LUXEMBOURG

Law and Practice

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1. General

1.1 General Characteristics of the Legal System

The Grand Duchy of Luxembourg is a civil law country that follows the inquisitorial model.

Its legal system is conducted through both oral argument (mostly before lower, commercial and criminal courts) and written submissions, depending on the subject matter and the amount at stake.

1.2 Court System

Luxembourg is composed of three main jurisdictional orders.

The Constitutional Court

As the highest authority, the Constitutional Court examines the constitutionality of laws. When, during a trial before a judicial or administrative court, the constitutionality of a law is questioned, and if the issue of constitutionality is deemed vital to the solution of the dispute, the ruling court must refer the matter to the Constitutional Court for preliminary rulings.

Administrative Courts

Administrative courts are composed of the administrative tribunal (for the first instance) and the administrative court (for the appeal process), and are assigned to hear and adjudicate on administrative and tax-related disputes.

The administrative tribunal controls the legality of administrative acts (regulative decisions) and decisions (individual). It largely rules on applications for annulments of any administrative decisions opposing local government authorities and users. It also hears applications for rectification of administrative decisions in cases expressly provided for by law.

The administrative court is the supreme administrative jurisdiction; the appeal body primarily hears cases brought against the decisions of other administrative jurisdictions.

Judicial Order (Courts of Law)

The court system is organised into subject matter (civil, commercial and criminal) sections.

For civil and commercial matters, the New Code of Civil Procedure (*Nouveau Code de Procédure Civile*, hereinafter "NCPC") encompasses most of the rules that apply to proceedings before the courts.

For criminal matters, the Code of Criminal Procedure (*Code de Procédure Pénale*) applies.

The courts of law are divided into two judicial districts (Luxembourg and Diekirch) and three instances:

- first instance courts – justices of the peace (*justices de paix*) and district courts (*tribunaux d'arrondissement*);
- the courts of appeal – the district court for decisions of justices of the peace, and the court of appeal (*cour d'appel*) for decisions of district courts; and
- the Supreme Court (*Cour de Cassation*).

Justices of the peace deal with small claims in civil and commercial matters, divided into subject matters assigned by law (such as labour, rental agreements and property disputes claims).

For commercial matters, justices of the peace only sit for smaller disputes, in which the amount at stake may not exceed EUR15,000.

They also have jurisdiction over summary procedure in the field of enforcement (eg, attachments of earnings).

In criminal matters, a justice of the peace acts as a police tribunal (*tribunal de police*), which has jurisdiction over small criminal matters.

District courts have jurisdiction in civil and commercial matters for all cases not specifically attributed by law to any other court.

Commercial disputes are usually brought before dedicated chambers of the district court, usually called the "Commercial Court", although there are no specific courts for commercial matters.

District courts act as a correctional chamber in criminal cases, or as a criminal chamber dealing with acts defined by law as crimes punishable by life or fixed-term custodial sentences, or by imprisonment of more than five years.

Finally, district courts act as (i) family courts having jurisdiction over divorce and child and youth protection cases, as determined by law, and (ii) courts of appeal for rental matters.

Courts of appeal act as second instance courts and have general jurisdiction over decisions handed down by the district courts.

They re-examine cases already judged in a court of first instance, in civil, commercial, criminal and family matters, and also have jurisdiction over cases decided by labour tribunals.

The *Cour de Cassation* has jurisdiction over court of appeal rulings as well as judgments rendered as last resort by the district courts.

An appeal to the *Cour de Cassation* does not constitute a second path of appeal. The *Cour de Cassation* does not rule on the merits but checks the exact application of the law by courts of appeal, district courts and lower tribunals.

The court of appeal, the *Cour de Cassation* and the Public Prosecutor's Office together form the Superior Court of Justice.

Besides these ordinary law courts, Luxembourg has set up some specialised jurisdictions, such as the social courts composed by the Social Security Arbitration Tribunal (*Conseil arbitral de la sécurité sociale*), which has jurisdiction throughout the country in social security matters, and the Higher Council for Social Security (*Conseil supérieur de la sécurité sociale*), which deals with appeals lodged against the ruling of the Social Security Arbitration Tribunal.

1.3 Court Filings and Proceedings

Before the justices of the peace and in commercial and social proceedings, the form of the application is quite informal and mostly accessible to the public.

Before higher courts (district courts and courts of appeal), the proceedings are formalistic, and the procedure is all written.

The assistance of a lawyer is not mandatory for proceedings before lower courts, justices of the peace, commercial proceedings and social proceedings, and generally for non-contentious remedies, where the procedure is oral and the parties may appear in person, or be represented by a lawyer, which is recommended when the claim is challenged or when the merits of the case are complex.

However, before the district courts dealing with civil matters and the court of appeal, the parties must be represented by a lawyer, specifically by an *avocat à la cour*.

Documents filed with the courts by the parties and internal court documents are not available to the public.

Hearings are public, except in cases where the law directs that they will be secret (cases involving minors and certain criminal cases). If the public discussion might lead to a scandal or serious inconvenience, or upon the request of the parties, the courts may discretionarily order that the pleadings will be in camera.

Only the litigants can obtain a copy of the judgment. Decisions that are published are generally anonymised.

1.4 Legal Representation in Court

Before the Luxembourg courts, "the lawyer is taken at his word", which means lawyers do not have to prove their mandate.

For oral proceedings, lawyers registered with the Luxembourg Bar Association can plead. For written proceedings, the parties must be represented by a lawyer registered with the Luxembourg Bar Association as an *avocat à la cour*.

In proceedings where the assistance of a lawyer is not mandatory, the parties may be represented by:

- their spouse or partner;
- their parents or relations in direct line;
- their parents or in-laws collaterally to the third degree inclusive; and
- people exclusively attached to their personal service or to their company.

