GAR Global Arbitration Review

The Guide to Challenging and Enforcing Arbitration Awards - Fourth Edition

Luxembourg

The Guide to Challenging and Enforcing Arbitration Awards - Fourth Edition

Enforcement used to be a non-issue in international arbitration. Most losing parties simply paid. Not so any more. The time spent on post-award matters has increased vastly, and challenges to awards have become the norm.

The ***Challenging and Enforcing Arbitration Awards Guide*** is a comprehensive volume that addresses this new reality. It offers practical know-how on both sides of the coin: challenging and enforcing awards. Part I provides a full thematic overview, while Part II delves into the specifics seat by seat, now covering 29 jurisdictions..

Generated: July 24, 2025

GAR Global Arbitration Review

Luxembourg

Olivier Marquais, Olivier Marquais, **Jeanclaude Lacatena** and Jeanclaude Lacatena

Loyens & Loeff

Summary

FORM OF AWARDS

1. MUST AN AWARD TAKE ANY PARTICULAR FORM?

As of 25 April 2023, a new Luxembourg Arbitration Law is in force. This reform is in line with a worldwide trend of reforms to increase recourse to arbitration as an alternative means of resolving disputes. It also secures Luxembourg's position as a place of enforcement of foreign awards. The new arbitration law is provided for in articles 1224–1249 of the New Code of Civil Procedure (NCPC). The new Arbitration Law only applies to arbitration agreements concluded, arbitral tribunals constituted and arbitral awards rendered, after the entry into force of the new law. It is essentially based on the UNCITRAL Model Law and on French arbitration law.

To be valid under Luxembourg law, an arbitral award rendered in Luxembourg must be in writing and signed by all members of the arbitral tribunal. If a minority of them refuses to sign, this is mentioned in the award, which has the same effect as if it had been signed by all the arbitrators (article 1232-1 NCPC). An arbitral award must also be reasoned unless the parties have dispensed the arbitral tribunal from giving any reasons (article 1232-2 NCPC). In practice, awards also contain names and domiciles of the arbitrators and parties, the object of the dispute, a citation of the arbitration agreement, the date of the award and the place of the arbitration. The tribunal provides a signed copy of the award to each party. The award can also be served or notified by one party to another (article 1232-3 NCPC).

PROCEDURAL LAW FOR RECOURSE AGAINST AN AWARD (OTHER THAN APPLICATIONS FOR SETTING ASIDE)

2. ARE THERE PROVISIONS GOVERNING MODIFICATION, CLARIFICATION OR CORRECTION OF AN AWARD? ARE THERE PROVISIONS GOVERNING RETRACTATION OR REVISION OF AN AWARD? UNDER WHAT CIRCUMSTANCES MAY AN AWARD BE RETRACTED OR REVISED (FOR FRAUD OR OTHER REASONS)? WHAT ARE THE TIME LIMITS?

At the request of a party, the arbitral tribunal may interpret the award, correct material errors and omissions affecting it, or supplement it when it has omitted to rule on a claim. It shall give its decision after hearing the parties or after summoning them (article 1232-4(2) NCPC). Such a request must be submitted within three months of the date of service of the award (article 1232-5(1) NCPC). Unless otherwise agreed, the amended or supplemented award shall be made within three (months of the date on which the matter was referred to the arbitral tribunal. This period may be extended. The rectified or completed award is served in the same manner as the initial award.

An application for review, which seeks to set aside an award rendered in Luxembourg so that a new decision can be made on the facts and law, is available against the arbitral award, if:

- after the award has been rendered, it is revealed that it was taken by surprise by the fraud of the party for whose benefit it was rendered;
- since the award was made, decisive documents have been recovered that had been withheld by another party;
-

it has been judged on documents recognised or judicially declared to be false since the award; or

- it has been judged on attestations, testimonies or oaths recognised or judicially declared false since the award (article 1243(1) NCPC).

The arbitral award may also be the subject of third-party proceedings, which would be brought before the court that would have had jurisdiction in the absence of the arbitration (article 1244 NCPC).

---

3. MAY AN AWARD BE APPEALED TO OR SET ASIDE BY THE COURTS? WHAT ARE THE DIFFERENCES BETWEEN APPEALS AND APPLICATIONS TO SET ASIDE AWARDS?

As a matter of public policy, an award rendered in Luxembourg is not subject to opposition, appeal or cassation before a state court, but it may be set aside by the Court of Appeal (article 1236 NCPC).

SETTING ASIDE OF ARBITRAL AWARDS

---

4. IS THERE A TIME LIMIT FOR APPLYING FOR THE SETTING-ASIDE OF AN ARBITRAL AWARD?

A setting-aside application is admissible as soon as the award has been rendered. It ceases to be admissible if it has not been lodged within one month of notification or service of the award (article 1239 NCPC).

---

5. WHAT KIND OF ARBITRAL DECISION CAN BE SET ASIDE IN YOUR JURISDICTION? WHAT ARE THE CRITERIA TO DISTINGUISH BETWEEN ARBITRAL AWARDS AND PROCEDURAL ORDERS IN YOUR JURISDICTION? CAN COURTS SET ASIDE PARTIAL OR INTERIM AWARDS?

Only arbitral awards (interim or final) rendered in Luxembourg may be set aside or annulled. Procedural orders may not be set aside or annulled pursuant to these provisions.

---

6. WHICH COURT HAS JURISDICTION OVER AN APPLICATION FOR THE SETTING ASIDE OF AN ARBITRAL AWARD? IS THERE A SPECIFIC COURT OR CHAMBER IN PLACE WITH SPECIFIC SETS OF RULES APPLICABLE TO INTERNATIONAL ARBITRAL AWARDS?

