PRACTICAL **GUIDE**

ARBITRATION

An Alternative Form of Dispute Resolution for Business

CHAMBER OF COMMERCE LUXEMBOURG

POWERING BUSINESS

ENGLISH

Contents

In this publication, terms that are underlined are defined in the glossary on page 24.

A Luxembourg Chamber of Commerce publication in partnership with Mindforest and the Luxembourg Arbitration Center.
June 2023.

LUXEMBOURG
ARBITRATION CENTER

powered by the
Luxembourg Chamber of Commerce

Introduction

In any business relationship, disagreement or even conflict can arise between partners. This may concern, among other the date on which a product is delivered, the quality of service provided, or the terms of payment of an invoice. Examples abound.

Traditionally, parties have relied on national courts to settle their differences. But court backlogs and the proliferation of means of appeal (e.g. first instance, appeal, cassation, back to appeal), make state justice lengthy and costly, and sometimes unsuited to the needs of businesses at a time when speed and responsiveness are key.

Another difficulty lies in the specific context of international trade in which the parties – often of different nationalities – may be reluctant to resort to a judge of the same nationality as their business partner, fearing either the judge's partiality or being at a disadvantage when navigating an unfamiliar legal system.

These various considerations have encouraged the development of an alternative form of justice: **arbitration.** This private form of justice, which is organised directly by the parties, who choose the individuals (also known as arbitrators) to settle their business disputes and who pay them for this service, has grown considerably around the world. Most countries recognise the value of this parallel justice system, and now have legislation to encourage and support its use. This is the case in Luxembourg, which recently modernised its law with the adoption of a new arbitration reform act of 19 April 2023. Luxembourg's development as an arbitration hub is also due to the presence of an arbitration centre at the Luxembourg Chamber of Commerce: **Luxembourg Arbitration Center (LAC).**

The aim of this guide is to provide an overview of arbitration as well as the LAC, and the efficient dispute resolution services that it offers to Luxembourg businesses and their partners.

This document is a summary provided for information purposes only in order to inform professionals about the possibilities offered by arbitration. It does not replace the need to consult specialists on the subject.

Arbitration in Brief

Arbitration as a dispute resolution method is an alternative to state judicial proceedings. It is currently favoured in international commercial relations due to its flexibility.

In order to resort to arbitration, it is essential to obtain the agreement of all parties involved. This can be done in advance by inserting an arbitration clause into the contract. The parties also have the option to enter into an arbitration agreement after their dispute has arisen.

Through this consensual approach, the parties appoint one or more individuals (referred to as "arbitrators") to form an "arbitral tribunal". The arbitral tribunal will be tasked with resolving the dispute in accordance with the rules of law. The decision of the arbitral tribunal (referred to as an "award") will be as binding on the parties as a court judgment.

Throughout the proceedings, the arbitrators and parties maintain the confidentiality of the information shared, and control access to hearings. This approach avoids the pitfalls of public court hearings, which may be damaging to the parties' reputation.

However, such tailor-made justice involves costs due to the need to pay the arbitrators for the service provided.

A comprehensive reform of Luxembourg's arbitration law was recently enacted to give the country a modern legislative framework conducive to arbitration.

In brief:

- arbitration is a dispute resolution mechanism;
- arbitration is consensual (all parties appoint and accept the arbitrator);
- arbitration results in a final decision that can be easily enforced;
- arbitration can be administered by an arbitration centre, which will handle the logistics and administration of proceedings; this is referred to as "institutional arbitration";
- proceedings can also be fully organised by the parties and their legal counsels; this is referred to as "ad hoc arbitration".

Did You Know?

One case that made arbitration famous dates back to the US War of Secession: the Alabama Claims.

The United States accused Great Britain of having secretly helped the confederate states by allowing the construction and sale of a warship – the Alabama – to the Confederacy.

In 1872 the arbitral tribunal ordered Great Britain to pay compensation, and the award was complied with, proving the effectiveness of arbitration!

The Luxembourg Arbitration Center (LAC)

Why have an arbitration centre in Luxembourg?

The Chamber of Commerce opened its Luxembourg Arbitration Center (LAC) in 1987 in order to offer an alternative to the judicial settlement of disputes, which is often long, costly and unsuited to the technical and complex nature of the business world. The LAC is responsible for the organisation, management and oversight of institutional arbitration proceedings governed by its own rules of arbitration (Rules of Arbitration).

Composition of the LAC

In the space of 35 years, the Arbitration Center has seen its caseload increase, confirming the interest of the business community in this type of dispute resolution.

LUXEMBOURG **ARBITRATION** CENTER

THE SECRETARIAT

The Secretariat handles the day-to-day management of the Center.
It helps the arbitral tribunal and parties to arrange hearings, and provides support to the Council of Arbitration.

- Secretary General
- Lawyers

THE COUNCIL OF ARBITRATION

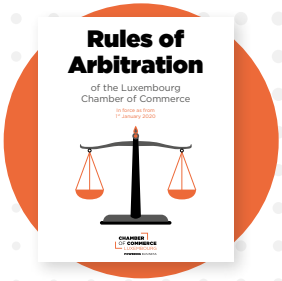
The Council of Arbitration is the decision-making body of the LAC, responsible for making various decisions throughout the course of an arbitral proceeding (appointment of arbitrators, determination of the advance, challenge of an arbitrator, approval of the award, etc.). The Council is tasked with organising and ensuring the proper conduct of arbitration proceedings and is supported in these tasks by the Secretariat.