If the legal representative is not a lawyer, he or she must have a power of attorney.

Foreign lawyers may plead before Luxembourg courts if they are assisted by a lawyer registered with the Luxembourg Bar Association.

2. Litigation Funding

2.1 Third-Party Litigation Funding

There are no specific legal provisions limiting the ability for a third party to fund a litigation.

It should therefore be permitted to the extent that it does not create a conflict of interest on the lawyer's side.

2.2 Third-Party Funding: Lawsuits

As explained at **2.1 Third-Party Litigation Funding**, there are no constraints in principle on third-party litigation funding.

2.3 Third-Party Funding for Plaintiff and Defendant

Please refer to **2.1 Third-Party Litigation Funding** and **2.2 Third-Party Funding: Lawsuits**.

Since there are no constrains, third-party funding would be available for both the claimant and the defendant.

2.4 Minimum and Maximum Amounts of Third-Party Funding

In the absence of specific legal provisions in Luxembourg, there is no particular threshold that applies to a third-party funder.

2.5 Types of Costs Considered Under Third-Party Funding

As explained at **2.1 Third-Party Litigation Funding**, there are no constraints in principle on third-party litigation funding.

2.6 Contingency Fees

Contingency fees that depend on the outcome and cover the totality of the lawyer's fee are prohibited by the rules of the Luxembourg Bar Association.

Success fees may be agreed with the client as long as part of the fees (fixed, flat-fee rates) relate to the service rendered.

2.7 Time Limit for Obtaining Third-Party Funding

As explained at **2.1 Third-Party Litigation Funding**, there are no specific rules about third-party funding litigation in Luxembourg.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

There are no pre-trial procedural rules.

However, mediation or conciliation may be imposed by an agreement between the parties, who may then invoke the obligation to take pre-action steps before initiating proceedings.

3.2 Statutes of Limitations

For civil actions (contractual and in tort) the right to claim generally extinguishes after a 30-year period has elapsed (from the day when the obligation becomes due or when the harm occurred).

For commercial claims, the general limitation period is of ten years from the due date of the non-performed obligation.

Depending on the object of the claim shorter limitation periods may apply (eg, two to ten years for warranty claims against construction companies, three years for wage claims, and five years for liability claims against management, supervisory auditors).

Specific prescription periods apply for more specific claims (eg, three to ten years for claims brought for product liability).

3.3 Jurisdictional Requirements for a Defendant

Any defendant may be subject to a lawsuit in Luxembourg.

In general, the Luxembourg courts will exercise jurisdiction over a defendant who has his or her domicile (individual) or its residence (legal entity) in Luxembourg.

An objection regarding the Luxembourg courts' jurisdiction must be raised before any other defence on the merits and represents a basic due process right to which every party is entitled before all Luxembourg courts.

3.4 Initial Complaint

Lawsuits are initiated through an application form stating the name and capacity of the litigants, the merits of the case (showing that the claimant is entitled to and has legal interest in bringing an action before the court against the defendant) and the claims of the plaintiff.

The application must be filed with the courts to commence the proceedings.

Depending on the subject-matter jurisdiction, the application will take the form of either:

- a petition (*requête*, ie, unilateral application filed with the court, which will then summon the defendant); or
- a writ of summons (*citation* before the lower courts and *assignation* before the district courts), which summons the defendant to appear before a court on a certain date (oral proceedings) or by a lawyer's representation (written proceedings).

Once the application has been served on the defendant and filed with the court, the claim can no longer be amended.

However, new legal arguments and ancillary claims may be admissible.

3.5 Rules of Service

The application is served on the defendant by either a bailiff (writ of summons) or a court's clerk (petition).

Both bailiffs and clerks of the court must comply with the relevant applicable rules of service. Lawyers and bailiffs may be ordered to pay the costs, or even damages, in their name and without recourse, if they have compromised the interests of their administration.

If the defendant resides abroad, the service is carried out by the bailiff, who sends a copy of the writ of summons by registered mail with acknowledgement of receipt to the defendant's domicile or residence.

3.6 Failure to Respond

If the defendant does not respond to a lawsuit and the document initiating the proceedings was validly served (ie, where the defendant has been summoned personally), the judgment will be deemed adversarial (*jugement réputé contradictoire*).

Otherwise, the judgment will be by default (*jugement par défaut*). Two remedies are available to a defendant who did not appear before the court:

- an opposition (*opposition*) before the same instance; and
- an appeal (*appel*) before the court of appeal.

It is worth mentioning that opposition is inadmissible against judgments that are deemed adversarial.

3.7 Representative or Collective Actions

Despite the submission of a bill of law in 2020 that intends to introduce collective recourse procedures in consumer law, Luxembourg law does not yet permit general class actions.

However, a representative action may be brought in the name of a duly qualified organisation and on behalf of its members (eg, the Luxembourg Consumer Protection Association, trade unions that are parties to a collective labour agreement), but only for the defence of their collective interests, not to claim on behalf of individual interests.

In addition plaintiffs who have similar but separate claims against the same defendants, or defendants who share a common interest, may bring an action on a "group" basis by way of a joint action, which must be brought by all the claimants individually.

Finally, litigants may apply for a joinder for closely related pending claims and ask the court to rule on them together, merely to prevent contradictory judgments. Such joinder is a judicial

administrative measure that may be taken at the request of both parties, or at the initiative of the court.

Court decisions are only binding upon the parties to the proceedings, and collective actions should therefore be considered as opt-in actions.

3.8 Requirements for Cost Estimate

There is no requirement to provide clients with a cost estimate of the potential litigation at the outset.

Lawyers' fees are freely determined and agreed with the client.