The Court of Appeal has exclusive jurisdiction to rule on setting-aside applications of awards rendered in Luxembourg (article 1236 NCPC).

---

7. WHAT DOCUMENTATION IS REQUIRED WHEN APPLYING FOR THE SETTING ASIDE OF AN ARBITRAL AWARD?

The award concerned by the application is an essential part of the documentation. The action is initiated by a writ of summons to the other parties to the award, and the Court of Appeal sitting in civil matters decides in accordance with the rules governing ordinary proceedings (article 1240 NCPC). The common law provisions concerning writs of summons of articles 153 and 154 NCPC are applicable. These include details of the applicant, of the person against whom the application is served and of the bailiff, the subject matter and a brief summary of the arguments, the court before which the action is brought, details of service, etc.

8. IF THE REQUIRED DOCUMENTATION IS DRAFTED IN A LANGUAGE OTHER THAN THE OFFICIAL LANGUAGE OF YOUR JURISDICTION, IS IT NECESSARY TO SUBMIT A TRANSLATION WITH THE APPLICATION FOR THE SETTING ASIDE OF AN ARBITRAL AWARD? IF YES, IN WHAT FORM MUST THE TRANSLATION BE?

The official languages in Luxembourg are French, German and Luxembourgish. Documents provided in any other language may need to be translated. However, the court may accept documents in another language understood by the court, such as English. The courts are usually satisfied with an informal translation. The Luxembourg Ministry of Justice provides a list of translators and interpreters who are sworn in before a chamber of the Supreme Court of Justice.

9. WHAT ARE THE OTHER PRACTICAL REQUIREMENTS RELATING TO THE SETTING ASIDE OF AN ARBITRAL AWARD? ARE THERE ANY LIMITATIONS ON THE LANGUAGE AND LENGTH OF THE SUBMISSIONS AND OF THE DOCUMENTATION FILED BY THE PARTIES?

The NCPC does not provide for other specific practical requirements. There are no limitations on the length of the submissions or documentation filed by the parties.

10. WHAT ARE THE DIFFERENT STEPS OF THE PROCEEDINGS?

An arbitral award may only be contested by way of a setting-aside application before the Court of Appeal, initiated by a writ of summons served by a bailiff to the other parties to the award (article 1240 NCPC). The steps for setting aside an arbitral award rendered in Luxembourg follow the general procedural rules before the Court of Appeal in civil matters (articles 598 et seq NCPC). These proceedings are adversarial.

Once enrolled with the Court of Appeal, the case is placed under the supervision of a magistrate in charge of procedural matters**,** responsible for ensuring that the proceedings are conducted fairly, and in particular that submissions and documents are exchanged on time. He or she may hear the lawyers and make all useful communications to them. He or she may also, if necessary, issue injunctions against them (hard deadlines to submit their briefs). Once the parties have sufficiently made their case, the instruction phase is closed and the case is scheduled for a hearing. In practice, the court asks the parties whether they intend on pleading the case or whether they are satisfied with the court rendering its decision on the basis of the written submissions only. The court will render its decision on the basis of the parties' pleadings (writ of summons and subsequent briefs) and supporting documentation.

A setting-aside application automatically entails an appeal against the order of the judge who ruled on the exequatur (article 1237 NCPC). Dismissal of the action for annulment confers the exequatur on the arbitral award (article 1242 NCPC).

11. MAY AN ARBITRAL AWARD BE RECOGNISED OR ENFORCED PENDING THE SETTING-ASIDE PROCEEDINGS IN YOUR JURISDICTION? DO SETTING-ASIDE PROCEEDINGS HAVE SUSPENSIVE EFFECT?

A setting-aside application does not have suspensive effect, so the arbitral award may still be recognised and enforced despite the filing of a setting-aside application. However, the Court of Appeal, ruling as in summary proceedings, may stop or modify the conditions of

enforcement of the award if such enforcement is likely to seriously prejudice the rights of one of the parties (article 1241 NCPC).

---

12. WHAT ARE THE GROUNDS ON WHICH AN ARBITRAL AWARD MAY BE SET ASIDE?

An award rendered in Luxembourg may be set aside if: (i) the arbitral tribunal has wrongly declared itself competent or incompetent; (ii) the arbitral tribunal has been improperly constituted; (iii) the arbitral tribunal has ruled without complying with the mission entrusted to it; (iv) the award is contrary to public policy; (v) the award is not reasoned (unless the parties have exempted the arbitrators from giving reasons); or (vi) in the case of a violation of the rights of defence or due process (article 1238 NCPC).

---

13. WHEN ASSESSING THE GROUNDS FOR SETTING ASIDE, MAY THE JUDGE CONDUCT A FULL REVIEW AND RECONSIDER FACTUAL OR LEGAL FINDINGS FROM THE ARBITRAL TRIBUNAL IN THE AWARD? IS THE JUDGE BOUND BY THE TRIBUNAL'S FINDINGS? IF NOT, WHAT DEGREE OF DEFERENCE WILL THE JUDGE GIVE TO THE TRIBUNAL'S FINDINGS?

In principle, the Court of Appeal does not conduct a full review and reconsider the factual or legal findings of the arbitral tribunal, even in the case of gross error on the part of the arbitrator, in law or in fact. When seized with a setting-aside application, the Court of Appeal strictly limits its review to what is necessary to assess the grounds raised under article 1238 NCPC.

---

14. IS IT POSSIBLE FOR AN APPLICANT IN SETTING-ASIDE PROCEEDINGS TO BE CONSIDERED TO HAVE WAIVED ITS RIGHT TO INVOKE A PARTICULAR GROUND FOR SETTING ASIDE? UNDER WHAT CONDITIONS?

