolving cross-border disputes.

1.7 Is Luxembourg jurisdiction a signatory to any other treaties relevant to arbitration?

Indeed, Luxembourg, as a vibrant hub of international commercial activity and dispute resolution, has duly acceded to a number of global conventions pertinent to arbitration. In the spirit of encouraging international business and fostering a congenial atmosphere for conflict resolution, Luxembourg upholds its commitments under these treaties.

Most notably, Luxembourg has signed and ratified the 1961 European Convention on International Commercial Arbitration. This convention further contributes to the predictability and dependability of Luxembourg's arbitration framework, inspiring confidence among global enterprises. Additionally, Luxembourg is a signatory to the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). This legal instrument provides an essential platform for the resolution of investment disputes, playing a pivotal role in shaping Luxembourg's attractiveness as an investment destination.

Furthermore, Luxembourg, being a hub for international business and finance, has established numerous bilateral investment treaties ("**BITs**") with other countries such as Brazil, China, India, South Africa, numerous other non-European countries, etc. These BITs play a crucial role in promoting and protecting foreign investment by providing legal frameworks and dispute-resolution mechanisms. These treaties serve as binding agreements between Luxembourg and its treaty partners, offering various protections to investors and their investments. The provisions within these treaties typically cover aspects such as fair and equitable treatment, protection against expropriation without compensation, and the free transfer of capital and returns. By ensuring a stable and predictable investment environment, BITs aim to encourage and attract foreign investments. However, it is important to note that the landscape of international investment law has undergone significant developments since March 2018. One such notable development is the decision rendered by the Court of Justice of the European

Union (CJEU) in the Achmea case in 6 March 2018. This decision had implications for the enforceability of intra-EU BITs. The court emphasized the principle of the autonomy of EU law and argued that disputes between EU member states should be resolved through the judicial system of the EU, rather than through arbitration tribunals.

These are just a few of the notable international instruments that Luxembourg is party to, all contributing to an established, balanced, and supportive arbitration environment, enhancing the Grand Duchy's reputation as a prime location for conducting international business.

2. ARBITRABILITY AND RESTRICTIONS ON ARBITRATION

2.1 How is it determined whether a dispute is arbitrable in Luxembourg jurisdiction?

Within the jurisdiction of Luxembourg, discerning the arbitrability of a dispute is subject to certain exclusions as articulated in the Nouveau Code de Procedure Civile («**NCPC**»). Articles 1224 and 1225 NCPC are pertinent provisions in this context. According to these provisions, there are specific circumstances or matters wherein arbitration is not considered an acceptable mode of dispute resolution.

Article 1224 of the NCPC explicitly delineates the scope of non-arbitrable disputes. This legal provision clarifies that any matters concerning the status and capacity of individuals, including issues related to marital relationships, divorce, and legal separation, are beyond the realm of arbitration. Additionally, it specifies that disputes involving the representation of persons deemed legally incapacitated, as well as matters concerning these incapacitated individuals and those who are absent or presumed so, are also exempt from arbitration. This demarcation serves to safeguard the interests and rights of individuals in areas deemed too critical or sensitive for arbitration.

Article 1225 of the NCPC specifies that certain types of disputes cannot be resolved through arbitration in Luxembourg. Specifically, it prohibits arbitration for disputes between professionals and consumers, disputes between employers and employees, and those related to residential leases. This prohibition applies not only during the duration of the contractual relationships but also extends beyond the termination of these contracts. Essentially, this rule underscores the intention to protect parties in asymmetrical power dynamics, such as consumers, employees, and tenants, by ensuring their access to the traditional court system rather than private arbitration, which might not offer the same level of protection. This provision is particularly designed to safeguard the interests of the deemed economically weaker party in such conflicts.

Bankruptcy proceedings also occupy a distinct legal space. Though disputes ensuing from bankruptcy proceedings are ordinarily non-arbitrable, specific situations warrant exceptions. For instance, a company's

receiver possesses the legal competence to conclude an arbitration agreement to amicably resolve a conflict with a debtor. Similarly, an arbitral tribunal is vested with the authority to adjudicate a dispute encapsulated by an arbitration agreement inscribed in a contract intended for execution before the initiation of bankruptcy proceedings.

Therefore, while Luxembourg's arbitration environment is expansive and accommodating, these exclusions merit attention. The law maintains an equilibrium between the exigency for commercial adaptability and the safeguarding of certain fundamental rights considered too imperative to be adjudicated outside the conventional court system. These principles highlight Luxembourg's position as a pragmatic and commercially viable locale for dispute resolution.

2.2 Are there any restrictions on the choice of seat of arbitration for certain disputes?

The decision regarding the seat of arbitration is a fundamental aspect of arbitration proceedings and can impact the legal environment within which the dispute will be resolved. Generally, in Luxembourg, parties enjoy a significant degree of autonomy in selecting the seat of arbitration, however, there may be some considerations that could place certain restrictions.

In Luxembourg, parties are, in principle, free to choose the seat of arbitration, subject to public policy restrictions and the requirement that the arbitration agreement is valid under the law to which the parties have subjected it or under the law of the country where the award is made.

For instance, disputes involving public entities or state-owned enterprises may be limited by sovereign immunity considerations or legal provisions related to state entities, which is a common principle in international arbitration law. Certain disputes governed by mandatory legal provisions (such as labour law or residential lease disputes) may not be subject to an arbitration agreement due to public policy or legislative restrictions. Moreover, the arbitrability of the subject matter of the dispute can also impose restrictions. In Luxembourg, certain categories of disputes, particularly those which concern public order, such as criminal or insolvency matters, are typically and in principle non-arbitrable. In such instances, these disputes must be settled by national courts.

Additionally, when a seat outside of Luxembourg is chosen, the parties must ensure that the law of the selected jurisdiction does not contain prohibitions or limitations on the type of disputes that can be arbitrated. Each jurisdiction may have its own rules on arbitrability and public policy restrictions.

Overall, while Luxembourg's arbitration-friendly legislation typically allows for broad discretion in the choice of the seat of arbitration, it is crucial to carefully consider the nature of the dispute, the parties involved, and the specific laws of the proposed seat, to ensure that the selection complies with the applicable laws and regulations. It is important to note that these references are illustrative and not exhaustive. Arbitration law is complex and multifaceted, and the specific legal considerations may vary depending on the exact nature of the dispute, the entities involved, and the choice of seat of arbitration. Professional legal advice should always be sought when dealing with these issues. Consulting with an experienced arbitration lawyer can be very beneficial in navigating this complex regime.