- President of the Luxembourg National Committee of the International Chamber of Commerce
- President of the Luxembourg Bar
- Director General of the Luxembourg Chamber of Commerce
- Chairman of the Board of the Luxembourg Institut des Réviseurs d'Entreprises"
- Luxembourg member of the the Luxembourg member of the International Court of Arbitration of the ICC

An Arbitration Center serving the needs of Luxembourg businesses

Since 2020, the Arbitration Center of the Luxembourg Chamber of Commerce has been pursuing collaborative and innovative initiatives and promoting arbitration with a view to enhancing Luxembourg's appeal as an arbitration venue.

- The LAC has published new Rules of Arbitration which are better suited to international arbitration standards and to developments in international trade, giving parties more visibility and predictability. In addition to establishing Emergency and Simplified Proceedings *see p.14-15 of this Guide)*, the Center has adopted modern procedural mechanisms and established a scale of fees and costs *see p.18 / Costs and Funding of Arbitration)*.
- The LAC has promoted arbitration by organising dedicated arbitration events and setting up the BeNeLux Arbitration and ADR Group in partnership with Belgian and Dutch arbitration centres.
- Increased digitalisation of proceedings



Facts and Figures

While Paris and London are recognised as being major international arbitration hubs, Luxembourg also has many advantages:

- internationally renowned financial center
- highly qualified professionals
- multicultural and multilingual
- bar association comprising lawyers from all nationalities and legal cultures.

Luxembourg's appeal as an arbitration venue has grown in recent years through initiatives and projects backed by the Luxembourg Chamber of Commerce via the LAC.

The activity of the LAC work in numbers

Language of cases
dealt with by the LAC


62%


33%


5%

70% of disputes
assigned to a single arbitrator

+60%:
increase in the number of cases submitted to the Luxembourg Arbitration Center between the 2010-2014 and 2015-2019 periods

25% of cases
brought before the LAC result in a settlement agreement between the parties prior to the final award

€3.7 million
average dispute amount

85% of disputes
are international (at least one party is located outside of Luxembourg)

Pros and Cons of Arbitration

at the LAC versus court proceedings

PROS

Faster as a matter of principle (Simplified Proceedings: in principle a little over 6 months, Emergency Proceedings: 15 days)

More flexible proceedings, tailored to the needs of the parties:

- choice of arbitrators by the parties or Arbitration Center (they are experts in their field – not necessarily lawyers or legal experts – which means that they can handle specialised subject matters)
- selection of the preferred procedural steps
- choice of governing law
- choice of language

Transparency over costsat the start of proceedings *(see p.18 / Costs and Funding of Arbitration).* A fee schedule is available and a cost calculator will soon be made available online to estimate costs.

Confidentiality: awards are not published and hearings are held behind closed doors

The decision, or award, is final: no appeal process and limited possibilities for annulment *(see p.20 / The Arbitration Award and Means of Recourse)*

Neutrality:

- choice of the seat (including a jurisdiction with which neither the claimant nor the defendant share a nationality)
- choice of how the composition of arbitral tribunal (possibility to choose arbitrators of a different nationality to either party)

Award that can be enforced (binding judicial decision – recognition of the award under the New York Convention) *(see p.20 / The Arbitration Award and Means of Recourse)*

Option to resort to simplified procedures that are faster and cost-effective. (1 sole arbitrator - 20% reduction in arbitrator fees)

A mechanism suited to international disputes: possibility to centralise disputes before a single arbitral tribunal in the event of complex international disputes. Limits costs and avoids conflicting decisions.

Possibility of consolidate related arbitration proceedings

Possibility to request conservatory and interim measures (in the case of Emergency Proceedings)

CONS

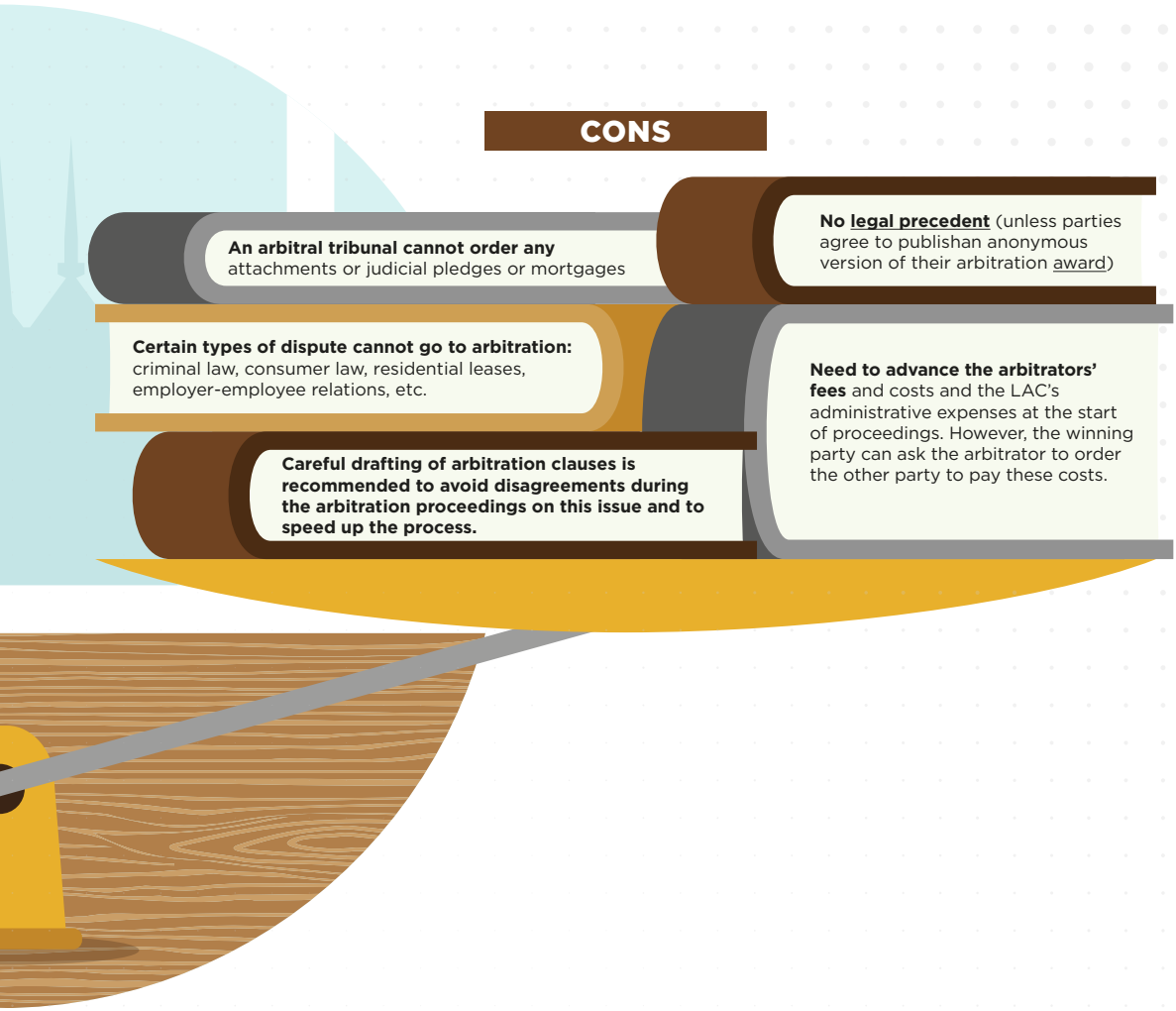
An arbitral tribunal cannot order any attachments or judicial pledges or mortgages