The NCPC does not expressly provide for situations in which an applicant would have waived its right to invoke a particular ground for setting-aside. However, under Luxembourg procedural law, there is a general duty of coherence imposed on parties, in the sense that they must not contradict itself. A party may not contradict itself to the detriment of another party. Thus, one may arguably be estopped from raising certain grounds if it can be demonstrated that it was aware of them during the arbitration proceedings but failed to invoke them in a timely manner.

In any event, article 1239 NCPC imposes a time bar of one month on the initiation of setting-aside proceedings, which begins to run from the moment the award is notified or served to the party.

---

15. WHAT IS THE EFFECT OF THE DECISION ON THE SETTING-ASIDE APPLICATION IN YOUR JURISDICTION? WHAT CHALLENGES OR APPEALS ARE AVAILABLE?

The rejection of the application for annulment confers the exequatur on the arbitral award (or those of its provisions that are not affected by the Court of Appeal's decision) (article 1242 NCPC). If the application is granted, the award is annulled. In principle, the decision of the Court of Appeal is final. It may, however, be brought before the Court of Cassation on certain limited grounds (article 3 Law of 18 February 1885).

---

16. WILL COURTS TAKE INTO CONSIDERATION DECISIONS RENDERED IN RELATION TO THE SAME ARBITRAL AWARD IN OTHER JURISDICTIONS OR GIVE EFFECT TO THEM?

Luxembourg judges may consider the decisions rendered in other jurisdictions regarding the same arbitral award, but they are not required to follow them. When matters of public policy are at stake, the Luxembourg courts may be more likely to follow foreign decisions from certain jurisdictions. For example, the Luxembourg courts have found an overall convergence between Swiss law and Luxembourg law in this respect, so that there is little risk of Luxembourg public policy rules being violated if the Swiss judges have found no such violations.

PROCEDURAL LAW FOR RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

17. WHAT IS THE APPLICABLE PROCEDURAL LAW FOR RECOGNITION AND ENFORCEMENT OF AN ARBITRAL AWARD IN YOUR JURISDICTION?

The Luxembourg arbitration law distinguishes between awards rendered in Luxembourg and foreign awards. Domestic awards are enforced pursuant to the provisions of articles 1233 et seq NCPC and foreign awards are enforced pursuant to the provisions of articles 1245 et seq NCPC. In both cases, there is a need to obtain an exequatur order concerning the award.

18. IS YOUR JURISDICTION A PARTY TO TREATIES FACILITATING RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS (EG, THE ICSID CONVENTION OR BILATERAL TREATIES)? (IN PARTICULAR, IS YOUR STATE A PARTY TO THE 1958 NEW YORK CONVENTION? IF YES, WHAT IS THE DATE OF ENTRY INTO FORCE OF THE CONVENTION? WAS THERE ANY RESERVATION MADE UNDER ARTICLE I(3) OF THE CONVENTION?

Luxembourg is a party to the New York Convention, approved by the Law of 20 May 1983. The New York Convention entered into force in Luxembourg with a reciprocity reservation, allowing Luxembourg to apply the Convention only to the recognition and enforcement of arbitration awards made in the territory of another contracting state. The Law of 20 May 1983 did not include a commercial reservation. Luxembourg courts have, on numerous occasions, clarified the application of the New York Convention.

Additionally, Luxembourg is a party to the European Convention on International Commercial Arbitration of 1961, the Convention on Conciliation and Arbitration within the Organization for Security and Co-operation of 1992, the Energy Charter Treaty of 1994 and 60 bilateral investment treaties.

Luxembourg is also a party to the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention), ratified by the Luxembourg parliament on 8 April 1970. Under article 54(1) of the ICSID Convention, ICSID awards must be enforced as if they were final court judgments in the country where enforcement is sought.

RECOGNITION PROCEEDINGS

19. IS THERE A TIME LIMIT FOR APPLYING FOR THE RECOGNITION AND ENFORCEMENT OF AN ARBITRAL AWARD?

There is no specific statutory time limit for applying for the recognition and enforcement of an arbitral award.

20. WHICH COURT HAS JURISDICTION OVER AN APPLICATION FOR RECOGNITION AND ENFORCEMENT OF AN ARBITRAL AWARD? IS THERE A SPECIFIC COURT OR CHAMBER IN PLACE WITH SPECIFIC SETS OF RULES APPLICABLE TO INTERNATIONAL ARBITRAL AWARDS?

Applications for recognition of domestic and foreign awards are brought before the President of the District Court (articles 1233 and 1245 NCPC). These proceedings are ex parte. Enforcement summons would typically be brought before the District Court.

---

21. WHAT ARE THE REQUIREMENTS FOR THE COURT TO HAVE JURISDICTION OVER AN APPLICATION FOR RECOGNITION AND ENFORCEMENT AND FOR THE APPLICATION TO BE ADMISSIBLE?

For domestic awards, article 1233 of the NCPC provides that the request for ***exequatur*** must be filed in the district where the award was rendered.

For foreign awards, article 1245 of the NCPC provides that the exequatur order shall be granted by the President of the District Court in whose jurisdiction the person against whom enforcement is sought is domiciled or, in the absence of domicile, resides. If this person has neither domicile nor residence in the Grand Duchy of Luxembourg, the application is brought before the President of the District Court of the place where the award is to be enforced.

---

22. ARE THE RECOGNITION PROCEEDINGS IN YOUR JURISDICTION ADVERSARIAL OR EX PARTE? WHAT ARE THE DIFFERENT STEPS OF THE PROCEEDINGS?