Fees are usually charged at an hourly rate or may be task-based. An agreement on a flat fee is also possible.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

The NCPC provides that ordinary courts (including lower ones), acting as summary judge (*juge des référés*), may pronounce several interim measures:

- to cease a manifestly unlawful disturbance;
- to prevent a prejudice;
- to preserve evidence; and/or
- to preserve the rights of the requesting party.

Any interim measures against which no serious objection may be brought, or which are justified by the existence of a dispute, may be ordered.

Courts dealing with summary proceedings can restrict the period of validity of an interim measure or limit its effect to specific assets or acts.

4.2 Early Judgment Applications

Before any other defence on the merits, both parties may:

- apply for interlocutory decisions on some of the issues in dispute (eg, a judgment which merely states that the conditions for the application of a legal provision are met, or which rules on the admissibility or non-admissibility of certain means of proof, or which is limited to deferring a decision on the merits of the claim based on the principle that a criminal action takes precedence over a civil action); and
- raise procedural objections regarding the admissibility of the case (eg, subject-matter jurisdiction, legal interest to act, dismissal of an action for delay).

At any time while proceedings are pending, the parties may, under certain conditions, ask the court to order, before any further progress is made in the case, a preparatory inquiry, or any other preparatory step to demonstrate their version of the alleged facts (eg, hearing of witnesses and experts).

If the court rules in favour of the early judgment application, it will postpone the proceedings for continuation on the claims, arguments and other questions that remain to be dealt with.

The judgment is described as interlocutory when the measure ordered prejudges the merits by giving an indication of the influence it should have on the outcome of the proceedings.

Whether a judgment is preparatory or interlocutory is a question of fact, which matters in the context of the admissibility of an appeal against such decisions.

The recently revised NCPC now provides for the possibility of requesting for authorisation to appeal against interlocutory decisions, by way of a petition, the court with jurisdiction to appeal. This will make it possible to quickly determine whether an interim judgment is appealable or not.

4.3 Dispositive Motions

Except for the new authorisation for leave to appeal against interlocutory decisions, Luxembourg law does not provide for motions that are intended to provide a relatively abbreviated procedure to narrow the scope of issues in dispute, or to eliminate issues entirely, commonly made before trial.

4.4 Requirements for Interested Parties to Join a Lawsuit

Third parties may join an ongoing proceeding through a petition for voluntary intervention (ancillary or conservatory) by notifying such request to the litigants' lawyers (and filing the same with the court).

Such an intervention is available to any third party who would be entitled to bring third-party proceedings against the upcoming judgment, provided that a direct or indirect legitimate interest (a substantial or moral interest in lodging an action, or even a simple detrimental prejudice) is demonstrated.

A party to the proceedings may also force a third party to enter a pending proceeding through a forced intervention writ of summons.

To be admissible, the forced intervention must be directed against a third party if the upcoming court decision may affect its rights (ie, if the third party has an interest in opposing the judgment to be rendered by the court seized and could make a third-party opposition against the same).

4.5 Applications for Security for Defendant's Costs

The NCPC provides for the possibility of requesting a security to protect a litigant located in Luxembourg against the financial losses that he or she might suffer, through an unfounded lawsuit, from a plaintiff who does not offer guarantees in Luxembourg in order to ensure the payment of damages and costs to which he or she might be condemned by a Luxembourg court.

Special laws (eg, the law on the protection of trade secrets) also provide that the defendant may require that a bond be provided by the plaintiff. The security covers, among other things, the proceedings expenses and the costs (lawyers' fees excluded).

The courts seized of an application for security have complete discretion as to the amount to be fixed; only a prohibitive amount would be disproportionate.

They will also consider the solvency of the plaintiff and the likely amount of costs and damages.

4.6 Costs of Interim Applications/Motions

In Luxembourg, there are no costs for interim applications or motions.

4.7 Application/Motion Timeframe

It is difficult to assess the average timeframe of proceedings as it depends on the complexity of the case, the number of parties involved, and whether proceedings are oral or written and dealt with before the first instance court or on appeal.

At present, the duration would ordinarily be around a maximum of six to 18 months for the first instance, and around 12 months up to two years for the appeal proceedings.

It is worth mentioning that a new, simplified pre-trial procedure, for proceedings where the amount at stake is less than or equal to EUR100,000, has introduced prescribed time limits for notifying pleadings and documents, under penalty of foreclosure, and limits the examination of the case to two rounds of pleadings per party.

Subject to this exception, there are no rules providing a specific time period.

It is also worth mentioning that the courts of law have accumulated a huge delay due to the pandemic and announced in their 2021 report that, in certain cases, appeal courts may need up to 19 months to clear the backlog of cases filed as at and/or pending in 2021.

5. Discovery

5.1 Discovery and Civil Cases

Luxembourg law does not provide for a discovery procedure, and fishing expeditions are prohibited.

Since the system is based on the adversarial principle, parties should spontaneously provide the courts with evidence, and should refrain from bringing lawsuits if they do not have enough evidence to support their claim.

Courts are allowed to ask the parties to provide evidence and to take a position on any factual issues that may be relevant before the ruling.

However, the burden of proof lies with that party who alleges a legal fact, and courts may not order investigative measures that are intended to alleviate the parties' lack of evidence.

Prior to any lawsuit, both parties may gather written witness statements.

Besides this, a claimant who is contemplating initiating a lawsuit may, if he or she has legitimate cause, request pre-trial investigative measures (eg, the appointment of an expert or an injunction to produce a document) to obtain evidence, from his or her adversary or a third party, regarding facts on which the outcome of a lawsuit could depend.

In addition, to prevent the destruction or the loss of evidence, the parties can ask the judge to order an investigative measure prior to the trial as an interim measure. The parties may either request such investigative measures through summary proceedings or by issuing an ex parte application (in exceptional circumstances).