No legal precedent (unless parties agree to publishan anonymous version of their arbitration award)

Certain types of dispute cannot go to arbitration: criminal law, consumer law, residential leases, employer-employee relations, etc.

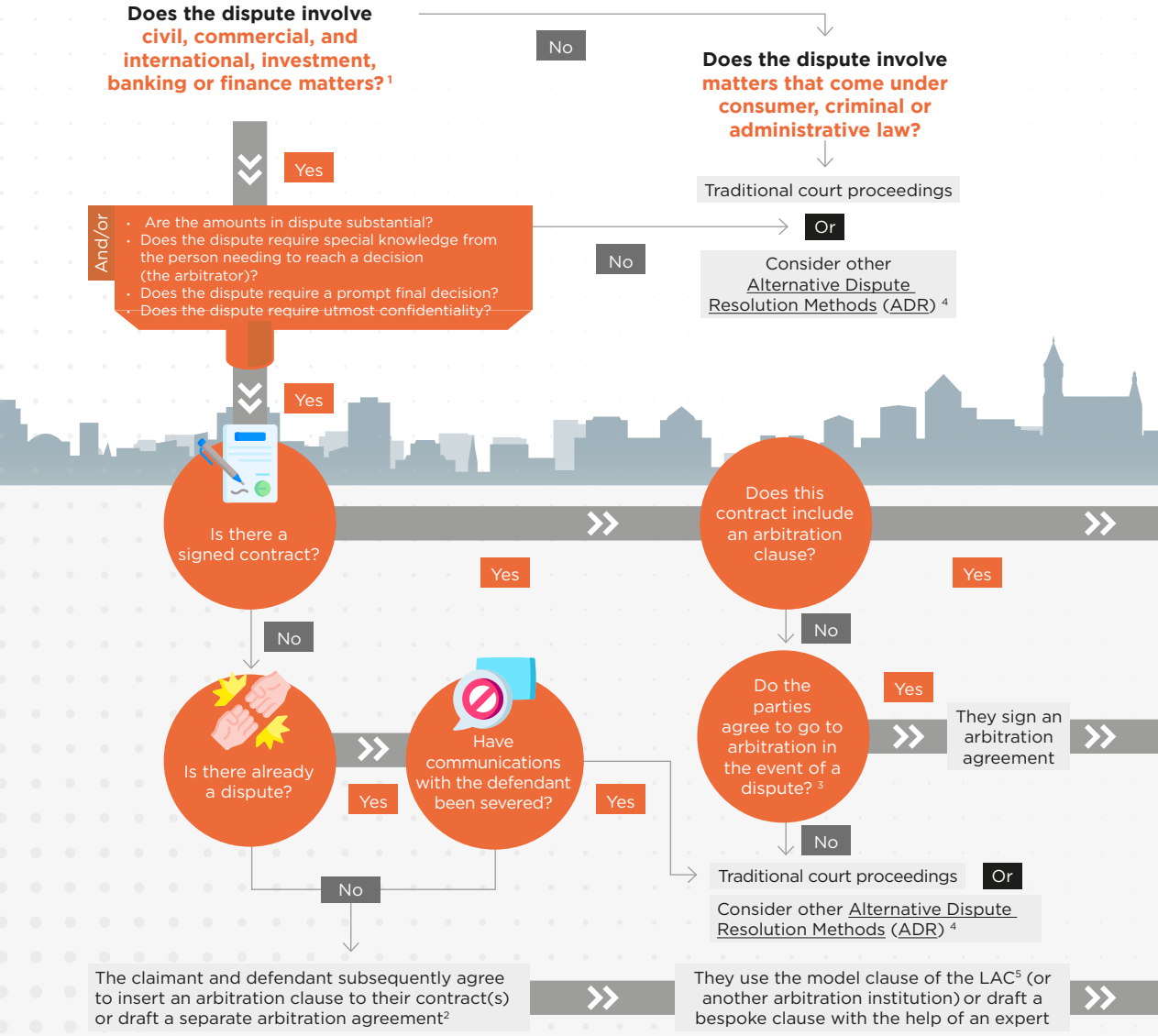
Need to advance the arbitrators' fees and costs and the LAC's administrative expenses at the start of proceedings. However, the winning party can ask the arbitrator to order the other party to pay these costs.