For both domestic and foreign arbitral awards, recognition proceedings are ex parte (articles 1233 and 1245 NCPC). In the case of refusal, an appeal may be lodged with the Court of Appeal sitting in civil matters. This appeal must be lodged within one month of notification of the refusal decision (article 1235 NCPC). In the case of foreign awards, the party against whom the exequatur order is rendered may also appeal to the Court of Appeal, within one month of the notification of the order (article 1246 NCPC).

---

23. WHAT DOCUMENTATION IS REQUIRED TO OBTAIN RECOGNITION?

Pursuant to article IV of the New York Convention, the applicant must provide the court with the original or a duly certified copy of both the arbitral award and the arbitration agreement. Pursuant to the Luxembourg arbitration law, for both domestic and foreign awards, the exequatur request is filed by the most diligent party with the court clerk's office, together with the original or a copy of the award and the arbitration agreement (articles 1233 and 1245 NCPC).

---

24. IF THE REQUIRED DOCUMENTATION IS DRAFTED IN A LANGUAGE OTHER THAN THE OFFICIAL LANGUAGE OF YOUR JURISDICTION, IS IT NECESSARY TO SUBMIT A TRANSLATION WITH AN APPLICATION TO OBTAIN RECOGNITION? IF YES, IN WHAT FORM MUST THE TRANSLATION BE?

Pursuant to article IV of the New York Convention, if the required documentation is not drafted in one of the official languages, it is necessary to submit a certified translation of the full arbitral award and the arbitration agreement. Pursuant to the NCPC, if the award or agreement is not drawn up in one of the administrative or judicial languages (French,

English and Luxembourgish), the court may request a translation into one of these languages (articles 1233 and 1245 NCPC).

---

25. WHAT ARE THE OTHER PRACTICAL REQUIREMENTS RELATING TO RECOGNITION AND ENFORCEMENT? ARE THERE ANY LIMITATIONS ON THE LANGUAGE AND LENGTH OF THE SUBMISSIONS AND OF THE DOCUMENTATION FILED BY THE PARTIES?

In its request for exequatur, the applicant elects domicile in the district of the court seized. Service on the claimant relating to the enforcement of the award or to remedies may be effected at this address (articles 1233 and 1245 NCPC). There are no limitations on the length of the submissions or documentation filed. The application must be drafted, and the documentation must be filed, in one of the official languages (although the courts usually accept documentation to be filed in English).

---

26. DO COURTS RECOGNISE AND ENFORCE PARTIAL OR INTERIM AWARDS?

Articles 1233 and 1245 NCPC do not expressly differentiate between final, partial, or interim awards for recognition purposes. Luxembourg courts will generally recognise and enforce partial and interim awards if they are binding and not subject to appeal before the arbitral tribunal.

---

27. WHAT ARE THE GROUNDS ON WHICH AN ARBITRAL AWARD MAY BE REFUSED RECOGNITION? ARE THE GROUNDS APPLIED BY THE COURTS DIFFERENT FROM THE ONES PROVIDED UNDER ARTICLE V OF THE NEW YORK CONVENTION?

With respect to foreign awards, article 1246 NCPC reflects to a large extent the provisions of article V of the New York Convention. Without prejudice to article V, the Court of Appeal may refuse the exequatur if:

- the arbitral tribunal has wrongly declared itself competent or incompetent;
- the arbitral tribunal has been improperly constituted;
- the arbitral tribunal has ruled without complying with its terms of reference,
- the award is contrary to public policy;
- the award fails to state reasons (unless the parties have dispensed the arbitrators from stating reasons);
- there has been a violation of the rights of the defence;
- is revealed, after the award has been made, that the award has been surprised by fraud on the part of the party for whose benefit it was made;
- decisive documents have been recovered that had been withheld by another party;
- it has been judged on documents recognised or judicially declared to be false since the award; or
- it has been judged on attestations, testimony or oaths recognised or judicially declared to be false since the award.

With respect to domestic awards, the exequatur is not granted if the award is manifestly affected by one of the grounds for annulment provided for in article 1238 NCPC, including: (i) the arbitral tribunal has wrongly declared itself competent or incompetent; (ii) the arbitral

tribunal has been improperly constituted; (iii) the arbitral tribunal has ruled without complying with its terms of reference; (iv) or the award is contrary to public policy; or (v) no reasons have been given for the award (unless the parties have dispensed the arbitrators from giving reasons; or there has been a breach of the rights of defence).

---

28. WHEN ASSESSING THE GROUNDS FOR REFUSING RECOGNITION, MAY THE RECOGNITION JUDGE CONDUCT A FULL REVIEW AND RECONSIDER FACTUAL OR LEGAL FINDINGS FROM THE ARBITRAL TRIBUNAL IN THE AWARD? IS THE JUDGE BOUND BY THE TRIBUNAL'S FINDINGS? IF NOT, WHAT DEGREE OF DEFERENCE WILL THE JUDGE GIVE TO THE TRIBUNAL'S FINDINGS?

In principle, the tribunal does not conduct a full review and reconsider the factual or legal findings of the arbitral tribunal, even in the case of gross error on the part of the arbitrator, in law or in fact. When seized with the application, the tribunal strictly limits its review to what is necessary to assess the grounds raised under articles 1238 and 1246 NCPC.

---

29. IS IT POSSIBLE FOR A PARTY TO BE CONSIDERED TO HAVE WAIVED ITS RIGHT TO INVOKE A PARTICULAR GROUND FOR REFUSING RECOGNITION OF AN ARBITRAL AWARD?