3. ARBITRATION AGREEMENT

3.1 What are the validity requirements for an arbitration agreement in Luxembourg jurisdiction?

Luxembourg's arbitration landscape is marked by an overarching ethos of liberality and flexibility, underscored in the Nouveau Code de Procedure Civile («**NCPC**»), particularly Articles 1227 et seq. In a departure from rigid formalistic procedures, the lawmaker does not prescribe stringent formal prerequisites for an arbitration agreement to attain validity. This adaptable modus operandi solidifies a conducive foundation for both domestic and international arbitration, thus positioning Luxembourg as a preferred destination for dispute resolution.

Arbitration agreements here can be meticulously designed to address a present dispute – often typified as "*pertaining to a defined legal relationship, contractual or otherwise*" referred to as "*compromis*" – or can be anticipatorily framed as an arbitration clause - "*clause compromissoire*" to pre-empt future disagreements. This proactive and reactive scope can be captured in either oral or written format, showcasing the flexible character of Luxembourg's arbitration agreement guidelines.

A unique feature of Luxembourg's arbitration milieu is the allowance of transitioning from court proceedings to arbitration, even if a court case has been set into motion. This evidences the dynamic nature of Luxembourg's arbitration, catering to parties' changing preferences in dispute resolution methods.

At its core, Luxembourg's arbitration domain amplifies the values of party autonomy and freedom of contract. It is crucial, however, to remember that, as reminded above, while the form of the arbitration agreement is not dictated by stringent guidelines, in other words it is not subject to any formal condition, its validity is contingent on the subject matter's eligibility for arbitration and the legal capacity of the parties to commit to the agreement.

In a nutshell, Luxembourg's inclusive stance on arbitration agreements, empowering parties with substantial control over their dispute resolution dynamics, propels its reputation as a sought-after commercial hub for arbitration.

3.2 Are there any provisions of legislation or any other legal sources in Luxembourg jurisdiction concerning the separability of arbitration agreements?

Absolutely, Luxembourg, in line with its robust legislative framework for arbitration, does indeed have specific provisions for the separability of arbitration agreements. These provisions are encapsulated in Article 1227-2 of the NCPC. In effect, this critical legal provision expressly establishes the principle of the 'separability' or 'independence' of the arbitration agreement from the underlying contract. It specifies that an arbitration agreement is autonomous, distinctly separate from the contract it is part of. Hence, the validity and continuance of the arbitration agreement are not affected or influenced by the invalidity or termination of the main contract. In essence,

Luxembourg's arbitration law, aligning with international arbitration practices, guarantees the enduring validity of arbitration agreements, regardless of any legal disputes arising from the underlying contract. This not only echoes Luxembourg's pro-arbitration stance but also strengthens its reputation as a preferred destination for commercial dispute resolution via arbitration.

3.3 Are there provisions on the seat and/ or language of the arbitration if there is no agreement between the parties?

Article 1228 of the Luxembourg New Code of Civil Procedure (NCPC) sets forth a flexible approach regarding the determination of the arbitration seat. Specifically, it allows the parties involved in arbitration to freely agree on the location where the arbitration is to be held or to assign this decision-making power to an appointed individual responsible for organizing the arbitration process. In situations where the parties do not make such a determination, the provision entrusts the arbitration tribunal with the authority to set the arbitration seat. This decision is made by considering the specific circumstances surrounding the case, including the preferences and conveniences of the parties involved. This rule ensures that the arbitration process remains adaptable and responsive to the needs and agreements of the parties, or in their absence, to the reasoned judgment of the arbitration tribunal.

In Luxembourg, the default provisions empower the arbitral tribunal with the authority to determine the language of arbitration. This decision is carefully made by the tribunal, taking into account relevant factors such as the nature of the dispute, the parties involved, and the specific circumstances at hand. The goal is to ensure an efficient and equitable process, enabling all parties to, fully and comprehensively, present their arguments and evidence. This approach ensures that the arbitration proceedings are conducted in a manner that is accessible and fair to everyone involved.

It is crucial to note that the default provisions may not always align with the parties' preferences or expectations. Therefore, it is highly advisable to include explicit clauses in the arbitration agreement pertaining to the seat and language to avoid uncertainty or disputes. By expressly agreeing on these aspects, parties can exercise greater control over the arbitration process and tailor it to their specific needs and requirements.

In conclusion, in the absence of an agreement on the seat and language of arbitration, Luxembourg's legal framework provides default provisions empowering arbitral tribunal to make these determinations respectively. However, for a smoother and more efficient arbitration process, it is strongly recommended to include clear provisions in the arbitration agreement addressing these key aspects.

4. OBJECTIONS TO JURISDICTION

4.1 When must a party raise an objection to the jurisdiction of the tribunal and how can this objection be raised?

According to the provision of Article 1227-3 of the Nouveau Code de Procedure Civile («**NCPC**»), a party wishing to challenge the jurisdiction of an arbitration tribunal must do so at the earliest possible stage of the arbitration process. In the event such objection to the jurisdiction of the tribunal were to be brought before a national court, it has to be raised *in limine litis* and said court must declare its lack of jurisdiction unless the arbitration agreement is manifestly null and void or obviously inapplicable to the matter in dispute. The objection could affect the tribunal's or court's authority to hear the case, possibly resulting in the case being transferred to a national court. The court does not possess the independent authority to declare *sua ponte* a lack of jurisdiction. Nevertheless, if the arbitration tribunal finds it lacks jurisdiction, or if an arbitration decision is voided for reasons that prevent the case from being arbitrated again, the case must be quickly resumed in the original court or tribunal.

4.2 Can a tribunal rule on its own jurisdiction?

In Luxembourg, it is indeed within the authority of an arbitral tribunal to determine its own jurisdiction. This power is explicitly granted by the New Code of Civil Procedure. Article 1227-2 states that the arbitral tribunal has the jurisdiction to decide on matters concerning its own authority, including addressing any challenges related to the existence or validity of the arbitration agreement. This provision ensures that the tribunal can effectively address and resolve any jurisdictional issues that may arise, thereby affirming the autonomy and efficiency of the arbitration process.

4.3 Can a party apply to the courts of the seat for a ruling on the jurisdiction of the tribunal? In what circumstances?

In principle, under article 1227-3 of NCPC, a party is generally precluded from seeking a court's determination on an arbitral tribunal's jurisdiction if an arbitration clause is in place. This reflects a strong legal preference for arbitration as the primary mode of dispute resolution. State courts are expected to defer to the competence of the arbitral tribunal, and in presence of arbitration agreement, the invocation of a state court's jurisdiction is considered an exception, not the rule.