Careful drafting of arbitration clauses is recommended to avoid disagreements during the arbitration proceedings on this issue and to speed up the process.



Consent to Arbitration

Arbitration, whether institutional or ad hoc, is type of dispute resolution that is based on the agreement of the parties. This means that the parties to a dispute must consent to its use in order to settle their differences. But how and when must this consent be given?



1 Types of operations that may be submitted to arbitration in banking and financial matters:
- sophisticated financial operations: derivatives, asset management, investments
- mergers and acquisitions
- share ownership and shareholders' agreements.

2. It is advisable to agree beforehand on on the preferred dispute resolution method - typically when drawing up contracts for the envisaged transaction. Experience has shown that once a dispute arises, it becomes more challenging to reach an agreement on how to resolve it.

3 *(see p.06-07 / Pros and Cons of Arbitration at the LAC versus Court Proceedings)*

4 e.g. mediation, conciliation

5 *(see p.10 / The Arbitration Agreement: Best Practices)*

6 Types of arbitration that may be resorted to: ad hoc arbitration or institutional arbitration

The Arbitration Agreement: Best Practices

In the arbitration agreement, the business partners agree on how they will resolve any disputes arising from their business relationship. Although envisaging potential disputes when negotiation business transactions may seem contrary to the intended spirit of cooperation and mutual trust, it is nonetheless a way to protect oneself against numerous difficulties if a dispute were to arise at a later stage.

Writing an arbitration agreement can be particularly delicate given the considerable freedom afforded to the parties in organising their arbitration proceedings.
Yet it must reflect the parties' wishes as closely as possible.

What are the best practices?

1. A WRITTEN agreement: although the consent to use arbitration as the dispute resolution method does not necessarily have to be put in writing, doing so is highly recommended as, without a written agreement, it will be much more difficult to prove if the other party challenges its existence. In the presence of an arbitration agreement, the dispute will no longer fall under the jurisdiction of the courts.

2. TO be agreed upon BEFORE the dispute: while it is possible for the parties to agree to arbitration once a dispute has arisen, it is advisable to insert an arbitration clause when the contract is signed to avoid additionnal disagreement regarding the dispute resolution method.

3. CHOOSE between ad hoc arbitration and institutional arbitration: if the parties wish to use institutional arbitration, then the name of the arbitration institution to which they which to submit their dispute must be clearly indicated.

4. Consider using a MODEL CLAUSE:
To avoid the risks associated with of clauses that are open to interpretation, many arbitration institutions provide standard clauses, which can be inserted directly into an agreement.

The LAC suggests the following: *Il disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the Arbitration Center of the Luxembourg Chamber of Commerce, by one or more arbitrators appointed in accordance with said Rules".*

5. Be as PRECISE as possible: it is advisable to adapt the arbitration agreement to the contract byclarifying certain details such as: the number of arbitrators and procedure for their appointment, the law applicable to the contract, the language of the proceedings, and the place (seat) of arbitration. *(see p.21 / Seat of arbitration)*

In arbitration proceedings that are subject to the Rules of Arbitration of the LAC, it is also possible to indicate, when the arbitration agreement is drafted, whether or not the parties wish to apply Emergency and simplified proceedings *(see p.14-15 / Emergency Proceedings – Simplified Proceedings)* provisions by choosing one of the following two options:

If parties wish to resort to simplified proceedings:
" The parties agree, pursuant to Article 22 paragraph 2 of the Rules, the parties agree that the simplified proceedings provisions shall apply, (irrespective of the amount in dispute / provided that the amount in dispute does not exceed (...)".

If parties refuse to use Emergency/Simplified Proceedings:
"The provisions regarding the emergency measures/ simplified provisions shall not apply".

6. By seeking advice from PROFESSIONALS: It is highly recommended to be advised and assisted by a lawyer when drafting the arbitration clause of a contract. This represents a very modest cost compared to the problems that can arise from a poorly drafted clause (a "pathological clause").

Testimonials

Think Tank pour l'Arbitrage
LUXEMBOURG

Mr Patrick Kinsch

Think Tank for Arbitration (www.arbitration.lu)

What is the role of the Think Tank?
The Think Tank (www.arbitration.lu) has existed for approximately a decade. It was created under the initiative of lawyers, magistrates and professors with the aim of studying the Luxembourg legislation on arbitration. The mission of the Think Tank is essentially scientific: researching and improving legislation and case law,and not to promote arbitration "commercially". It has worked towards the development of a modern legislation on arbitration.

Indeed, the legislation was outdated, and no one had taken the initiative to thoroughly reform it. It still followed the 1806 Code of Civil Procedure, which was adapted to modern realities on a very limited scale in the early 1980s.. Luxembourg did not have a modern arbitration law throughout the 20th century, whereas other countries were enacting laws to regulate their arbitration practice.

Can you tell us more about how the new arbitration law came about?
The study was undertaken with great diligence, initially under the tireless impetus of the first chairman of the Think Tank, Mr Vincent Bolard, which has recently lead to the adoption of the new arbitration law.

The work mainly consisted of comparative law studies on arbitration (especially in French and Belgian law). We also took into account arbitration texts produced by UNCITRAL, the United Nations Commission on International Trade Law. The project was supported by the Chamber of Commerce. The text was written by a drafting committee of the Think Tank, which presented it to the Ministry of Justice. Driven by Ms Tanson, Minister of Justice, the draft law was voted on 23 March 2023.