The NCPC does not expressly provide for situations in which an applicant would have waived its right to invoke a particular ground. However, under Luxembourg procedural law, there is a general duty of coherence imposed on parties, in the sense that one must not contradict itself. A party may not contradict itself to the detriment of another party. Thus, one may arguably be estopped from raising certain grounds if it can be demonstrated that it was aware of them during the arbitration proceedings but failed to invoke them in a timely manner.

In any event, article 1246 NCPC imposes a time bar of one month to initiate proceedings before the Court of Appeal to seek the annulment of a foreign award, from the date that it was served.

---

30. WHAT IS THE EFFECT OF A DECISION RECOGNISING AN ARBITRAL AWARD IN YOUR JURISDICTION?

An exequatur order renders the award immediately enforceable as if it were a domestic judgment. Although an award has ***res judicata*** effect as from the moment it is rendered (article 1232-3 NCPC), domestic and foreign awards cannot be enforced in Luxembourg without an exequatur order (articles 1233 and 1245 NCPC).

The party against whom enforcement of the foreign award is sought can challenge the decision granting the ***exequatur*** to the award within one month of the date of service of the order, by initiating appeal proceedings before the Court of Appeal (article 1246 NCPC). In the event of fraud, it can initiate a recourse in retractation against the order after this deadline, provided that it does so within two months of taking knowledge of the grounds (article 1247 NCPC). The appeal and the recourse in retractation against the exequatur order are not suspensive, but the Court of Appeal, ruling as in summary proceedings, may stop or modify the conditions of enforcement of the award if such enforcement is likely to seriously prejudice the rights of one of the parties (articles 1241 and 1248 NCPC).

---

31. WHAT CHALLENGES ARE AVAILABLE AGAINST A DECISION REFUSING RECOGNITION IN YOUR JURISDICTION?

A decision refusing the recognition of an arbitral award, domestic or foreign, may be appealed before the Court of Appeal sitting in civil matters pursuant to articles 1235 and 1246 NCPC. This appeal must be filed within one month of the notification of the refusal. In principle, the decision of the Court of Appeal is final. It may, however, be brought before the Court of Cassation on certain limited grounds (article 3 Law of 18 February 1885).

---

32. WHAT ARE THE EFFECTS OF ANNULMENT PROCEEDINGS AT THE SEAT OF THE ARBITRATION ON RECOGNITION OR ENFORCEMENT PROCEEDINGS IN YOUR JURISDICTION?

With respect to foreign arbitral awards, in accordance with article VI of the New York Convention, if an application for the setting-aside or suspension of the award has been made to a competent authority at the seat of the arbitration, the Luxembourg judge seized with the recognition or the enforcement of this award may, if appropriate, adjourn the decision (eg, Court of Appeal, 25 June 2015, No. 42067).

---

33. IF THE COURTS ADJOURN THE RECOGNITION OR ENFORCEMENT PROCEEDINGS PENDING ANNULMENT PROCEEDINGS, WILL THE DEFENDANT TO THE RECOGNITION OR ENFORCEMENT PROCEEDINGS BE ORDERED TO POST SECURITY?

In accordance with article VI of the New York Convention, the ***exequatur*** judge may, at the request of the applicant, order the person against whom enforcement is sought to post suitable security. The Luxembourg judge enjoys the discretion whether to order the posting of security as well as the amount that should be posted.

---

34. IS IT POSSIBLE TO OBTAIN THE RECOGNITION AND ENFORCEMENT OF AN AWARD THAT HAS BEEN FULLY OR PARTLY SET ASIDE AT THE SEAT OF THE ARBITRATION? IF AN ARBITRAL AWARD IS SET ASIDE AFTER THE DECISION RECOGNISING THE AWARD HAS BEEN ISSUED, WHAT CHALLENGES ARE AVAILABLE?

In 1999, the Court of Appeal decided that the fact that an award could be set aside in the seat of arbitration does not prevent the Luxembourg court from enforcing the award, since former article 1251 of the NCPC does not refer to the annulment of an award in the seat of arbitration as a reason for refusing its enforcement in Luxembourg (Court of Appeal, 28 January 1999, 31, 95). This approach aimed at allowing the enforcement of the award in the greatest number of cases. However, this liberal transnational approach seeking to allow enforcement in the greatest number of cases was not always followed by Luxembourg courts. For example, in a case where the application challenging the award was pending before the courts of the jurisdiction where the award was rendered, the Luxembourg Court of Appeal decided to suspend the enforcement proceedings and wait for the result of the challenge. The Court made no mention of article VII of the New York Convention (pursuant to which the provisions of the New York Convention shall not deprive any party of any right it may have to avail itself of the award in the manner and to the extent allowed by the law of the country where it is sought to be relied upon), but rather strictly held that former article 1251 of the NCPC provides for grounds to refuse enforcement, "subject to international conventions", which grant it discretion to suspend the enforcement when the challenge is pending before the jurisdiction of the seat "if it considers it proper" (article VI). The Court expressed that, in this case, it was appropriate to suspend the proceedings because the hearings on the

challenge were only a few months away. Although former article 1251 NCPC would not apply under the new regime, the Luxembourg courts may apply the same principles under articles 1238 and 1246 NCPC.

SERVICE

35. WHAT IS THE PROCEDURE FOR SERVICE OF EXTRAJUDICIAL AND JUDICIAL DOCUMENTS TO A DEFENDANT IN YOUR JURISDICTION?

The transmission of documents and information in Luxembourg may occur through service, notification or publication, depending on the type of document and the legal requirements. Only bailiffs may serve documents. Depending on the circumstances, service may be done in several ways. Service to the addressee is the most reliable method of service and is deemed adversarial even if the addressee is in default. Service at the domicile or at the registered seat may be done by any person present who is not the addressee, who received the document in a sealed envelope. Service is in the mailbox if no one is present, and the bailiff will leave the documents in the mailbox. Service by search report occurs if it is impossible to find the addressee, the bailiff will speak to the neighbours and conduct other searches, and record their efforts and findings in a report. Insofar as it is possible, the bailiff will always try to serve using the most reliable method and in the order mentioned above.