This exceptional circumstance arises only under specific, and narrowly defined conditions. A state court or tribunal may assume jurisdiction if, and only if, the arbitration agreement is patently null and void or if it is manifestly unenforceable. This could occur in instances where the dispute itself is obviously and evidently not subject to arbitration or if there are glaring legal flaws in the arbitration agreement. Apart from these exceptional scenarios, the presence of an arbitration clause generally compels the state court to decline jurisdiction. However, a state court or tribunal can only decline its jurisdiction in response to a plea of incompetence raised *in limine litis* by a party. The court is not authorized to declare

its lack of jurisdiction *sua ponte* i.e. on its own initiative. This approach underscores the legal system's commitment to uphold the autonomy of the arbitration process and reinforces the principle that resorting to state courts in the presence of an arbitration clause is an extraordinary measure, activated only upon a party's request.

5. THE PARTIES

5.1 Are there any restrictions on who can be a party to an arbitration agreement?

Under Luxembourg law, the eligibility to be a party to an arbitration agreement is broadly inclusive. Both natural and legal persons, whether from within Luxembourg or abroad, are permitted to enter into arbitration agreements, as long as they possess the legal capacity to do so. Notably, however, there are nuanced considerations regarding public bodies. Generally, due to its roots in conventional justice and its inherent characteristics, arbitration is not typically associated with public entities. As a rule, public bodies acting within the scope of their public authority prerogatives are neither expected nor entitled, in most circumstances, to engage in arbitration for resolving disputes, particularly those of an administrative nature. This is exemplified by Article 2 (1) of the Law of 7 November 1996, which governs the organization of administrative courts. Despite this principle, there are specific instances where exceptions are made, allowing legal persons governed by public law to engage in arbitration. These exceptions are often influenced by international law and the evolving landscape of global commerce. Notably, the prohibition against arbitration involving acts of public authorities does not generally extend to disputes arising from international commercial contracts under private law, especially those made with foreign companies. Furthermore, various agreements focused on the resolution of cross-border or international disputes have long recognized arbitration as a viable method. Thus, while the principle generally restricts public bodies from participating in arbitration, the evolving nature of international relations and commerce has led to certain exceptions that facilitate their involvement in specific contexts.

5.2 Are the parties under any duties in relation to the arbitration?

Yes, parties involved in arbitration under Luxembourg law have specific duties and obligations. These duties are outlined in various articles of the Nouveau Code de Procedure Civile («**NCPC**»), ensuring a structured and fair arbitration process.

Firstly, Article 1231 and subsequent sections of the NCPC mandate that both parties and arbitrators must follow the procedural rules, timelines, and formats set for the arbitration proceedings, whether agreed upon mutually or outlined in the applicable regulations. This requirement ensures a streamlined arbitration process, offering consistency and predictability, while also ensuring procedural efficiency.

Article 1231-3 of the NCPC highlights the requirement for the arbitral tribunal to ensure party equality and adhere to adversarial principles, underscoring a commitment to fairness and due process fundamental to litigation. These essential principles, vital across all litigation forms, including arbitration, are detailed in Title II of the NCPC (Book I, Articles 50 and onwards), covering general provisions for contentious cases. These provisions demand adherence to adversarial procedures, the expectation of dignified conduct, and collaboration with court-directed investigations. Importantly, these standards are also incumbent upon the parties involved in arbitration, reinforcing the expectation of equitable and principled engagement. This alignment of arbitration with litigation's core principles via the NCPC affirms the commitment to conducting arbitration with the same level of fairness and due process as is expected in conventional litigation.

Lastly, Article 1231-5 imposes a duty of confidentiality on the arbitration proceedings, except where legal obligations dictate otherwise or the parties have agreed to forego confidentiality. This provision underscores the private nature of arbitration, a feature that often makes it an attractive alternative to public court proceedings.

In summary, parties engaged in arbitration in Luxembourg are bound by duties that include following procedural norms, adhering to fundamental litigation principles, and in principle maintaining confidentiality. These obligations are designed to foster a fair, efficient, and effective arbitration process.

5.3 Are there any provisions of law which deal with multi-party disputes?

Multi-party disputes are indeed permissible within the framework of arbitration, though Luxembourg's arbitration legislation does not contain specific provisions exclusively governing such disputes. Parties involved in multi-party arbitrations retain considerable autonomy to tailor the arbitration process to suit their needs. This flexibility includes agreeing on the number and selection of arbitrators, a decision that becomes particularly significant in the context of multi-party disputes. The arbitration agreement itself can be structured to accommodate the complexities of multi-party scenarios. It may include clauses for the joinder of additional parties or the consolidation of separate but related disputes, ensuring a comprehensive resolution process. Additionally, the rules of the chosen arbitration institution often provide detailed guidance on handling multi-party disputes. These rules may cover aspects such as procedural fairness, efficient management of proceedings, and equitable representation of all parties' interests.

In the absence of explicit legal directives, the responsibility to navigate the intricacies of multi-party disputes largely falls on the arbitrators. They play a crucial role in determining the most appropriate procedural approaches, ensuring that the process adheres to the principles of fairness and efficiency. Central to their mandate is the commitment to providing all parties with an equitable opportunity to present their case and to participate fully in the arbitration proceedings.

6. APPLICABLE LAW ISSUES

6.1 How is the law of the arbitration agreement determined in Luxembourg jurisdiction?

In Luxembourg, in instances where the substantive law remains ambiguous or the parties have not established a clear legal framework, the Tribunal embarks on a meticulous process to identify the most fitting applicable law. This process may involve the application of the Rome Convention of 19 June 1980 and the Brussels Regulations, supplemented, where necessary, by conflict of laws rules. Save for these specific conventions and regulations, in general, current legislation in Luxembourg does not prescribe explicit other rules for determining the law governing arbitration agreements. Instead, it upholds the principle of the parties' autonomy, allowing them the freedom to select the applicable law. This selection must be explicitly stated or inferred with reasonable certainty from the agreement's terms or the case's circumstances. In the absence of such a selection, Luxembourg's conflict of laws rules will dictate the applicable law to the arbitration agreement. Should the arbitration agreement be part of a broader contract, the contract's governing law might also be considered indicative of the law governing the arbitration agreement. However, this is not an absolute rule; the true intentions of the parties will take precedence in determining the applicable law. If the law governing the arbitration agreement remains undetermined, the tribunal may resort to the law of the arbitration's location, which, in the case of Luxembourg, is the law of the Grand Duchy of Luxembourg.

6.2 Will the tribunal uphold a party agreement as to the substantive law of the dispute? Where the substantive law is unclear, how will the tribunal determine what it should be?

Under Article 1231 of the NCPC, Arbitral Tribunals are compelled to adjudicate disputes according to the laws deemed applicable. This obligation extends to international disputes, wherein the legal frameworks agreed upon by the parties are given precedence, except in cases where such agreements infringe upon international public order principles. In Luxembourg, there exists a robust tradition of Tribunals respecting parties' consensus on the substantive law governing their disputes. This respect for party autonomy is, however, conditioned upon the compliance of such agreements with international public order.