What will this new arbitration law change?
This law is a remarkable progress that will facilitate the conduct of arbitration proceedings, whether they are administered by an arbitration institution (such as the Arbitration Center of the Chamber of Commerce) or conducted through non-institutional (ad hoc) arbitration. It is worth noting the presence of a supporting judge to help the parties in the event of difficulty constituting the arbitral tribunal, or if there is any debate over an arbitrator's impartiality.
(see p.21 / Support from National Courts during Arbitration).

Is it fair to say that the Luxembourg justice system is generaly favourable to arbitration based on case-law, and that Luxembourg can be considered a good place of arbitration for all parties?
I think so. Even before the new arbitration law, judges did not confine themselves in a literal application of the old law, which dated back to Napoleon. They looked more towards French case law for inspiration, thereby demonstrating their support for arbitration. Moreover, Luxembourg judges apply the New York Convention as the basis for the recognition of foreign arbitral awards. Indeed, in Luxembourg there are numerous requests to recognise awards made abroad. The reason for this is that Luxembourg is a major financial hub. Therefore, when it comes to the enforcement of an arbitral award by seizing assets held at a bank, the enforcement of the award often has to happen in Luxembourg.

Is there a move towards arbitration in financial matters?
No, or only very slightly. The banking world still prefers to go to court, believing it to be more effective in collecting a bank loan, for example.
Arbitration is a distinct form of justice that complements state justice system and does not seek to to entirely replace it. It is different form of justice, one with a less formal, often more agreeable tone, the main advantages of which are *(see p.06-07 / Pros and Cons of Arbitration at the LAC versus Court Proceedings)*

- being a single instance procedure (no appeal process) if the parties prefer a swifter resolution of their disputes
- being confidential (it does not aim to preserve illegitimate secrets, but to maintain the confidentiality of business matters, especially in relation to the competitors of the companies involved in the dispute)
- have the dispute settled by arbitrators that are experts in their field (who are often not legal professionals);
- and– provided that the parties have chosen this solution – potentially resulting in a decision on the basis of equity amiable composition rather than a ruling reasoned in law

The Stages of the Arbitration at the LAC

Key actors
- **The parties** (claimant, defendant, both)
- **The Council or the Secretariat of the LAC**
- **The arbitrators**

Onset of the dispute
This is a pre-requisite: recourse to arbitration is possible *(see p.08 / Consent to Arbitration).*

In an emergency: Emergency Proceedings
An arbitrator is appointed by the Council who rules on the requested measures within 15 days. *(see p.14 / Emergency Proceedings)*

The arbitration request is submitted to the Secretariat of the LAC by the claimant).[1]

An advance (€1,000) on administrative costs is paid by the claimant.

The opposing party (defendant) receives a copy of the request.

The opposing party responds within 30 days.

Amount in dispute < EUR 1 million and arbitration agreement reached after 01/01/20 or both parties agree to simplified proceedings?

Yes → Possibility of Simplified Proceedings *(see p.15 / Simplified Proceedings).*

No

The Council of the LAC determines the amount of the advance.

The arbitrator(s) sign(s) declaration of, availability, impartiality, and independence.

Choice of the arbitrator(s)

As a matter of principle, the parties choose their arbitrator by common agreement. When three arbitrators are required, each party chooses one and these two arbitrators then appoint the third. The Council confirms each of these choices. The Council will appoint all of the arbitrators in case of dificulty. When choosing the arbitrators, parties take into account the subject matter of the dispute, the governing law and the language of the proceedings.

The Council confirms the appointment of the arbitrator(s).

The advance is paid (in theory shared equally between the claimant and defendant).

The case file is submitted to the arbitrator(s). Start of a two-month deadline for drafting and signing the terms of referrence

The arbitrator(s) draw(s) up a document setting out their role [2]. The parties and arbitrator(s) sign the terms of reference: Start of a six-month deadline for arbitrators to render the final award.

[1] cf. the Rules of Arbitration of the LAC on the requirements for the request.
[2] cf. the Rules of Arbitration of the LAC on requirements on the terms of reference.
[2] These submissions contain reasoned written claims and all documentation that could support them.

The draft award is submitted to the Council

The Council examines and approves the draft of the award. If necessary, the Council suggests modifications as to the form and, without affecting the arbitrators' liberty of decision, may also draw their attention to points of substance.

The arbitral tribunal prepares a draft award, which is decided by a majority vote (failing which by the arbitrator designated as the president of the tribunal). The award must be reasoned, and determine which party shall bear the arbitration costs (or how they are shared by the parties).
(see p.18 / Costs and Funding of Arbitration)

The award is signed by the arbitral tribunal.

The Secretariat notifies the award to the parties. An original of the award is deposited with the Secretariat.

After the final hearing, the arbitrator(s) close(s) the proceedings and inform(s) the Secretariat and the parties of the date on which the draft award shall be submitted to the Council.

The arbitrator(s) summon(s) the parties to appear at hearings for pleadings.
(see p.16 / A Window into an Arbitration Hearing)

An advance (set by the arbitrator) is paid to cover experts' fees.

If necessary, the arbitrator(s) appoint(s) expert(s).

The arbitrator(s) establish(es) the facts of the case by examining the parties' submissions.

The parties send their submissions to the arbitrator(s).[3]

The arbitrator(s) establish(es) a procedural timetable.

Case management conference (in person or remotely).

The parties undertake to promptly execute the award, which is final *(see p.20 / The Arbitration Award and Means of Recourse)*.

Any material, mathematical or typographic error must be communicated to the Council within 30 days for correction or interpretation by the arbitrator (in the form of an addendum to the award). The opposing party is involved in this process.

Emergency Proceedings

The Rules of Arbitration of the Luxembourg Arbitration Center(LAC) also provide for Emergency Measures Proceedings (Emergency Proceedings). The decision is rendered within 15 days.