With respect to the disclosure of documents, the claimant must specifically:

- establish that the requested documents do (or are likely to) exist; and
- detail the information of those documents he or she requires in his or her application (eg, a contract that would have been signed between the defendant and a third party on a specific date).

While proceedings are ongoing, both parties may offer evidence for their allegations through testimonies (depending on the subject matter and amount at stake), presumptions, confession and oath.

Besides this, parties can request any legally admissible civil investigative measure such as witness statements, witness hearings and technical expertise, in order to obtain evidence.

Indirectly, a counterclaim for procedural damages (*indemnité de procédure*) and/or an order to pay the costs of the proceedings allow the scope and/or costs of an unsuccessful discovery application to be curbed.

5.2 Discovery and Third Parties

As set out at **5.1 Discovery and Civil Cases**, both parties may, if they have a legitimate cause, request that a person (the adversary or a third party) who holds evidence produces it in the proceeding.

To obtain such disclosure, the required evidence:

- must be identified with precision;
- must exist or be likely to exist;
- must be presumably in possession of the identified party; and
- must be relevant to the resolution of the dispute.

Prior to a lawsuit, the parties may request such disclosure through summary proceedings.

During a lawsuit, they can request a court order against parties or third parties to produce evidence that is in their possession.

5.3 Discovery in This Jurisdiction

Under Luxembourg law, there is no disclosure procedure as such.

As set out at **5.1 Discovery and Civil Cases**, a party is obliged to disclose, to all parties as well as to the judge, in a timely manner during the proceedings (and no later than before the closure of the written instruction or before the ruling is reserved in oral proceedings), the documents on which it wishes to rely, and which therefore support and evidence its case.

5.4 Alternatives to Discovery Mechanisms

Please refer to **5.1 Discovery and Civil Cases**.

5.5 Legal Privilege

The concept of legal privilege is expressly recognised in the Criminal Code, in special laws (eg, on the financial and insurance sectors, on the fight against money laundering and terrorist financing) and in professional regulations (eg, the Luxembourg Bar Association Regulation).

Communication between lawyers, including with foreign lawyers (unless specifically marked as official), and communication (of every type) between lawyers and their clients is privileged and its contents may not be divulged either to the courts nor to an examining magistrate.

It is worth mentioning a recent decision rendered on 13 July 2021 by an administrative judge, which set out the extent to which a lawyer's professional secrecy is enforceable against the tax authorities.

All documents produced during the proceedings without prejudice are consequently covered by confidentiality.

Some documents are confidential by nature, and the duty to maintain confidentiality extends to any information that the lawyer has obtained from the client or third party, whether the information concerns the client and/or a third party, because of his or her being instructed on a matter.

Legal privilege does not extend to in-house counsel, since a lawyer registered with the Luxembourg Bar Association must be independent and is not allowed to work as an employee.

5.6 Rules Disallowing Disclosure of a Document

Restrictions on the disclosure of documents are mainly governed by the principle of professional secrecy.

Such right is implicitly acknowledged in the NCPC or the defence rights (principles in the EU Charter of Fundamental Rights) on which the Luxembourg jurisdiction relies, which apply the parties' rights of defence and impose as such a general right to legal privilege.

Parties as well as third parties to proceedings may, of course, invoke a legitimate reason to oppose the forced disclosure of documents.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Luxembourg law provides for legal bases that allow the presidents of the courts (justices of the peace and district courts), dealing with summary proceedings, to pronounce, under certain circumstances, several interim measures either:

- to prevent a prejudice;
- to preserve evidence; and/or
- to preserve the obvious rights of the requesting party.

Depending on the subject matter, injunctive relief may be sought pre-trial, in conjunction with or after the action on the merits has been brought.

There are several kinds of interim injunctions, from an order for payment to prohibitory injunctions (eg, cease and desist or demolition orders), and including the freezing and seizure of assets.

In principle, obtaining provisional and precautionary measures requires:

- specific grounds and specific legal bases
- evidence that shows with a sufficient degree of certainty that there is either a genuine need or urgency, or a risk of further deterioration of the situation; and
- considering the specific circumstances of the case, that the claimant's rights must be observed, are not seriously questionable, and appear to be due.

Injunctive relief is principally granted if the claim is not seriously disputed or challengeable (eg, request for payment), but also sometimes because the alleged right is challenged (eg, interim administrator in shareholder disputes or judicial expertise for alleged construction defects and shortcomings).

Summary proceedings may be launched through a petition or writ of summons, which must be served on the defendant by a bailiff or the court's secretary.

In cases of extreme urgency, interim measures (eg, bank account attachment, authorisation to reduce time limits for procedures) may be granted on an ex parte basis, based on the evidence and on the information contained in the application, as a first step in a procedure that is subjected to the adversarial principle in a second step.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

In the case of extreme proven emergency, an injunctive order can be rendered by special summary judges within two to three days.

There are, however, no out-of-hours judges as such in Luxembourg (except for state prosecutors and the magistrates who conduct criminal investigations, known as examining judges) and the petition must be filed within the court's opening hours.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Protective, interim or provisional injunctive relief may, under certain circumstances, be obtained on an ex parte basis.

Such relief will, however, be subject to validation during a contradictory procedure.

6.4 Liability for Damages for the Applicant

A successful defendant may claim a procedural indemnity for damage it has suffered (eg, lawyer costs and other expenses) and/or damages for abusive and vexatious proceedings.

However, Luxembourg law does not recognise punitive damages.

Besides, it is considered that, except in the case of litigious and disloyal attitude (malicious intent and chicanery), legal actions do not drift into abuse.

