

Luxembourg to finally reform arbitration rules

On March 23, 2023, bill n°7671 reforming arbitration rules was unanimously adopted by the Chamber of Deputies.

The aim of the reform is to amend the New Code of Civil Procedure and to modernise in depth the Luxembourg arbitration rules in line with the business needs of today's commercial actors, so that the parties may rely on flexibility, expediency and confidentiality.

Arbitration rules were never thoroughly amended despite the growth of this dispute resolution procedure in Luxembourg, particularly in international matters.

As a reminder, arbitration is a procedure in which a dispute is submitted, by agreement between the parties, to one or more arbitrators who shall deliver a binding decision.

Arbitration can only take place if both parties have agreed on it. In the case of potential disputes arising from a contract, the parties can choose in advance to submit a dispute to arbitration.

Even in the absence of such a clause, the parties are free to have recourse to arbitration once a dispute arises (ad hoc arbitration).

The reform redefines the legal bases of arbitration.

These legal bases must consist of a body of coherent rules, known and recognised by the business world for their effectiveness and accepted as meeting the requirements and constraints of a useful arbitration procedure.

The scope of arbitration is limited to professionals, excluding certain categories of disputes (consumer law, labour law, leases, status of persons), so as not to make these specific protective regimes more flexible. This alternative dispute resolution method can help to reduce the burden on national courts and is usually less time consuming for the parties.

One of the innovations of the reform is the creation of "support judge" ("juge d'appui") responsible for helping the parties to overcome the obstacles which may appear before the constitution of the arbitral tribunal.

Pursuant to the new article 1229 of the New Code of Civil Procedure, the support judge in charge of the arbitration proceedings shall be the Luxembourg judge when the place of the arbitration has been fixed in Luxembourg, or, if the place has not been fixed, when :

- 1) the parties have agreed to submit the arbitration to Luxembourg procedural law; or
- 2) the parties have expressly given jurisdiction to the Luxembourg courts to hear disputes relating to the arbitral proceedings; or
- 3) there is a significant connection between the dispute and Luxembourg.

Another advantage of the reform is that the Luxembourg support judge always has jurisdiction if one of the parties is exposed to a risk of denial of justice. ("competence universelle")

Linari Law Firm is available should you need any assistance regarding dispute resolution and/or arbitration.