36. WHAT IS THE PROCEDURE FOR SERVICE OF EXTRAJUDICIAL AND JUDICIAL DOCUMENTS TO A DEFENDANT OUTSIDE YOUR JURISDICTION? IS IT NECESSARY TO SERVE THESE DOCUMENTS TOGETHER WITH A TRANSLATION IN THE LANGUAGE OF THIS JURISDICTION? IS YOUR JURISDICTION A PARTY TO THE 1965 CONVENTION ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS (THE HAGUE SERVICE CONVENTION)? IS YOUR JURISDICTION A PARTY TO OTHER TREATIES ON THE SAME SUBJECT MATTER? WHEN IS A DOCUMENT CONSIDERED TO BE SERVED TO THE OPPOSITE PARTY?

In the case of persons domiciled or residing abroad, international agreements take precedence over the general rules of domestic law. Service is made in the form of transmission agreed between Luxembourg and the country of domicile or residence of the addressee. In the absence of another transmission procedure provided for by an international agreement, article 156 NCPC provides for the conditions of service. In this case, the bailiff shall send a copy of the document by registered letter with acknowledgement of receipt to the domicile or residence of the addressee abroad. If the foreign state does not allow legal documents to be sent by post to persons established on its territory, the bailiff sends a copy of the document by registered letter with acknowledgement of receipt to the Ministry of Foreign Affairs for service of the document on the addressee through diplomatic channels. The general rules of domestic law do not provide for translation requirements. However, the forms and conditions of service in the jurisdiction where the service will be done must be complied with.

Luxembourg is a party to the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Service Convention). Parties to this Convention may specify the details of service in their jurisdiction, including the central authority, the methods of service and the translation requirements.

For service within the European Union, Regulation (EU) 2020/1784 of the European Parliament and of the Council (the Service Regulation) applies as of 1 July 2022.

The moment when the document is considered to be served to the opposite party depends on whether international agreements are applicable, and what they provide. If the Hague Service Convention is applicable, the contracting parties may provide for this or leave this up to their domestic law.

IDENTIFICATION OF ASSETS

37. ARE THERE ANY DATABASES OR PUBLICLY AVAILABLE REGISTERS ALLOWING THE IDENTIFICATION OF AN AWARD DEBTOR'S ASSETS WITHIN YOUR JURISDICTION? ARE THERE ANY DATABASES OR PUBLICLY AVAILABLE REGISTERS PROVIDING INFORMATION ON AWARD DEBTORS' INTERESTS IN OTHER COMPANIES?

There are no databases or publicly available register allowing the identification of a debtor's assets in Luxembourg. Award creditors may, however, obtain information concerning a debtor's corporate structure and subsidiaries in its annual accounts filed with the Luxembourg Trade and Companies Register, which is publicly available.

38. ARE THERE ANY PROCEEDINGS ALLOWING FOR THE DISCLOSURE OF INFORMATION ABOUT AN AWARD DEBTOR WITHIN YOUR JURISDICTION?

Before initiating proceedings on the merits, a potential claimant may file a writ before the judge of summary proceedings for the sole purpose of forcing the opposing party to disclose evidence or documents under article 350 NCPC. This request may concern an award. This is subject to a number of criteria identified by case law:

- the requested evidence must be relevant and useful for a potential dispute;
- the reason must be legitimate (the requesting party must seek at establishing facts in view of a determinable and subsequent dispute);
- there must be no legal obstacle that would justify refusal;
- proceedings on the merits must not have already been initiated;
- it must be likely that the evidence requested exists and that it is in possession of the party from which disclosure is sought; and
- the request must identify the information or document with sufficient specificity.

This seeks to ensure that the defending party can easily identify the documents to disclose should the request be granted, and to prevent "fishing expeditions".

ENFORCEMENT PROCEEDINGS

39. WHAT KINDS OF ASSETS CAN BE ATTACHED WITHIN YOUR JURISDICTION?

Assets seized in Luxembourg typically include movable property such as funds held in bank accounts or company shares, through a third-party attachment, and may also include immovable property.

40. ARE INTERIM MEASURES AGAINST ASSETS AVAILABLE IN YOUR JURISDICTION? IS IT POSSIBLE TO APPLY FOR INTERIM MEASURES UNDER AN ARBITRAL AWARD BEFORE REQUESTING RECOGNITION? UNDER WHAT CONDITIONS?

Interim measures against assets include the third-party attachment procedure, allowing a creditor to attach assets held by a third party for the benefit of a debtor, in the hands of the third party. This is very efficient and widely used in Luxembourg. If the award creditor has not obtained the recognition (***exequatur***) of the award in Luxembourg, it will need to request an authorisation to attach from the president of the District Court.

---

41. WHAT IS THE PROCEDURE FOR OBTAINING INTERIM MEASURES AGAINST ASSETS IN YOUR JURISDICTION?

If the measure is an attachment of assets and the award has not been recognised in Luxembourg, the award creditor would need a presidential authorisation to attach. In its application, the creditor must demonstrate that it holds a claim that is certain in its principle (ie, that there is an appearance of certainty that the claim is certain, liquid and due).