6.5 Respondent's Worldwide Assets and Injunctive Relief

Luxembourg law does not provide for the possibility to grant injunctive relief outside Luxembourg.

6.6 Third Parties and Injunctive Relief

A third party can be ordered to produce documents or evidence it may hold, or to withhold assets, bank accounts, documents or shares.

In the case of an injunction to withhold, such relief will, however, be subject to validation in the framework of a contradictory procedure.

6.7 Consequences of a Respondent's Non-compliance

If a respondent fails to comply with the terms of an injunction, the injunction may be enforced through a bailiff.

It is worth mentioning that in case of difficulty in enforcing a court decision, a party may also ask the court to order a periodic penalty payment (*astreinte*), ie, a fine that increases with the number of days of delay.

7. Trials and Hearings

7.1 Trial Proceedings

Before the lower courts, in summary and commercial proceedings, the procedure is mainly oral (ie, the parties discuss their arguments orally before the court). The parties may file written pleadings if the complexity of the case at stake so requires.

Before the district courts (dealing with civil matters), in appeal and cassation proceedings, the procedure is formalistic and all written.

However, written pleadings could also be filed in commercial proceedings if the court requires the parties to do so (which happens according to complexity criteria determined by the court) and/or if the parties decide to exchange their written pleadings.

7.2 Case Management Hearings

For shorter hearings, the parties will exchange their justifications and supporting documents before the pleadings, the arguments will be pleaded before the court and a ruling will be rendered after the pleadings based on the court's agenda.

7.3 Jury Trials in Civil Cases

There are no jury trials available in civil cases.

7.4 Rules That Govern Admission of Evidence

Luxembourg law mainly requires pre-constituted written proof.

Where pre-constituted proof is not conceivable (for legal facts), only a posteriori proof is required.

In other words, legal facts are proven by any means (including testimonies, presumptions, confessions and declarations under oath), but legal acts are only proven in writing.

In accordance with the adversarial principle, the burden of proof lies with that party who alleges a legal fact.

Both parties are required to provide their evidence to one another and to file any evidence with the courts, sufficiently in advance of the hearing date (at least five days before the court hearing for oral pleadings).

If a justifying document is submitted after this deadline, such evidence may be excluded from the debates at a litigant's request.

Indeed, the judge will not consider any document or evidence not submitted to both parties for their consideration.

7.5 Expert Testimony

Parties may instruct an expert unilaterally or jointly before the trial or ask the court to appoint an expert.

The court can of course seek expert testimony or guidance, particularly regarding technical matters (eg, damages, share value assessments).

It is worth mentioning that the experts' findings are not binding upon the court.

7.6 Extent to Which Hearings Are Open to the Public

Hearings are public, except in cases where the law provides that they will be secret.

Transcripts of hearings are available to the lawyers. Only the litigants receive copies of the judgments.

Decisions that are published are generally anonymised.

7.7 Level of Intervention by a Judge

In Luxembourg, rulings are reserved to a later date.

It is forbidden for judges to rule by general disposition; ie making a decision that is not based on the specific facts, parties and claims.

Court decisions must therefore always be motivated by and limited to the specific case on which a judge is ruling.

7.8 General Timeframes for Proceedings

As mentioned at **4.7 Application/Motion Timeframe**, it is difficult to assess the average timeframe of proceedings.

At present, commercial disputes are shorter than others and may last from six to 12 months, depending on the complexity of the case, the number of litigants, the court calendar, postponements, etc.

8. Settlement

8.1 Court Approval
To settle a lawsuit, no court's approval is required.

However, a court may, in its power of reconciliation, record a settlement that has been reached during the trial by the litigants, in the minutes signed by the judge and the parties. Such minutes will constitute an enforceable title.

8.2 Settlement of Lawsuits and Confidentiality
Settlement agreements may provide for confidentiality.

8.3 Enforcement of Settlement Agreements
Except for settlement reached before courts (as explained at **8.1 Court Approval**) that may be enforced like court decisions, the enforcement of settlement agreements may be sought before the courts, which may, depending on the subject matter, rule on their execution.

8.4 Setting Aside Settlement Agreements
Settlement agreements may be ruled as null and void in the absence of valid reciprocal concessions or where the parties' consent has been undermined by a fraudulent act or by misleading (typically, if a party did not understand the meaning or the scope of the agreement).

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant
Damages may be awarded to a successful litigant.

However, compensation in kind, in cases where this is possible, will always prevail in the award of damages.

9.2 Rules Regarding Damages
Amounts granted for damages are potentially uncapped.

In principle, parties may be granted damages which are not punitive but compensate the damage suffered.

In addition, contractual agreements may provide for uncapped damages payments for compensation. Such penalty clauses may be subject to the court's reassessment and reduction.

9.3 Pre- and Post-judgment Interest
Interest may be granted on the amount of the claim, generally as of the date of a formal notice, or as of the date of the application (ie, service or filing with the court) or as of the date set forth by the court.

The interest rate may be legal (including delay interest rate) or contractual.

There is a five-year extinctive prescription for successive interest debts. Thus, default rate interest awarded by the courts is subject to a five-year limitation period.

9.4 Enforcement Mechanisms of a Domestic Judgment

Domestic judgments become enforceable after having been served upon the unsuccessful party and can be enforced only when final, ie, when no further remedies are available.

9.5 Enforcement of a Judgment From a Foreign Country

Foreign decisions rendered in the EU, or subject to an international treaty, are generally recognised from one country to another and the conditions for enforcement have been significantly simplified.

Since 10 January 2015, EU decisions are enforced in Luxembourg without any declaration of enforceability being required. The holder of such enforceable title must provide two forms (namely, the certificate concerning a judgment, and the certificate concerning an authentic instrument/court settlement).