Prerequisites to Emergency Proceedings:

A situation that cannot wait for the constitution of an arbitral tribunal.
Conservatory or interim measures are sought (e.g. measures aimed at preserving evidence, orders for interim payment, security for costs etc.).

The arbitrator may order conservatory or interim measures if appropriate and if the law authorises an arbitrator to make them(e.g. the emergency arbitrator cannot order any conservatory attachments as this jurisdiction is reserved for the national courts).

Key features of the Emergency Proceedings:

A single arbitrator, designated by the President of the Arbitration Council within two days of the receipt of the complete request by the Secretariat. In the event of disagreement over the choice of the arbitrator, the parties have the option of challenging the appointment within three days.

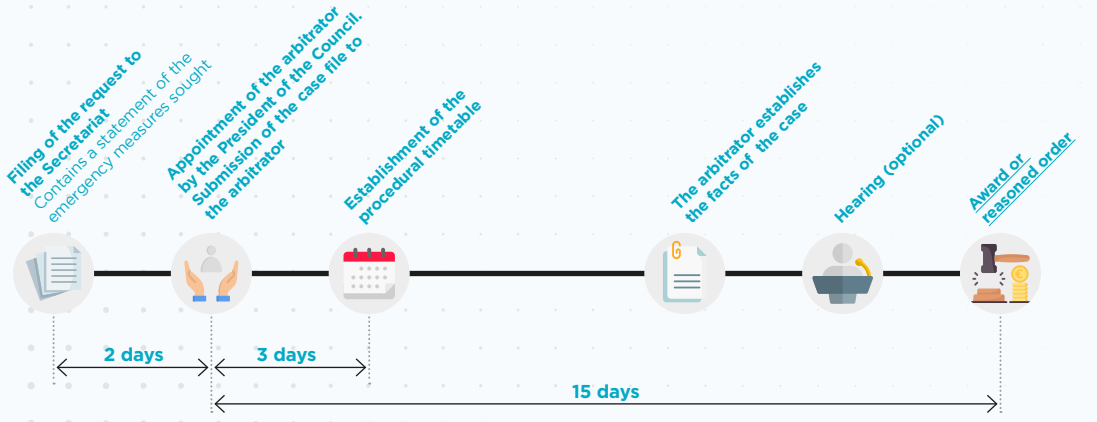
The arbitrator renders the decision in the form of a written and reasoned order (or in the form of an award he/she considers it appropriate, but does not require to complying with the standard proceedings, which require the prior approval from the Council) within 15 days following the submission of the case file by the Secretariat unless an extension is granted pursuant to the arbitrator's reasoned request).

Flat-rate fee of EUR 18,000, broken down as follows:

- EUR 15,000 for the arbitrator's fees and expenses;
- EUR 3,000 for the administrative expenses of the LAC;
- In addition, the parties will bear the regular expenses that the parties incur for their legal defence, and any expert fees and expenses;
- If the Emergency Proceedings are withdrawn or suspended before a decision is made, some of the costs incurred may be reimbursed on an ad hoc basis (except for a non-refundable fee of EUR 1,000 to cover administrative costs).

The parties undertake to comply with any decision made by the arbitrator ruling on emergency measures.

- The arbitrator decides which party should bear the costs of the proceedings, or on how the costs are allocated;
- A request for arbitration on the merits of the case must be sent to the Secretariat within 30 days of the decision of the emergency arbitrator, failing which the parties will no longer be bound by this decision.
- The arbitrator to whom the merits of the case are submitted will not be bound by the decision of an arbitrator ruling on emergency measures. The former may, for example, amend the latter's decision or even lift the measures ordered.



Simplified Proceedings

The Rules of Arbitration of the Luxembourg Arbitration Center provides the option to choose Simplified Proceedings. Simplified Proceedings have the advantage of reducing both the duration and the costs of the arbitral proceedings in disputes that do not present any particular complexities, or for which the amount in dispute does not exceed a certain threshold.

Prerequisites to Simplified Proceedings:

The amount in dispute must be less than EUR 1 million. If the amount in dispute exceeds this threshold during the conduct of the arbitral proceedings, then the Simplified Proceedings may continue or be converted into standard proceedings, subject to the agreement of the parties and the opinion of the arbitrator and Council.

The parties must have signed an arbitration agreement after 1 January 2020 (date on which the new Rules of Arbitration, including these Simplified Proceedings, entered into force).

It should be noted that the parties may still agree to submit their dispute to Simplified Proceedings regardless of the amount in dispute and the point at which the arbitration agreement was reached.

Key features of the Simplified Proceedings:

A sole arbitrator (unless the parties agree otherwise) shall be appointed by the parties or by the Council of Arbitration if the deadline set by the Secretariat has passed.

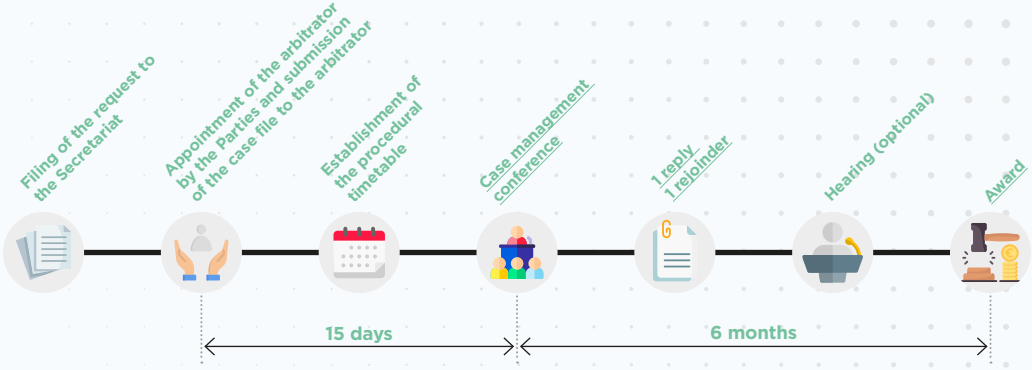
Faster Proceedings

- No new claims are possible after the constitution of the arbitral tribunal (unless authorised by the arbitrator);
- D+15 after the date of the submission of the case file to the arbitrator: case management conference;
- After the submission of the answer to the request for arbitration, in principle the parties may submit only a single reply and rejoinder;
- The arbitrator must render the award within six months after the case management conference *(see p.12 / Stages of the proceedings)*.
- However, the Council may extend the deadline pursuant to a reasoned request from the arbitrator.