---

42. WHAT IS THE PROCEDURE FOR IMPLEMENTING INTERIM MEASURES AGAINST ASSETS IN YOUR JURISDICTION?

Interim measures against assets would mostly concern attachments (see below concerning the procedure). The judgment from the District Court validates the attachments and orders the attached third party to empty its hands into those of the creditor, and transfers ownership of the assets seized to the creditor. It is equivalent to a judicial transfer of the debtor's rights in the assets to the creditor. In principle, two conditions must be met. First, the validation judgment must be ***res judicata***. The validation judgment can only be enforced against the third party (eg, a bank) on the basis of a certificate from the attaching party's attorney stating the date on which the judgment was served at the debtor's domicile, and on the basis of a certificate from the court clerk stating that there are no objections or appeals against the judgment. Second, the validation judgment must be served on the attached third party. As from this moment, the attaching party become the direct creditor of the attached third party.

---

43. WHAT IS THE PROCEDURE FOR REQUESTING ATTACHMENT AGAINST ASSETS IN YOUR JURISDICTION? WHO ARE THE STAKEHOLDERS IN THE PROCESS?

If the creditor already obtained the recognition of its award in Luxembourg, it holds an enforceable title and may directly proceed with the attachments. Typically, the award creditor will serve the exequatured award on the debtor shortly before initiating the attachments. The procedure requires filing a writ of attachment on the third party holding the assets (eg, a bank) that results in the debtor's assets being immediately frozen. Within eight days, the creditor must file a writ of summons on the debtor seeking the validation (ie, the transfer) of the assets to its benefit. If this deadline is not met, the attachment is automatically lifted, and the debtor may dispose of the assets. The validation proceedings follow the rules of civil written procedure and are adversarial in nature, and are subject to appeal. Within eight days of the service of the writ of summons, the creditor must file another writ on the attached third party informing it that civil proceedings against the debtor are ongoing.

If the creditor does not hold a title enforceable in Luxembourg, it must seek a presidential authorisation to attach the assets. This requires filing an ex parte request with the President of the District Court, explaining the circumstances of the case, arguing the appearance of certainty of the claim for the amounts owed, and describing specifically the assets to be seized and where they are located. The applicant is usually informed of the result of the request within a few days. If the authorisation is granted, the creditor may proceed as

described above, with respect to the assets as described in the authorisation. Since the creditor does not have an enforceable title in Luxembourg, its summons shall seek both the sentencing of the debtor and the validation of the attachment. If the authorisation is not granted, the creditor may appeal this decision.

The stakeholders in this procedure are the creditor who initiates the third-party attachment, the debtor whose assets are subject to the attachment, the attached third party (typically a financial institution or a company that shares belonging to the debtor are being attached), the president of the District Court if it is necessary to obtain an authorisation, and the District Court, which will decide whether to validate the attachment.

---

44. WHAT IS THE PROCEDURE FOR IMPLEMENTING ATTACHMENT ORDERS AGAINST ASSETS IN YOUR JURISDICTION?

When the creditor seeks and obtains a presidential authorisation to attach assets in Luxembourg, the order is usually immediately enforceable and the creditor may immediately rely on it to start the attachment procedure. Thus, there is no specific implementation procedure. The writ of attachment is ex parte and is filed directly on the attached third party, and results in immediately attachment of the assets. With respect to the validation (ie, transfer) of the attached asset, the procedure requires that the validation judgment is res judicata and that the judgment is served on the attached third party (see question 42).

---

45. ARE THERE SPECIFIC RULES APPLICABLE TO THE ATTACHMENTS AGAINST SUMS IN BANK ACCOUNTS OR OTHER ASSETS DEPOSITED WITH BANKS?

Most attachments in Luxembourg concern sums held in bank accounts, following the procedure set out in article 693 et seq NCPC. There are no specific rules applicable. The request for the authorisation to attach and the writ of attachment must describe with specificity the target assets held by the bank. Since the creditor may not know specifically the form of the assets held, creditors usually cast a wide net on the movable assets that may be held by the banks for the debtor.

---

46. MAY A CREDITOR OF AN AWARD RENDERED AGAINST A PRIVATE DEBTOR ATTACH ASSETS HELD BY ANOTHER PERSON ON THE GROUNDS OF PIERCING THE CORPORATE VEIL OR ALTER EGO? WHAT ARE THE CRITERIA, AND HOW MAY A PARTY DEMONSTRATE THAT THEY ARE MET?

The general principle is that only the assets owned by the debtor may be attached. If the attachment concerns assets belonging to a third party, the third party is likely to initiate summary proceedings to have the attachments lifted. In exceptional circumstances, it is, however, possible to proceed with such attachments. The attaching party would need to demonstrate that it is necessary to assimilate the third party to the debtor and their respective assets and liabilities, for example, in cases of fictitious entities or fraud.

RECOGNITION AND ENFORCEMENT AGAINST FOREIGN STATES

---

47. ARE THERE ANY RULES IN YOUR JURISDICTION THAT SPECIFICALLY GOVERN RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS AGAINST FOREIGN STATES?

Under article 54(1) of the ICSID Convention, ICSID awards must be enforced as if they were final court judgments in the country where enforcement is sought. In a judgment dated 11

February 2021, the Luxembourg Court of Appeal confirmed the recognition and enforcement of an award issued by an ICSID panel. The Court of Appeal gave full effect to articles 53 and 54 of the ICSID Convention, which provide that parties are bound by the award and that it shall not be subject to appeal or any remedy other than those outlined in the ICSID Convention. The only condition for refusing recognition pertains to the existence and authenticity of the award itself.

