

# New law on arbitration

The new law on arbitration ("**Arbitration Law**") published on 21 April 202 aims to modernise the current arbitration legislation deemed to be "outdated".

## Why is it important?

The Arbitration Law redefines the legal basis for arbitration with a view to accommodating the business needs of today's market players when it comes to dispute resolution. By offering practice-oriented rules setting up a complete framework for the various stages of the arbitral proceedings, the Arbitration Law intends to promote Luxembourg's attractiveness as an arbitration centre, highlighting its advantages of flexibility, rapidity and confidentiality while at the same time providing appropriate guarantees, particularly with regard to compliance with public order and preservation of the rights of the parties and those of third parties.

In this respect, the Arbitration Law is inspired by the French rules on international arbitration as well as the United Nations Commission on International Trade Law ("**UNCITRAL**") Arbitration Rules, which have been transposed in over 100 countries and have proved their effectiveness in other successful international arbitration centres.

## What does it mean?

These are the key points of the reform:

- **Adjusting the scope of application of arbitration**

The Arbitration Law does not change the principle that all persons can compromise on the rights of which they have free disposal. However, it clarifies which rights fall outside of this general scope, by expressly excluding from arbitration the disputes between professionals and consumers, between employers and employees as well as disputes relating to residential leases.

- **Improving the conduct of the proceedings**

The Arbitration Law introduces the principle of confidentiality of the arbitral proceedings (subject to contrary statutory requirement) which is essential when it comes to disputes involving business secrets or financial and banking transactions.

The Arbitration Law further sets a time limit for the duration of the arbitral proceedings which may not exceed 6 months from the moment the arbitral tribunal is formed, except where the parties have decided otherwise or an extension of the time limit is

decided.

Furthermore, the Arbitration Law introduces the supporting judge whose role is to resolve blockages and difficulties during the arbitral proceedings. The supporting judge is a Luxembourg judge when, amongst other things, the seat of arbitration is located in the Grand-Duchy of Luxembourg or the parties have chosen the Luxembourg procedural rules for their arbitration.

If the parties have decided otherwise, the arbitral tribunal may order provisional or conservatory measures, except for attachments which may only be ordered by judicial courts.

- **Remedies and enforcement of arbitration awards**

As soon as it is rendered, the arbitral award has the authority of *res judicata*.

The Arbitration Law provides, however, for two possible remedies against an arbitral award.

First, according to the Arbitration Law, a party can file an application for review aiming at the re-examination in fact and in law and the subsequent withdrawal of the award. Nevertheless, this remedy is only possible in four cases relating to serious fraud committed during the arbitral proceedings.

Second, and more importantly, the award is not subject to opposition, appeal or cassation before a state court but a party may file an application for annulment with the Court of Appeal in a limited number of serious circumstances. This remedy, however, only applies to awards rendered in Luxembourg and awards rendered abroad cannot be set aside by the Luxembourg courts; only the courts of the State in whose territory the award was rendered have jurisdiction to do so.

As regards the enforcement of the arbitral award, the Arbitration Law does not innovate and still provides that an arbitral award may still only be enforced in the territory of the Grand Duchy of Luxembourg by virtue of an exequatur order issued by the president of the competent district court.

## **What's next?**

The Law is welcomed by national arbitration specialists and practitioners such as the Think Tank for Arbitration and the Luxembourg Arbitration Association ("**LAA**"). It is an additional but essential piece contributing to the construction of Luxembourg as an arbitration centre. Previous steps had already laid out the foundations of this construction: the renewal of the rules of arbitration by the Luxembourg Chamber of Commerce, the organisation of the Luxembourg Arbitration Day by the LAA and the recent signature of a cooperation agreement between the main arbitration centres and arbitration associations in the Benelux area (namely CEPANI, NAI, DAA, LAA and the Luxembourg Chamber of Commerce) for the creation of the Benelux Arbitration and Alternative Dispute Resolution ("**ADR**") Group to join forces for the strengthening and the promotion of arbitration in the Benelux area.

Our firm is represented in the Think Tank for Arbitration, on whose work the Arbitration Law is based, and in the board of the LAA.

For any further information please contact us or visit our website at **[www.elvingerhoss.lu](http://www.elvingerhoss.lu)**.

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