A 20% deduction
on the arbitrator's fees
(see p.18 / Costs and Funding of Arbitration)

Streamlining of the procedure

- Reduction or elimination of the document production requests, limitation of written submissions;
- After consulting the parties, the arbitrator may decide to render an award solely on the basis of submitted documents, without holding a hearing or calling witnesses and experts;
- If hearings are held, they may be held by videoconference or telephone to lilmit the time and costs associated with travel.



A Window into an Arbitration Hearing

Hearings are crucial moments in the arbitration process.

They provide an opportunity for the arbitrator to address procedural aspects and, in particular, to hear the parties on the merits of the case. During the hearing the arbitrator can shed clarify factual andlegal issues with the parties and their legal advisers.

The Luxembourg Arbitration Center (LAC) a wide selection of rooms that can be made available for hosting hearings. Hearings can be held fully or partially online through videoconferencing, and generally last several hours or even whole days.

Thus, it is important to carefully choose the place in which the hearing will be held in terms of neutrality, access, convenience and digital equipment.

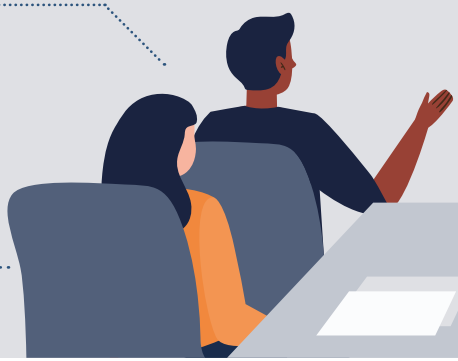
Legal Counsels
During hearings, legal counsels – typically lawyers who specialise in dispute resolution – generally speak on behalf of the client.

Some participants may join the hearing remotely. LAC facilities are equipped for hybrid hearings (for both in person and online attendance).

Claimant
(or duly authorised representative)

Experts
Experts are sometimes heard to provide technical insights.

Witnesses
Third parties may attend a hearing to provide testimony.



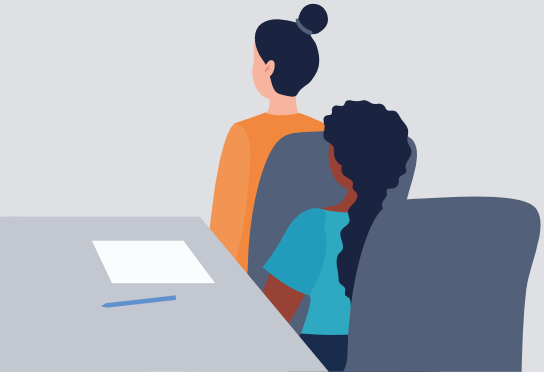
No Public Attendance
Unlike traditional court proceedings in which most hearings are public, arbitration is confidential.

Arbitrator(s)

The arbitrators conduct hearings through an adversarial procedure in accordance with the Rules of Arbitration of the LAC: to reach a decision they ask the parties questions regarding their arguments, the facts and the evidence that they have included in their submissions.

Defendant
(or duly authorised representative)

Legal Counsels



Secretariat of the LAC
Without being physically present at the hearings, the Secretariat assists the arbitral tribunal and the parties in organising the hearings, in accordance with the Rules of Arbitration.

Costs and Funding of Arbitration

How much does an arbitration proceeding before the LAC cost?

A company thinking about referring a dispute to arbitration must be aware of the costs involved. They depend on the amount in dispute, the complexity of the case, and the number of the required arbitrators.

What do arbitration costs include?

It is worth bearing in mind that arbitration costs typically include all of the following:

- the administrative costs of the LAC;
- the arbitrators' fees and expenses;
- the parties' legal fees, including lawyerss fees;
- expert fees (if necessary);
- hearing costs (transcription, interpreters, hearing rooms, travel and accommodation expenses, printing).

See table below

The scale provided by the LAC allows parties to anticipate the costs related to arbitrators' fees and the administrative cost of the LAC:

AMOUNT OF THE DISPUTE	FEES EXCL. VAT 1 ARBITRATOR		FEES EXCL. VAT 3 ARBITRATORS		ADMINISTRATIVE COSTS ARBITRATION CENTER
	Minimum	Maximum	Minimum	Maximum	
Up to €50,000	€1,500	€4,500	€4,500	€15,000	€1,500
From €50,001 to €250,000	€5,000	€15,000	€15,000	€45,000	€3,000
From €250,001 to €500,000	€10,000	€30,000	€30,000	€60,000	€4,500
From €500,001 to €1,000,000	€15,000	€40,000	€40,000	€90,000	€6,000
From €1,000,001 to €5,000,000	€25,000	€60,000	€60,000	€150,000	€7,500
From €5,000,001 to €10,000,000	€35,000	€80,000	€80,000	€200,000	€9,000
From €10,000,001 to €30,000,000	€45,000	€100,000	€100,000	€250,000	€10,500
From €30,000,001 to €50,000,000	€55,000	€120,000	€120,000	€300,000	€12,000
€50,000,001 and above	€75,000	According to the file	€150,000	According to the file	€13,500

How are the arbitration costs allocated between the parties?