---

48. WHAT IS THE PROCEDURE FOR SERVICE OF EXTRAJUDICIAL AND JUDICIAL DOCUMENTS TO A FOREIGN STATE?

Service of documents to a foreign state is usually done via diplomatic channels. There are no provisions in the NCPC detailing the process. In practice, this usually requires the bailiff transmitting the documents to the Ministry of Foreign Affairs and the Luxembourg embassy in the foreign state, which transmits to the competent local authority. Creditors shall take into account whether the respondent state is a party to the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Service Convention), requiring contracting parties to nominate a central authority and provide details on contact persons, methods of service, translation requirements, oppositions and declarations if any, etc.

---

49. MAY A FOREIGN STATE INVOKE SOVEREIGN IMMUNITY (IMMUNITY FROM JURISDICTION) TO OBJECT TO THE RECOGNITION OR ENFORCEMENT OF ARBITRAL AWARDS?

Immunity from jurisdiction is a privilege allowing a state to contest a tribunal's jurisdiction to hear a claim against it. Immunity from jurisdiction is governed by customary international law. International instruments include the European Convention on State Immunity (ECSI). Luxembourg has not signed the UN Convention on Jurisdictional Immunities of States and Their Property of 2004 (UNCSI) (not yet in force) but it reflects the current state of customary international law.

---

50. MAY AWARD CREDITORS APPLY INTERIM MEASURES AGAINST ASSETS OWNED BY A SOVEREIGN STATE?

Interim measures against state assets (including attachments) are available to creditors if the assets are not covered by sovereign immunity (see below).

---

51. ARE ASSETS BELONGING TO A FOREIGN STATE IMMUNE FROM ENFORCEMENT IN YOUR JURISDICTION?

In principle, assets of a foreign state or belonging to its organs, located in Luxembourg and used in the exercise of its public functions (eg, diplomatic representation, special missions, representations to international organisations, etc), are immune from enforcement. Luxembourg is a party to the European Convention on State Immunity of 16 May 1972 (Basel) (ratified by the law of 8 June 1984), which states that: "no measures of execution or preventive measures against the property of a contracting state may be taken in the territory of another contracting state except where and to the extent that the state has expressly consented thereto in writing in any particular case" (article 23).

In the context of the enforcement of an ICSID award, the Court of Cassation confirmed that acceptance of the arbitration clause by the signatory state constitutes a waiver of immunity from execution, and therefore deprives that state of the possibility of invoking immunity from execution in the State in whose territory enforcement of the arbitral award is sought (Cass, 14 July 2022, CAS-2021-00061, No. 116/2022).

Enforcement and recognition are separate proceedings under Luxembourg law. Recognition proceedings do not concern a state's immunity from execution (Court of Appeal, 27 April 2017, No. 132174).

---

52. IS IT POSSIBLE FOR A FOREIGN STATE TO WAIVE IMMUNITY FROM ENFORCEMENT IN YOUR JURISDICTION? WHAT ARE THE REQUIREMENTS OF WAIVER?

Immunity from jurisdiction is not absolute, and states may waive it, for example, by way of an arbitration agreement. This is in line with the international instruments listed above (article 17 of the UNCSI and article 12 of the ECCI). Pursuant to established case law, the waiver shall be certain and non-equivocal, and can be express or tacit (Court of Appeal, 27 April 2017, No. 132174). The waiver may also result from the fact that the foreign state appears without raising any jurisdictional objection and accepting the debate on the merits. A waiver of immunity from jurisdiction does not automatically entail a waiver of immunity from execution, and vice versa.

Immunity from execution may only concern the assets affected to public use of the foreign state, since assets affected to private or commercial use would generally not be covered by the immunity. The waiver of immunity from execution must be specific and unequivocal (while case law does not seem to require the same specificity with respect to the waiver of immunity from jurisdiction).

There is a presumption of public use of assets when the debtor whose assets are attached is the foreign state itself. The attaching creditor carries the burden to demonstrate the contrary, which it may do by any means (District Court, 22 November 2013, No. 132265).

---

53. IS IT POSSIBLE FOR A CREDITOR OF AN AWARD RENDERED AGAINST A FOREIGN STATE TO ATTACH THE ASSETS HELD BY AN ALTER EGO OF THE FOREIGN STATE WITHIN YOUR JURISDICTION?

Yes, under certain circumstances. The courts will look at whether a convergence of factors indicates that an apparently separate entity may be deemed an emanation from the state. These factors include financial autonomy, functional independence, the confusion of assets and liabilities, the financing of the entity, its links with the foreign state, the composition of the management organs, the control of the state, whether the entity pursues a public object and functions, etc. There is no single determining factor (District Court, 10 July 1996, No. 50718, District Court, 27 March 2019, No. 177266).

---

54. MAY PROPERTY BELONGING TO PERSONS SUBJECT TO NATIONAL OR INTERNATIONAL SANCTIONS BE ATTACHED? UNDER WHAT CONDITIONS? IS THERE A SPECIFIC PROCEDURE?

In principle, assets subject to international sanctions cannot be attached. On 11 November 2021, the European Court of Justice established that a private creditor must first obtain authorisation from relevant national authorities (Case C-340/20, ***Bank Sepah v Overseas***

Financial Limited). The relevant authority responsible for overseeing and authorising actions on sanctioned assets falls under the Ministry of Finance, which handles aspects related to anti-money laundering and anti-terrorism financing compliance.

LOYENS & LOEFF
Law & Tax

Olivier Marquais	olivier.marquais@loyensloeff.com
Olivier Marquais	olivier.marquais@loyensloeff.com
Jeanclaude Lacatena	jeanclaude.lacatena@loyensloeff.com
Jeanclaude Lacatena	Jeanclaude.Lacatena@loyensloeff.com

Parnassusweg 300 1081 LC Amsterdam, PO Box 71170, 1008 BD Amsterdam, Netherlands

Tel: +31 20 578 57 85

http://www.loyensloeff.com