In situations where the substantive law is ambiguous or the parties have failed to designate a specific legal framework, the Tribunal embarks on a rigorous process to ascertain the most appropriate applicable law. This endeavour may draw upon instruments like the Rome Convention of 19 June 1980 and the Brussels Regulations, further informed by conflict of law rules as necessary. In determining the applicable law, the Tribunal considers various factors, including the law governing the contract, the location designated for the contract's performance, and common trade practices. Moreover, the Tribunal may incorporate any additional elements it deems relevant to ensure the adjudication is both fair and equitable.

The Tribunal's determination of the applicable law is conclusive and binds all parties involved. This methodology not only upholds legal certainty but also respects the autonomy of the parties, thereby conforming to established international legal norms. Should the evidence of the substantive law be inadequately or insufficiently proved by the parties, the Tribunal may refrain from applying the foreign substantive law, defaulting instead to the law of the seat of arbitration. This principle ensures that the arbitration process remains anchored in a legal framework that is both predictable and consistent with the broader objectives of justice and fairness.In instances where the substantive law remains ambiguous or the parties have not established a clear legal framework, the Tribunal embarks on a meticulous process to identify the most fitting applicable law. This process may involve the application of the Rome Convention of 19 June 1980 and the Brussels Regulations, supplemented, where necessary, by conflict of laws rules.

7. CONSOLIDATION AND THIRD PARTIES

7.1 Does the law in your jurisdiction permit consolidation of separate arbitrations into a single arbitration proceeding? Are there any conditions which apply to consolidation?

Luxembourg arbitration law does not expressly provide for the possibility of consolidation of separate arbitrations into a single arbitration proceeding. It is however permissible and may be considered whether (i) the separate arbitrations involve common questions of law or fact and are between the same parties or parties connected by a common legal relationship (such as contracts that are related or part of a series of contracts), (ii) all parties involved in the separate arbitrations agree to consolidate their disputes into a single proceedings, and (iii) the consolidation must be seen to enhance procedural efficiency without compromising the fairness and the rights of the parties involved.

The specific arbitration clauses in the respective contracts and the rules of the chosen arbitral institution (if any) can significantly impact and potentially restrict the possibility and process of consolidation. The process of appointing arbitrators in the consolidated arbitration can be complex, especially if different arbitrations have different arbitrators or if the method of appointment was different in each case. The power to order consolidation may lie with the arbitrators themselves. The arbitrators or the court, as the case may be, will consider whether consolidation would be beneficial in terms of time and cost efficiency and whether it would prejudice any party's rights.

7.2 Does the law in your jurisdiction permit the joinder of additional parties to an arbitration which has already commenced?

Luxembourg legal framework governing arbitration does allow for the inclusion of additional parties after the commencement of the arbitration proceedings, under certain conditions. This practice is aligned with principles seen in international law, such as those outlined in Article 1231-12, inspired by Belgian law.

Key points include:

- *Application for Intervention*: any interested third party can apply in writing to the arbitral tribunal for intervention. This application is then communicated to the original parties of the arbitration.
- *Invitation by a Party:* An existing party in the arbitration can invite a third party to join the proceedings.
- *Consent and Arbitration Agreement:* critical to the joinder is the existence of an arbitration agreement between the third party and the original disputing parties, and the consent of the Arbitral Tribunal is mandatory.

This provision is particularly relevant in complex disputes where third parties, such as guarantors in financial obligations, have a vested interest in the outcome. By allowing the inclusion of additional parties, Luxembourg legal system ensures a comprehensive and equitable resolution process that acknowledges the interconnected nature of modern commercial and legal relationships.

7.3 Does an arbitration agreement bind assignees or other third parties?

Under Luxembourg law, the binding nature of an arbitration agreement typically does not extend to third parties as a general rule. Nevertheless, there are substantial exceptions to this principle inter alia in case of an assignment of the contract. These exceptions arise when the arbitration agreement implicitly encompasses such parties, or when they have implicitly or necessarily accepted its terms. The impact of the arbitration clause on third parties largely depends on the precise wording used in the agreement and the specific context of each case. Central to this issue is the foundational principle that an arbitrator's authority is based on the expressed intent of the involved parties, reflecting the contractual essence of arbitration. Importantly, judicial precedents have recognized situations in which parties' actions may imply their agreement to arbitration, despite not having formally signed the arbitration agreement. This broader interpretation allows the arbitration clause to affect third parties, particularly when they play a significant role in the implementation of the contract at the heart of the dispute.

8. THE TRIBUNAL

8.1 How is the tribunal appointed?

The appointment of the tribunal in Luxembourg arbitration law, as governed by the provisions of the Nouveau Code de Procedure Civile («**NCPC**»), is a structured process that ensures fairness and efficiency in the constitution of the arbitral tribunal.

Indeed, according to Article 1228-2 of the NCPC, the parties involved in the arbitration have the flexibility to appoint arbitrators directly or through reference to specific arbitration rules or procedures. This can include the designation of arbitrators or the modalities for their appointment. The parties are free to decide the number of arbitrators. In scenarios where there is no agreement on this matter, the default number is set at three arbitrators.

As per Article 1228-4 (1°) of the NCPC, in cases where a single arbitrator is to be appointed and the parties cannot reach a consensus on the choice, the appointment is then made by the person responsible for organizing the arbitration or, if such a person is not designated, by the supporting judge.

Where the arbitration is to be conducted by three arbitrators (Article 1228-4 (2°)), each party selects one arbitrator. These two arbitrators then jointly appoint the third. If a party does not choose an arbitrator within one month of a request, or if the first two arbitrators cannot agree on the third within a month of the last arbitrator's acceptance, the appointment is made by the afore-mentioned responsible person or the supporting judge.

Finally, Article 1228-4 (4°) of NCPC stipulates that any other disagreements concerning the appointment of arbitrators are to be resolved by the person responsible for organising the arbitration or, in their absence, by the supporting judge.

In summary, the Luxembourg arbitration framework outlined in the NCPC provides a comprehensive and flexible mechanism for the appointment of arbitrators, catering to various scenarios and ensuring that the arbitral tribunal is constituted in a manner that is equitable and conducive to the efficient resolution of disputes. The process underscores the importance of party autonomy in arbitration while also providing an effective fallback mechanism through the involvement of a responsible person or a supporting judge to facilitate appointments when parties cannot reach an agreement. This approach balances the principles of fairness, efficiency, and party autonomy, which are crucial in the context of commercial and professional arbitration.