For a judgment rendered in a jurisdiction outside the EU (in a country which is a signatory to a bilateral or multilateral treaty for the reciprocal recognition and enforcement of foreign judgments), the court will judge whether the conditions imposed by the treaty are respected in the context of an ex parte procedure and confirm its enforceability by an exequatur order.

Such order will be served on the defendant as a first step to the enforcement procedure. If the enforceability is challenged, the defendant may lodge an appeal against the exequatur order.

For third-country decisions (those which do not originate from an EU country and are not subject to an international treaty), an exequatur procedure is required for their recognition and enforceability in Luxembourg, unless otherwise provided for by an international instrument.

The defendant must be properly summoned before the district court dealing with the exequatur.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

District courts have jurisdiction over cases decided by lower tribunals as specifically provided by the NCPC (eg, sitting in rental matters).

Courts of appeal acts as second instance courts (in civil, commercial, criminal, family and labour matters) and have general jurisdiction over decisions handed down by the district courts. When sitting as appeal courts, they re-examine the merits and confirm or overturn decisions ruled in the court of first instance.

The *Cour de Cassation* has jurisdiction over court of appeal rulings as well as judgments rendered as last resort by the district courts. The *Cour de Cassation* checks the exact application of the law by courts of appeal, district courts and lower tribunals and does not rule on the merits.

10.2 Rules Concerning Appeals of Judgments

Appeal is reserved to the parties to a judgment who have an interest in lodging an appeal. Judgments rendered by justices of the peace relating to disputes over amounts that do not exceed EUR2,000 cannot be appealed.

Decisions ruling on the merits are subject to appeal as well as interlocutory decisions, under certain conditions.

Appeal is also available against summary proceedings orders in front of the court of appeal. It is worth mentioning that although such orders are not binding upon the judge handling the case on the merits, they are temporarily fully enforceable, and can be immediately enforced, despite the suspensive effect ordinarily attached to the appeal.

10.3 Procedure for Taking an Appeal

For civil and commercial matters, the form of the application is a notice of appeal (*acte d'appel*) served through a bailiff to the defendant in appeal. For criminal cases, the appeal is made by way of declaration to the court's secretary.

Whereas appeal proceedings dealt with by the court of appeal require the representation by a lawyer and are a written procedure, appeals dealt with by district courts (in civil and commercial matters) do not require the parties to be represented by a lawyer and are an oral procedure.

Generally, either party can appeal an adverse court judgment within 40 days of the date on which the judgment is notified to the parties by the clerk court or from the date of its service by a bailiff.

If the judgment is given by default, the 40-day deadline starts after the expiry of the time limit of the opposition period.

Some provisions provide for a shorter time limit (eg, 15 days in bankruptcy cases).

10.4 Issues Considered by the Appeal Court at an Appeal

Appeal can be based on the ground that the first court has misinterpreted the facts or the law. The appealing party must, however, prove that the decision is detrimental.

Appeal courts are empowered to reconsider all the points and arguments that have been debated before the first judge (in accordance with the principle of devolutive effect) as well as new legal arguments, but new claims are inadmissible.

It is worth stressing that Luxembourg law does not know the "rule of precedent" applied in the Anglo-Saxon legal systems.

Judges are not generally bound by judicial decisions pronounced in other cases, even when quite comparable.

10.5 Court-Imposed Conditions on Granting an Appeal

The court cannot impose conditions on the parties in relation to an appeal.

10.6 Powers of the Appellate Court After an Appeal Hearing

Courts of appeal can either confirm the decision rendered by the first judge or overrule it partly or entirely.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

As stated at **6.4 Liability for Damages for the Applicant**, Luxembourg law does not recognise punitive damages.

The successful party may claim a procedural indemnity to cover its legal costs (eg, attorney's, bailiff clerk's and expert's expenses) and/or damages for abusive and vexatious proceedings (motivated by malicious intent and/or chicanery).

When experts have been appointed, their fees are normally borne by the unsuccessful party.

11.2 Factors Considered When Awarding Costs

Costs are generally borne by the unsuccessful party but can also be shared among the parties.

The court assesses in this respect, at its sole discretion and subjectively, whether it is fair for a party to bear the costs and to what extent.

11.3 Interest Awarded on Costs

No interest is payable on the costs and expenses of the proceeding.

12. Alternative Dispute Resolution (ADR)

12.1 Views of ADR Within the Country

The alternative dispute resolution (ADR) mechanisms available are:

- conciliation (decisions are not enforceable, and if they are not executed, the parties will have to submit the case to court);
- judicial mediation (parties may ask the homologation of the agreement by the court, which will then be binding) and contractual mediation (agreements lack legal force and if a party fails in its commitments, the other party must take the matter to court);
- arbitration (the arbitration sentence is binding and enforceable); and
- the ombudsman (whose rulings are recommendations).

ADR is increasingly being used in Luxembourg.

Mediation may be the most popular alternative to litigation and arbitration (in terms of formality, confidentiality, shortness and cost-efficiency).

Compared to litigation, arbitration may provide a faster resolution of cross-border disputes and offers confidentiality in addition to the binding effects.

12.2 ADR Within the Legal System

ADR methods are not mandatory.

Parties are free to have recourse to ADR or not, unless they are bound to do so in accordance with the provisions of an agreement or a contract that defines the legal relationship between them.

12.3 ADR Institutions

Alongside the ordinary courts, where the judge's first role is that of conciliation, individual institutions offer and promote ADR, for example:

- the Civil and Commercial Mediation Centre of the Luxembourg Bar (*Centre de Médiation Civile et Commerciale*, or "CMCC") is one of the main mediation bodies and deals with civil, commercial and social matters;
- the Arbitration Centre (*Centre d'Arbitrage de la Chambre de Commerce*);
- the Standing Committee on Labour and Employment at the level of the Inspectorate of Labour and Mines; and
- the Consumer Ombudsman, who deals with out-of-court settlement for consumers.

