NEW ARBITRATION LAW IN LUXEMBOURG

A KICK-START FOR LUXEMBOURG AS AN ARBITRATION VENUE?

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EU Arbitration Alert

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On 23 March 2023, the Luxembourg Parliament voted to modernize and update the arbitration law, applicable to arbitrations seated in Luxembourg. The long-awaited new law entered into force on 25 April 2023 (the New Arbitration Law), and is the first significant modification of the Luxembourg arbitration law in many years. It is indicative that Luxembourg State Council has been calling for a reform since 1980. This reform is the fruit of the labor of several academics and arbitration practitioners joining their voices for a change via different fora such as the Luxembourg Arbitration Association, the Luxembourg Chamber of Commerce, and The Think Tank for Arbitration in Luxembourg.

Is such a reform enough to kick-start interest in arbitration in Luxembourg?

KEY FEATURES OF THE NEW ARBITRATION LAW

It goes without saying that reforming a law dating from codification in the Napoleonic era meant there was considerable ground to cover and lot of room for improvement. Now, enriched with elements from French and Belgian law as well as provisions of the UNCITRAL model law on international commercial arbitration, the New Arbitration Law can better serve any aspiration for making Luxembourg a hospitable environment for arbitration.

Amongst the newly adopted features are the following:

1. The arbitral tribunal is entitled to decide whether it has jurisdiction (“competence-competence” principle); thus, a Luxembourg court's review of the arbitration agreement is fairly limited (i.e., non-arbitrability of the case or the agreement is manifestly void or non-applicable);
2. The absence of a separating line between domestic (within the meaning of continental law) and international arbitration;
3. The formal recognition of the arbitration clause's separability and autonomy;
4. The right of parties to apply to a state court for interim measures, provided certain conditions are met;
5. The introduction of the notion of the “supporting judge” or “juge d'appui” to facilitate the progress of arbitration proceedings (i.e., amongst others, intervention in disputes related to the constitution of the tribunal, extension of the duration of the tribunal's mission, order for production of documents);
6. The different treatment of awards rendered in Luxembourg by:

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- Allowing for a one-off right to appeal (in front of the Court of Appeal, and on limited grounds) for the purpose of having the award set aside, hence no right of appeal against the exequatur is granted; and
- In general, making available a simplified enforcement procedure for such awards instead of the standard process applicable to those rendered outside Luxembourg.

7. With a view to accommodate contemporary (practical/logistical) needs, it has been adopted, amongst others, that:
   - In case a time limit is not specified in the arbitration agreement, the default duration of the proceedings has been set to six months following the appointment of the last arbitrator (subject to extension by agreement of the parties or by the person responsible for organizing the arbitration, if such a person has been designated by the parties, or, failing that, by the supporting judge);
   - It falls on the arbitral tribunal's discretion to meet, hold hearings, examine, etc. at any place it deems appropriate; and
   - The arbitration proceedings are confidential.

ARBITRATION STAKEHOLDERS IN LUXEMBOURG

Luxembourg is one of Europe's strongest financial hubs, where, amongst others, investors and fund managers from around the globe meet and make business happen. The country's elevated business activity caught the attention of various stakeholders, who have sought to promote the hosting of arbitration proceedings in Luxembourg.

Amongst the parties working towards this goal is the Luxembourg Chamber of Commerce, which is spearheading the campaign by (i) forming a separate unit (the Luxembourg Arbitration Centre or LAC) comprised of arbitration ex-practitioners with the goal of the promotion of arbitration, (ii) revising its arbitration rules to reflect contemporary practice, and (iii) securing cooperation with neighboring and more experienced fellows. With regard to the latter, on 8 September 2022, the LAC signed a cooperation agreement with the Netherlands Arbitration Institute (NAI) and the Belgian Centre for Arbitration and Mediation (known as CEPANI), while a joint arbitration event took place in Luxembourg on 20 April 2023 as a result of this cooperation.

Furthermore, Luxembourg's arbitration community is being supported by a well-knit arbitration association, namely, the Luxembourg Arbitration Association, offering a contact point for parties to choose arbitrators while frequently organizing conferences to educate its members.

REFORM FINE-TUNED WITH CURRENT MARKET?

In terms of the current arbitration market in Luxembourg, most arbitration practitioners are working on the recognition and enforcement of arbitral awards issued abroad. That is because Luxembourg is one of those jurisdictions where multinational corporations deposit their assets either for subsequent investment or for safekeeping.

With that context, it seems that Luxembourg has made a strategic choice in the New Arbitration Law. The simplified enforcement process for arbitral awards rendered in Luxembourg may bring material benefits. If there is

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a strong possibility for the award to need to be enforced in Luxembourg, this new feature, alongside the New Arbitration Law in general as well as the reduced costs and the modernized rules of arbitration offered by the LAC, ought to enhance the appeal of Luxembourg as a potential seat of arbitration.

Whilst it is too early to say whether these changes will be enough to facilitate a shift in arbitration traffic towards Luxembourg, the attempts to bring the arbitration law into line with modern international standards is to be welcomed.

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