8.2 Are there any requirements as to the number or qualification of arbitrators in Luxembourg jurisdiction?

In Luxembourg's arbitration framework, the stipulations regarding the number and qualifications of arbitrators are notably flexible, aligning with the commercial needs of the parties involved. Parties have the autonomy to determine the number of arbitrators through their arbitration agreement. Should they not specify this in the agreement, the default number is set at three. This fallback number can also be determined by the person in charge of organizing the arbitration chosen by the

parties or, if necessary, by the supporting court. As for the qualifications, the key requirement for arbitrators in Luxembourg is to uphold impartiality and independence, ensuring an equitable and unbiased arbitration process. This approach reflects Luxembourg's commitment to fostering a dynamic and fair arbitration environment, adaptable to the diverse requirements of international commerce.

8.3 Can an arbitrator be challenged in Luxembourg jurisdiction? If so, on what basis? Are there any restrictions on the challenge of an arbitrator?

An arbitrator can be challenged under specific circumstances as per Luxembourg legal framework. The primary grounds for challenging an arbitrator, as outlined in Article 1228-7 NCPC, are circumstances that raise legitimate doubts about his or her impartiality or independence, or if the arbitrator lacks the qualifications agreed upon by the parties. If a dispute arises regarding the challenge, it is initially addressed by the entity responsible for organizing the arbitration. In the absence of such a body, the supporting judge intervenes and the parties must refer the matter to the court within one month of the disputed fact's disclosure or discovery. Furthermore, as stated in Article 1228-8 NCPC an arbitrator can only be dismissed with the unanimous consent of all parties involved. If unanimity is not achieved, the same procedure of arbitration organization or judicial intervention applies, with a similar one-month timeframe for resolution. While Luxembourg does permit the challenging and potential dismissal of an arbitrator, it does so within a structured and judicious framework. This approach safeguards the arbitration process's integrity and fairness, ensuring challenges are substantiated and resolved swiftly. These measures guarantee that the appointment, evaluation and potential removal of arbitrators occur in an equitable, organized, and prompt manner.

8.4 If a challenge is successful, how is the arbitrator replaced?

Arbitrators are expected to continue their duties until the conclusion of their assignment, barring any legitimate reasons for abstention such as an inability to fulfil their role or a valid reason for abstaining or resigning. In the event of a successful challenge against an arbitrator, the replacement process is guided by the principles outlined in Art. 1228-9 NCPC. The appointment of a new arbitrator is conducted in alignment with the procedures initially agreed upon or followed by the parties for the appointment of the original arbitrator.

8.5 What duties are imposed on arbitrators? Are these all imposed by legislation?

In light of the provision of article 1228-6 NCPC, the duties imposed on arbitrators include not only the obligation to disclose any circumstances that could affect their independence or impartiality before accepting their appointment but also an obligation of confidentiality as arbitration proceedings, unless otherwise agreed by the parties, are strictly confidential. Additionally, arbitrators are required to promptly disclose any similar circumstances that may arise after accepting their appointment. This underscores the importance of arbitrators maintaining their impartiality and independence throughout the

arbitration process and ensuring they meet the necessary qualifications agreed upon by the parties.

8.6 What powers does an arbitrator have in relation to:

(a) Procedure including evidence

Under Art. 1231-2 NCPC, an arbitration tribunal has significant discretion in regulating the procedure of arbitral proceedings. This can be outlined in the arbitration agreement, either directly or by referencing specific arbitration rules or procedural guidelines. In cases where the arbitration agreement does not specify procedural details, the tribunal is empowered to establish the necessary procedural framework. Notably, this discretion allows the arbitrator to deviate from the procedures typical in state courts, offering a more tailored approach to dispute resolution provided that, as per Article 1231-3 NCPC, under all circumstances, the tribunal, ensures equality and adherence to the adversarial principle and equality between parties. This ensures that all parties have a fair opportunity to present their case and respond to the other party's arguments, upholding the integrity and balance of the arbitration process.

Investigative Powers and Handling of Evidence

According to Article 1231-8 NCPC, the arbitral tribunal is authorized to conduct necessary investigations. It can hear any person, including the parties involved, ensuring a comprehensive evaluation of the case. This hearing process is not bound by oath-taking unless a foreign law applicable to the proceedings dictates otherwise. If a party possesses relevant evidence, the tribunal can order its production in a manner deemed appropriate. This grants the arbitrator substantial control over the evidentiary aspects of the case. When a party relies on a document held by a third party, the arbitrator can facilitate its procurement. The party can, upon the arbitrator's request, summon the third party before a supporting judge to obtain or produce the document.

The arbitration tribunal, in this legal framework, wields considerable power over procedural matters and the handling of evidence. This includes the ability to tailor the process to the specifics of the case, ensuring fairness and comprehensive consideration of all relevant materials and testimonies. Such flexibility and authority underscore the effectiveness and efficiency of arbitration as an alternative dispute resolution method, tailored to meet the unique needs of the parties involved while maintaining procedural integrity.

(b) Interim relief?

Understanding the Scope of Arbitrator Powers

Arbitrators' Authority to Order Provisional Measures: under Article 1231-9 NCPC, arbitrators have significant latitude to order parties to undertake provisional or protective measures deemed appropriate. This capacity is a fundamental aspect of an arbitrator's role in ensuring the effectiveness and fairness of the arbitration process.

Conditions and Limitations: it is crucial to note that this authority is subject to certain conditions the arbitral tribunal determines, offering a tailored approach to each case's unique dynamics.

Exclusions - State Court Jurisdiction: importantly, the applicable provision clarifies that the power to order seizures remains exclusively within the jurisdiction of state courts. This distinction ensures a balance between the arbitrator's authority and the traditional powers of state judiciary systems.

Modifications and Adjustments to Interim Measures: arbitrators are not only empowered to order interim measures but also have the flexibility to modify, supplement, suspend, or revoke these measures. This dynamic ability allows arbitrators to respond effectively to evolving case circumstances, ensuring that interim measures remain relevant and fair throughout the arbitration process.

Ensuring Fairness through security for interim measures: a critical aspect of an arbitrator's power is the discretion to require a party requesting an interim measure to provide appropriate security. This requirement is a safeguard, promoting responsibility and mitigating potential misuse of the interim relief process.

Arbitrators in modern commercial arbitration play a pivotal, balanced and, yet dynamic role in managing interim relief measures, characterized by a balance of authority, flexibility, and responsibility. Their powers, as outlined in Article 1231-9 NCPC, reflect a comprehensive approach, ensuring that interim measures are used effectively and judiciously, in alignment with the overarching goal of fair and efficient dispute resolution.

(c) Parties which do not comply with its orders?