Generally, the processes are time and cost efficient (eg, the Consumer Ombudsman is free of charge for all parties).

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

Domestic arbitration is governed by Articles 1224-51 of the NCPC.

In addition, Luxembourg has ratified several international agreements governing arbitration.

Many matters can be subject to arbitration.

Arbitration awards are binding on the parties, and the award is final.

13.2 Subject Matters Not Referred to Arbitration

Some disputes may not be subject to arbitration, such as those concerning the status and legal capacity of persons, requests for divorce or separation, disputes concerning persons who are missing or presumed missing, and employment matters.

13.3 Circumstances to Challenge an Arbitral Award

Arbitration awards can be declared void by the Luxembourg District Court in limited cases (such as invalidity of the arbitration clause, violation of the rights of the defence, etc).

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

An arbitration award is deemed to be domestic if the award is issued in Luxembourg.

Domestic awards are enforced by an enforcement order granted by the president of the district court and cannot be appealed before the Luxembourg courts.

Foreign awards are enforced in Luxembourg by an exequatur order granted by the president of the district court. The exequatur procedure is identical to the simplified exequatur procedure of a foreign judgment.

14. Outlook and COVID-19

14.1 Proposals for Dispute Resolution Reform

A recent law (Law of 8 June 2021) aiming at strengthening the efficiency of justice came into force on 16 September 2021.

This new law provides, inter alia, for the consecration of electronic communication between lawyers and, to a limited extent, by the courts.

In many proceedings, the assistance of a lawyer is no longer mandatory. It also provides for shortening the time limits of the written procedure, especially for disputes with less than EUR100,000 at stake, where a single plaintiff is opposed to a single defendant. The formalistic written procedure has also been simplified and shortened, whereby each lawyer will have to file three submissions followed by a summary submission (that includes all the arguments and claims contained in the submissions previously filed) before the close of the hearing.

The introduction of the simplified procedures brought by the Law of 8 June 2021 should result in the more rapid discharge of certain disputes.

Among other major changes envisaged is the “Paperless Justice” project, which aims at establishing digital justice (eg, filing of applications, submissions and evidence by using digital communication as in France or in Belgium). Despite the progress achieved with digitalisation

of administrative procedures as well as the digital availability of case law and digital access to investigation files in criminal matters, the project is currently behind schedule.

14.2 Impact of COVID-19

During the COVID-19 state of emergency, all time limits prescribed in proceedings before the judicial, administrative and constitutional courts were suspended.

Alongside these suspensions, the obligation to make an admission of cessation of payments leading to bankruptcy was also suspended. The remaining fraction of the limitation periods resumed the day after the end of the state of emergency.

The COVID-19 pandemic has accelerated the development of digital communication with judicial institutions.

Courts, in co-operation with the Bar Association, have developed the process of electronic communications and facilitated exchanges between lawyers and the courts. In this context, the judicial order has been operating with a reduced service and the movement of the public on the courts' sites has been restricted to the absolute minimum.

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Trends and Developments

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Luxembourg's Fight for Court System Efficiency

All litigants and other court users want their cases resolved as quickly as possible.

Legal practitioners often hear the same questions (how long does a case take to process? Why does it take so long? Not to mention the costs associated with the processing of cases and the delivery of service) and criticism about the length of time it takes a court to process cases of different types.

In an ideal world, from the commencement of litigation to its resolution, whether by trial or settlement, any time that elapses other than is reasonably required for pleadings, discovery and court events is unacceptable and should be eliminated.

Unfortunately, court congestion is a general international trend and Luxembourg is no exception.

Reasons for court congestion

From a purely Luxembourg-centric perspective, one of the major reasons for this is the international context in which Luxembourg operates.

Over the last decade, companies, individuals and court users, as well as judges, have been affected by different international and European financial measures, such as tax, anti-money laundering and counter-terrorism financing rules (which are constantly evolving), which were put in place to improve tax transparency, prevent people from abusing rules and find related risks in international dealings.

The combination of these complex rules, increased transparency and cross-border co-operation between authorities inevitably leads to an increase in controversy and litigation, which requires careful consideration by a court and may have international reach, all of which could significantly affect the progression of the case.

From a practical point of view, the congestion phenomenon requires an understanding that the timeliness and expedition of case processing (ie, the time required to properly obtain, present and weigh the evidence, law and arguments) necessarily includes some degree of uncertainty.

First, courts suffer from relatively large inventories of pending cases (ie, backlogs). The more cases awaiting processing, the longer it will take to process cases on average. Luxembourg courts usually process cases in a "first in, first out" order instead of a "last in, first out" order – ie, in chronological order. "Older" cases are dealt with first, even if they have been waiting a long time to be processed (not to mention that older lawyers have priority over younger lawyers when it comes to pleading the case, as decided by the court from time to time).

Second, it depends on how the time it takes to process a case is counted for particular kinds of cases (eg, a civil damage case might be "interrupted" by criminal proceedings and considered inactive for case processing until the criminal matter is settled, whereupon the civil

case resumes and the time elapsed continues to be counted).

A case that was scheduled for trial may be continued or postponed several times before the pleadings, because of the court's schedule or the use of adversary delaying tactics.

Finally, the timing of case processing is dependent on the characteristics of Luxembourg procedures.