Under the guiding principles of Art. 1231-13, an arbitrator is vested with significant authority to ensure compliance with their decisions. This encompasses not only final judgments but also extends to interim or protective measures and measures of inquiry. In instances where parties fail to adhere to the arbitrator's orders, the arbitrator has the discretion to impose penalties. This power is crucial in maintaining the efficacy and integrity of the arbitration process. Primarily, it acts as a deterrent against non-compliance, reinforcing the seriousness and binding nature of the arbitrator's orders. Additionally, it ensures that all parties engage in the arbitration process in good faith, respecting the temporary measures or inquiries that may be pivotal in the resolution of the dispute.

In essence, the authority to levy penalties under Art. 1231-13 is a vital tool in the arbitrator's arsenal. It not only upholds the enforceability of their decisions but also underpins the overall effectiveness and credibility of the arbitration process as a means of dispute resolution. This power must, however, be exercised judiciously and in alignment with the principles of fairness and justice, which are the cornerstones of arbitration.

(d) Issuing partial final awards ?

An arbitration tribunal may issue partial award.

(e) The remedies it can grant in a final award ?

In Luxembourg, public policy is the only exception to the broad scope of relief that can be requested and granted. This matter

is considered under the substantive law of Luxembourg, allowing for a wide range of legal remedies without specific restrictions.

(f) Interest?

Within the bounds of the applicable Luxembourg laws, arbitration tribunals enjoy considerable discretion in awarding interest, a freedom that is circumscribed only by specific considerations regarding compounding interest and stringent anti-usury laws. According to Article 1154 of the Luxembourg Civil Code, interest accrued on principal amounts may compound, thereby generating further interest, provided there is either a "judicial" demand or a special agreement that explicitly addresses interest owed for at least one year. Luxembourg's rigorous usury laws, under article 494 of the code Penal meticulously define and penalize only those usurious practices that exploit a borrower's vulnerability through the repeated imposition of unauthorized rates. This precise interpretation ensures that instances of usury are rarely recognized under Luxembourg law, striking a careful balance between the protection of borrowers and the legitimate accrual of interest under specific conditions.

8.7 How may a tribunal seated in Luxembourg jurisdiction proceed if a party does not participate in the arbitration?

In cases where a respondent does not participate in arbitration without justifiable reason, the tribunal has the authority to proceed and render an award based on the evidence available. In adherence to the key adversarial principle, the tribunal ensures non-participating parties are given ample opportunity to engage, clarifying that their absence does not constitute consent to the claims presented.

Should the claimants fail to present their case, the tribunal is obligated to dismiss the arbitration, preserving the rights of other parties to pursue their claims independently. Conversely, if the respondent fails to articulate its defence, the tribunal will advance the proceedings, ensuring that such non-participation is not deemed an implicit agreement to the claimant's demands and allegations. Additionally, the tribunal may progress with the arbitration in the event of a party's non-engagement in oral hearings or failure to produce documents, making determinations based on the evidence available.

The tribunal possesses the capacity to issue a default award, provided that the non-defaulting party substantiates its claim and demands. Such a default award is enforceable in court just like a standard award.

9. THE ROLE OF THE COURT DURING AN ARBITRATION

9.1 Will the court in your jurisdiction stay proceedings and refer parties to arbitration if there is an arbitration agreement?

Pursuant to Article 1227-3 of the Nouveau Code de Procedure Civile («**NCPC**»), should a dispute that falls within the scope of an arbitration agreement be submitted to a state court, the court must defer jurisdiction, with the exception being circumstances wherein the arbitration agreement is null and void due to the non-arbitrability of the dispute, or if the agreement is obviously null and void or obviously inapplicable for any other reason. However, the court is precluded from unilaterally – *sua ponte* - asserting its lack of jurisdiction; such a challenge must be proactively raised at the preliminary stage of the legal proceedings. The effectiveness of this challenge hinges solely on its being raised 'in limine litis.' Should there be a failure to present this challenge at the 'in limine litis' stage, it may result in the presumption that the case has been transferred to the jurisdiction of state courts. If the arbitral tribunal adjudicates itself as lacking jurisdiction, or if an arbitral award is vacated on grounds that preclude the possibility of reconvening the tribunal, the litigation shall resume before the initially seized court, contingent upon the notification to the court registry and the other parties involved by either of the parties or a single party regarding this specific juncture.

9.2 Does the court in Luxembourg jurisdiction have any powers in relation to an arbitration seated in Luxembourg jurisdiction and/or seated outside Luxembourg jurisdiction? What are these powers? Under what conditions are these powers exercised?

Under the provisions of Article 1227-4 of the NCPC, Luxembourg law delineates specific and limited circumstances under which courts may exercise jurisdiction over arbitration matters, whether seated within or outside Luxembourg. Notably, before the formation of an arbitral tribunal, or in instances where it becomes apparent that the arbitration tribunal is incapable of granting the requested measure, the existence of an arbitration agreement does not preclude a party from seeking judicial intervention. For instance, the arbitral tribunal lacks jurisdiction to order attachment proceedings, as only the state court possesses the authority to order seizures (Article 1231-9 NCPC). Similarly, the tribunal cannot compel the forced production of documents held by a third party, a measure that is exclusively within the state court's purview (Article 1231-8 NCPC). This intervention may be sought for the purposes of obtaining measures of inquiry, or interim or protective measures, without such action constituting a waiver of the arbitration agreement.

Luxembourg courts exercise a markedly restrained approach towards involvement in arbitral proceedings, adhering closely to the principle of party autonomy and respecting the arbitral tribunal's jurisdiction. This approach is manifested in the courts' limited authority to intervene, which is exercised only under narrowly defined conditions, either at the

request of one of the parties involved in the arbitration or by the arbitral tribunal itself. The overarching principle guiding this legal framework is the respect for the arbitral process, ensuring that the tribunal's authority to manage the proceedings is maintained with minimal state court interference.

9.3 Can the parties exclude the court's powers by agreement?

While the power and authority of an arbitral tribunal to order provisional or conservatory measures, except in situations explicitly outlined by law such as ordering attachments or the delivery of piece of evidence held by third parties, can be restricted or nullified by mutual agreement of the parties involved (as per Article 1231-9 of the NCPC), the jurisdiction and powers bestowed upon the supporting judge (*"juge d'appui"*) or state courts originate predominantly from public policy rules. Consequently, these powers are inherently and generally beyond the scope of limitation or exclusion through party agreements.

10. COSTS

10.1 How will the tribunal approach the issue of costs?

In arbitration proceedings seated in Luxembourg, the tribunal possesses considerable latitude in determining the allocation of costs associated with the arbitration. This includes arbitrators' fees and expenses, administrative fees, and the legal and other expenses reasonably incurred by the participating parties.

The tribunal has the authority to require one party to bear another's costs, wholly or partially, particularly if it finds evidence of frivolous, improper, or bad-faith actions. The final award will address the arbitration costs and specify the responsible parties or their sharing proportion. The tribunal may incorporate any relevant circumstances into its cost-related decisions, emphasizing the importance of conducting the arbitration in an expedient and cost-effective manner.

Ultimately, the approach to arbitration costs in Luxembourg is designed to be adaptive, enabling the tribunal to tailor the cost allocation to the specifics of each case, thereby reflecting the principles of fairness and efficiency inherent in the arbitration process.

10.2 Are there any restrictions on what the parties can agree in terms of costs in an arbitration seated in Luxembourg jurisdiction?

Parties have the autonomy to agree on how these costs should be divided. Absent such an agreement, the tribunal is tasked with making this determination. The tribunal's approach to cost allocation is not rigid; it may distribute

costs in direct correlation to each party's success in the arbitration, divide them equally, or adopt a different distribution as deemed fitting. This flexibility allows the tribunal to consider various factors, including the case's complexity, the parties' conduct, the arbitration outcome, and any settlement proposals made.

11. FUNDING

11.1 Is third-party funding permitted for arbitrations seated in Luxembourg jurisdiction?

In arbitrations seated within the jurisdiction of Luxembourg, third-party funding is allowed. Luxembourg law does not contain specific provisions that directly address third-party funding in the context of arbitration; nevertheless, the practice is accepted and gaining prominence. Though not legally compelling, most arrangements for third-party funding adhere to the ethical standards and rules of professional conduct that apply to legal practitioners representing the parties involved in the arbitration or to the Code of Conduct for Litigation Funders. The arbitral tribunal may consider the presence of third-party funding arrangements when making decisions regarding the allocation of costs.

Some rules of public order may restrict the parties' discretion and possibilities in agreeing third-party funding contracts. For example, pure pacta de quota litis are held to be void under Luxembourg laws. Therefore, in the context of Luxembourg law, while third-party funding is permitted, the autonomy of the parties involved is not absolute and may encounter limitations due to public order regulations. For instance, agreements based solely on pacta de quota litis - whereby fees are contingent solely on the litigation's outcome - are deemed invalid. This stipulation underscores the legal framework's commitment to ensuring that agreements do not contravene key principles of fairness and ethical standards without which no Justice can be rendered. In navigating these waters,

it is essential for parties to be acutely aware of the nuanced restrictions that safeguard the integrity of the legal process and the access to a tribunal, ensuring that the pursuit of justice remains untainted by arrangements that might otherwise compromise it. This careful balance reflects a broader principle inherent in Luxembourg's legal system: while innovation in legal financing is acknowledged if not favoured, it must not overstep the bounds of what is considered crucial under the eye of Justice.

12. AWARD

12.1 What procedural and substantive requirements must be met by an award?

To fulfil both procedural and substantive requirements, an arbitral award must adhere to specific legal and regulatory standards. Firstly, arbitrators are obliged to resolve disputes in accordance with the law applicable to the substance of the dispute and the rules governing the proceedings. The award itself must meet several criteria:

- It must be documented in writing and bear the signatures of either all arbitrators or those who concur with the decision, as provided for by article 1232-1 of the Nouveau Code de Procedure Civile («**NCPC**»);
- It should explicitly state the reasons behind the decision, except in cases where the parties have mutually agreed to waive this requirement, in accordance with Article 1232-2 NCPC;
- Additionally and although the relevant Luxembourg provisions do not impose it, the award should clearly indicate the arbitration's venue and the date when the decision was rendered.

The arbitration agreement or rules may permit arbitrators to include their individual or dissenting views within the award, as per Article 1232 NCPC. Once issued, the award carries the authority of a final and conclusive judgment (res judicata) and must be promptly distributed to each party in signed form, as mandated by Article 1232-3 NCPC. Lastly, a party has the right to formally serve the award.

This comprehensive framework ensures that the award is not only legally compliant but also transparent and accountable to the parties involved.

12.2 Must the award be produced within a certain timeframe?

The legislation in Luxembourg does not prescribe a definitive period for the issuance of an arbitral award. However, it can be deduced from Article 1231-6 of the NCPC that, in the absence of a specified timeframe within the arbitration agreement, the term of the arbitral tribunal's mandate is confined to six months, commencing from the acceptance date of the last arbitrator's appointment. This provision implies that, since the authority and assignment of arbitrators must be completed within six-months, the award should logically be issued within the same timeframe. Nonetheless, the parties involved may mutually agree upon a specific and distinct delay for the delivery of the arbitral award.

13. ENFORCEMENT OF AWARDS

13.1 Are awards enforced in Luxembourg jurisdiction? Under what procedure?

In Luxembourg, both domestic and international arbitral awards are enforceable, reflecting the jurisdiction's favourable stance towards arbitration enforcement. The enforcement process for foreign award is delineated by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which Luxembourg adheres to under the principle of reciprocity (see law on 20 May 1983 (the Law of May 20, 1983 approving the New York Convention of June 10, 1958 on the Recognition and Enforcement of Foreign Arbitral Awards). This applies to awards issued within the territories of states that are parties to the Convention. For awards originating from states not party to the Convention, subject to strict conditions, enforcement within Luxembourg remains however possible.

To initiate enforcement, the applicant must submit to the president of the Luxembourg district court a specific request, the original award or a certified copy, along with the arbitration agreement. If these documents are not in French, German, or Luxembourgish, translations must be provided. Additionally, the applicant must demonstrate that the award is final and binding, ensuring that any applicable appeal periods have lapsed.

Upon successful recognition and declaration of enforceability, the award acquires the same legal standing as a final judgment issued by a Luxembourg court, thereby permitting its enforcement under Luxembourg law.

14. GROUNDS FOR CHALLENGING AN AWARD

14.1 What are the grounds on which an award can be challenged, appealed or otherwise set aside in Luxembourg jurisdiction?

In Luxembourg, the challenge, appeal, or setting aside of an arbitration award can be pursued through two primary avenues: the annulment and the revision.

For direct recourse against **domestic award,** the relevant legal framework is outlined in Article 1243 of the Nouveau Code de Procedure Civile («**NCPC**»), which provides for a recourse of revision under specific and very restrictive conditions. This application seeks the revocation of an arbitration award to allow for a new decision based on both the facts and the law. Such a review can be requested in the following very limited circumstances:

(i) Discovery of fraud by the party in whose favour the award was made, after the issuance of the decision;

(ii) Recovery of crucial documents previously withheld by another party, subsequent to the award's issuance;

(iii) If the decision was based on critical documents later acknowledged or judicially declared to be falsified;

(iv) If the decision relied on attestations, testimonies, or oaths later recognized or judicially declared as false.