- What is the claim about? Outside the administrative process, which has strict time limits, the duration of procedures before the courts of law is obviously unpredictable. Commercial litigation often lasts longer than civil litigation. Criminal litigation is inevitably affected by the complex and evolving tax, anti-money laundering and counter-terrorism financing rules, not to mention the European Public Prosecutor's Office, which became operational on 1 June 2021.
- Is it a written or verbal process? Complex cases take longer to complete: the more complex the case, the more processing needs to be done, with written procedures.
- How much is at stake? The amount at stake determines which tribunal is competent.
- How urgent is the claim?
- Is the claim disputed, challengeable or unquestionable? This can determine the brevity of the procedure. Can an application be filed before summary courts or not?

Legal topics and rights, as well as the claim itself, determine the subject-matter jurisdiction, which in turn determines the timeframes.

Therefore, it makes sense for the court to control the pace of litigation and the balance between the time required to perform an adequate review of a case and the time needed to enable the just and efficient resolution of cases.

Intensive efforts to resolve the problem

As described in the Luxembourg Trends & Developments chapter in the 2022 Chambers Practice Guide to Litigation, the COVID-19 pandemic posed severe challenges to the normal functioning of the justice system. It reaffirmed that digital technologies are essential for ensuring uninterrupted and timely access to justice for individuals and businesses.

With a view to reducing court congestion and making the judicial system fit for the digital era, the Luxembourg courts initiated reforms in technology and case management practices, with the aim of improving court efficiency and reducing delays by simplifying and digitising communications.

Whereas faxes, attendance at pre-trial hearings and official communications through the court's lawyers' boxes were common, courts now communicate more quickly by email.

Also, the dematerialisation of judicial proceedings (eg, through secure electronic data exchange) has proven to be easier, allow faster access to courts and help electronic interaction and communication between judicial authorities and practitioners in judicial proceedings (using secure electronic communication tools, including for deadlines, judgment and ruling, in compliance with the current legal framework, especially with data protection rules). It is worth noting that the deadlines for submitting evidence, documents and submissions became mandatory in simplified pre-trial procedures applicable to cases where the value of the litigation is less than or equal to EUR100,000 and that feature only one plaintiff and a single defendant.

Fixed times for appearing at hearings have made trial dates more certain and predictable. The courts' success in improving the holding of case processing and pleadings on the dates on which they are scheduled to be held demonstrates the positive development of case processing.

Progress continues

The Luxembourg government has adopted several bills aimed at seizing the opportunities offered by digital technologies, with the objective of improving access to and the functioning of justice systems.

Even though the time limits in administrative proceedings are, in theory, meant to keep a lawsuit from going on for too long, examples include draft bills aimed at the digitisation of urgent proceedings before the administrative courts. For example, the draft bill amending the amended law of 21 June 1999 on the rules of procedure before the administrative courts is part of the general framework of the digitisation of justice (Paperless Justice Project), but is for the sole benefit of professionals in competition law.

Another bill would allow the use of an electronic signature or electronic seal on administrative documents. It sets the conditions for the use of an electronic signature or electronic seal, and allows for the sending of documents by qualified electronic registered mail (draft law relating to the electronic signature of acts in administrative matters and amending the law of 25 July 2015 relating to electronic archiving and the draft grand-ducal regulation laying down certain procedures for implementing the law relating to the electronic signature of acts in administrative matters and amending the law of 25 July 2015 relating to archiving).

In criminal matters, the draft law on modification of the Code of Criminal Procedure and on the European arrest warrant and surrender procedure is worth mentioning. The aim of this amendment is to retain in the Code of Criminal Procedure certain useful provisions adopted during the pandemic (currently contained in the amended Act of 20 June 2020 temporarily adapting certain procedural modalities in criminal matters), specifically the possibility of carrying out certain acts of criminal procedure through telecommunications (eg, the hearing of witnesses by audiovisual telecommunication or by audio-conference, the assistance of a lawyer using telecommunication, and the possibility of filing an appeal electronically).

These bills would represent big improvements if they are passed.

Commercial court congestion should be relieved further by the adoption of the new Law of 28 October 2022 creating the procedure for administrative dissolution without liquidation, which introduces a simplified procedure that aims to eliminate the numerous commercial companies that have not been compliant under applicable Luxembourg law for several years (and therefore meet the condition for the opening of a judicial liquidation), and includes the ex officio striking off of commercial companies in bankruptcy. Moreover, these companies have neither assets nor employees.

In civil cases, the pre-trial ruling on the admissibility of an action or the jurisdiction of the court, the simplified case management conference (Law of 8 June 2021 aimed at strengthening the efficiency of justice) and the practice of summary briefs have been shown to be effective in improving the efficiency of case processing.

However, the draft law on the temporary suspension of evictions in relation to residential leases may be a small blemish. The bill proposes to suspend the execution of evictions in relation to housing leases until 31 March 2023, due to inflationary pressures.

In the context of the current Ukraine conflict-related economic, food and energy crisis, the goal of avoiding families and individuals finding themselves on the street overnight during the winter with a virtual impossibility of finding a new home quickly is understandable.

But some people may think that the court system's efficiency also includes the principle that justice is not fully served until all court orders have been enforced and followed, and all parties are held responsible for their financial obligations under the law.

Obtaining a ruling, the enforcement of which is ex officio legally suspended, may create some frustration and backfire on court congestion (at least in lease-related matters) after the mid-winter break.

Conclusion

Luxembourg court congestion is one of the drawbacks of the country's attractiveness as an international financial centre. But Luxembourg courts should be congratulated for their efforts in dealing with timeliness and efficiency, especially since their backlogs have increased due to the COVID-19 epidemic.

Before suing, parties should consider several key issues, such as the complexity of their case, the amount at stake and whether any emergency procedures may be launched because the rights and claims involved are unquestionable. Since several court users are involved, there is inevitably some degree of uncertainty regarding timeframes.

It is advisable to investigate whether the defendants have assets and to take advice on how easy it would be to enforce a judgment against them, even before a dispute is imminent.

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