Only those parties directly involved in or represented during the initial arbitration proceedings are eligible to petition for a review. Such a petition must be filed within a two-month period following the date on which the party first became cognizant of the justifications for seeking a revision. The submission of this application mandates the compulsory summoning of all the parties involved in the revision process; failure to comply will result in the application being deemed inadmissible. Only parties who were part of or represented in the original arbitration can request such a review. This recourse must be filed within two months from the day the party became aware of the grounds for review. The application necessitates summoning all parties involved in the challenged award to the revision proceedings, under penalty of inadmissibility.

The application for review must be formally submitted to the Arbitral Tribunal. Should circumstances render the reconvening of the Tribunal impracticable, the appeal shall instead be directed to the Court of Appeal. In such instances, the appeal will be tried and judged according to the ordinary procedural rules applicable in the Court of Appeal in civil matters.

Should either the Arbitral Tribunal or the Court of Appeal deem the appeal warranted, it will proceed to render a decision on the merits of the dispute. Nonetheless, a review undertaken by the Court of Appeal shall not culminate in a verdict on the merits unless the constitution of a new arbitral tribunal is either declined by the parties or contested by one party on the premise that an arbitration agreement does

not exist between them. In instances where the review is pertinent solely to a specific section of the award, and the remaining portions are contingent upon it, only that section will be subject to review. Furthermore, a party is precluded from requesting a review of an award that has previously been challenged in this manner, barring the emergence of new grounds subsequent to the original challenge.

In Luxembourg, a party may petition the state court for the annulment of domestic arbitration awards, invoking the legal framework provided by Article 1238 of the New Code of Civil Procedure (NCPC). This specific provision permits parties to appeal to the Court of Appeal, which deals with cases in civil matters. The appeal must be lodged within a one-month deadline from the award's notification, a period that is strictly enforced without regard to location. Importantly, filing an appeal does not stay the execution of the award. The Court of Appeal may annul the award on the following specific grounds:

(i) The arbitral tribunal incorrectly asserted or denied its jurisdiction;

(ii) The arbitral tribunal was improperly constituted;

(iii) The tribunal issued a ruling without adhering to the agreed-upon terms of its mission;

(iv) The award contravenes the principles of public policy;

(v) The reasoning behind the award was not provided, except in cases where the parties waived the requirement for such explanations;

(vi) There was a violation of the fundamental rights to a fair defense.

These provisions underscore the stringent criteria applied by Luxembourg courts in reviewing domestic arbitration awards, ensuring that the award is consistent with both key procedural fairness and Luxembourg's public policy standards.

14.2 Are parties permitted to exclude any rights of challenge or appeal?

Under Luxembourg law, parties are precluded from waiving or excluding their right to challenge or appeal an arbitration award. The rationale for this prohibition is rooted in the principle that the right to contest an award for violating public policy is integral to public interest and the right to a fair trial, rendering it inviolable and non-negotiable. Consequently, any contractual provision attempting to sidestep this fundamental principle is deemed null and void. Challenges or appeals against arbitration awards are permissible solely within the confines and through the mechanisms expressly delineated by the NCPC. Hence, any agreement designed to curtail the ambit of judicial scrutiny or to forsake the right to challenge or appeal an award is regarded as ineffective and legally unenforceable.

15. CONFIDENTIALITY

15.1 Is arbitration seated in Luxembourg jurisdiction confidential? Is a duty of confidentiality found in the arbitration legislation?

In Luxembourg, arbitration proceedings are inherently confidential, as mandated by the arbitration legislation. Article 1231-5 the Nouveau Code de Procedure Civile («**NCPC**») explicitly provides for that, except as required by overriding legal obligations or as expressly agreed upon by the involved parties, the entirety of the arbitration process is to remain confidential. This confidentiality encompasses all elements related to the arbitration, including but not limited to the existence of the arbitration itself, the parties' submissions, and the final award, except where disclosure is mandated by law or is essential for the execution or enforcement of the award. However, the parties may elect to enhance the scope of confidentiality through explicit agreements within the arbitration contract or via a distinct accord. Despite the general adherence to confidentiality in Luxembourg's arbitration framework, exceptions exist. These include instances where judicial intervention necessitates the revelation of information during processes such as the annulment or enforcement of an award, or where disclosure is compelled by statutory requirements. Consequently, parties are advised to meticulously consider confidentiality provisions when formulating their arbitration agreements and to seek expert legal guidance where appropriate.

15.2 Are there any exceptions to confidentiality?

Yes, Luxembourg's arbitration legislation does include specific exceptions to the principle of confidentiality. Notably, parties involved in arbitration may mutually decide to relinquish confidentiality entirely or partially. Additionally, circumstances necessitating legal disclosure, such as for the enforcement or contestation of an award, also constitute exceptions.

16. HOW CAN WE ASSIST YOU?

How our team can assist you:

- **Arbitration Strategy Development:** our seasoned team can assist in devising effective strategies for dispute resolution, considering all relevant legal, commercial, and practical aspects. We conduct a thorough analysis to advise on the most advantageous course of action – be it pursuing arbitration, litigation, negotiation, or other forms of alternative dispute resolution.
- **Drafting and Reviewing Arbitration Agreements:** we provide expert assistance in drafting arbitration clauses in commercial contracts, ensuring they are robust, clear, and enforceable. Moreover, we can review existing agreements and suggest modifications to optimise them in light of the latest legal changes and best practices.
- **Representation in Arbitration Proceedings**: from initiating the arbitration process to presenting the case and enforcing or challenging the award, our team is adept at handling the entire arbitration proceedings. We work diligently to protect our clients' interests, focusing on achieving favourable outcomes while minimising risks and costs.
- **Advisory Services:** we provide timely advice on matters related to conflicts of interest, procedural issues, disclosure obligations, and the role of competence-competence principle under the new law reform.
- **Confidentiality and Ethics**: upholding the new obligation of confidentiality introduced in the reform, we ensure that all proceedings are handled with utmost discretion. We also adhere to the highest ethical standards and professionalism.
- **International Arbitration**: with the extensive experience in international law, our arbitration team is skilled at managing cross-border disputes. We navigate the complexities of international rules and jurisdictions to provide comprehensive support for global disputes.

At our firm, we understand that every dispute comes with its own set of challenges. That's why we commit to a personalised approach, providing each client with a bespoke solution to meet their unique requirements. Whether you're a multinational corporation or a local business, you can trust our team to provide exceptional service and expert guidance through the complexities of arbitration law.

Feel free to get in touch with us to learn more about how we can assist you in arbitration matters.

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