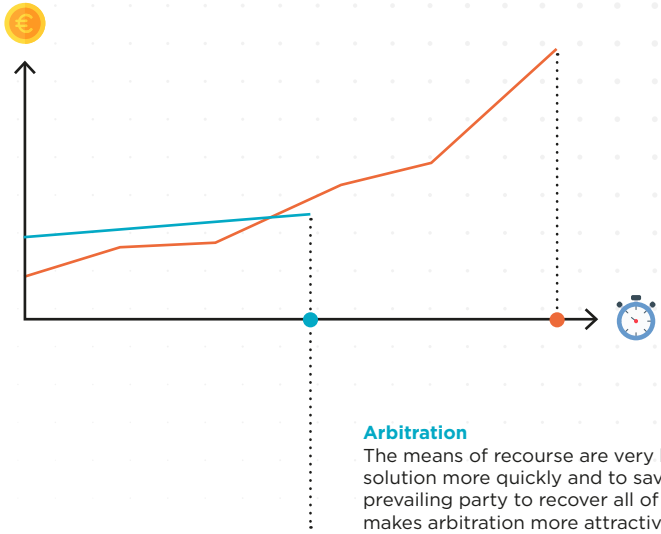
In their final award, the arbitrators also rule on the allocation of the arbitration costs between the parties.

The cost allocation does not depend solely on the success of the claims. Other factors are taken into account, such as the parties' conduct before and during arbitration (dilatoryor abusive tactics, e.g. excessive demands for document production, failing to comply with orders to produce documents etc.).

Unlike court proceedings, the allocation of arbitration costs covers all costs, including lawyers' fees. The losing party may be ordered to pay all of the costs of the proceedings, resulting in minimal arbitration costs for the prevailing party.

Arbitration vs Judicial Proceedings: which is more cost-effective?

The answer to this question will depend on the specificities of each dispute and on the various criteria that need to be taken into consideration. However, the advantages of arbitration *(see p.06 / Pros and Cons of Arbitration)* often tilt the balance in its favour.



Judicial Proceedings

While, parties do not have to pay court judges, a single dispute is nearly always judged twice (even three or four times) due to the possibilities of appeal and cassation.

The parties often incur defence costs for years and these are only calculated definitively when the case is finally over and once all avenues of appeal have been exhausted.

Arbitration

The means of recourse are very limited, enabling the parties to reach a final solution more quickly and to save time and money. The possibility for the prevailing party to recover all of the costs incurred in the proceedings also makes arbitration more attractive from a cost perspective.

Did you know?

Third Party Funding (TPF) is a new way of financing litigation, particularly used in international arbitration. Through this process, a third party undertakes to cover all of the expenses of a party in the arbitration proceedings, in exchange for a promise that it will receive a portion of the proceeds. This mechanism, which is already well established in numerous common law countries (e.g. United Kingdom and United States) is experiencing significant growth in European states.

If TPF is used, the third (financing) party merely provides the funds to enable the claimant to initiate arbitration proceedings. In general, it therefore remains external to the proceedings: it is not the owner of the rights in dispute and does not acquire the status of a party to the proceedings (no subrogation of claim).

The Arbitration Award and Means of Recourse

The arbitrator renders the decision in a written and reasoned document called the "award", which rules on the parties' rights.
From this moment the mission of the arbitrator comes to a conclusion.

Once the award has been rendered and notified to the parties, several scenarios may arise:

Either the parties willingly comply with the award, in which case no formality is required, and the parties simply carry out the decision of the arbitrator.

Or the losing party does not voluntarily comply with the award...

...and the winning party will seek to enforce it.

How?
By applying to the courts of the country in which the award should be enforced.

Why?
The arbitral tribunal is not a state court but a private jurisdiction. If one of the parties does not voluntarily comply with the award, the other party cannot ask a bailiff to compel the other to do so without obtaining prior authorisation to enforce the award.

What do the courts do?
The courts review the award. They will not judge the case a second time but conduct certain procedural verifications, in particular regarding the conformity of the award with the national and international public policy. The award can then become part of the legal system of that country and have the same effect as a national court decision.

At the end of this review, the national court grants exequatur, which is a type of writ of execution for an award. The award is then recognised as an enforceable instrument in the national legislation of the court who reviewed it (Luxembourg's, for example).

...and the losing party wishes to challenge the award.

As a matter of principle an award is final and there are very few means of recourse. For example, an award cannot theoretically be appealed whether before another arbitral tribunal or a national court, the aim being to ensure that efficiency of arbitration.
The only possibility for challenging an award is to submit a request for annulment.
To further guarantee the effectiveness of arbitration, the grounds for annulment is only possible in certain cases that are exhaustively provided for by law (cf. article 1238 of the New Code of Civil Procedure). In Luxembourg, annulment proceedings are possible if, for example, the arbitral tribunal has wrongly declared that it has or does not have jurisdiction, or if it has been improperly constituted.

Did you know?

Enforcement can be a little more complex when the judge has to review an award that was rendered in a different jurisdiction. To facilitate this process, more than 170 States have acceded to an international convention:
the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This convention makes it possible to have an award recognised and enforced in most countries around the world.

Support from National Courts during Arbitration

In some circumstances, it may be necessary during arbitral proceedings to seek the assistance of national courts by applying to a "supporting judge" (jude d'appui), who is a judge of a national court who can lend support to arbitral proceedings.

When should one seek the assistance of a supporting judge?

> **During ad hoc arbitration,** usually for procedural difficulties (e.g. if the parties disagree over the choice of arbitrator(s)) or to obtain conservatory or interim measures.
Indeed, in ad hoc arbitrations, the parties organise proceedings themselves and, if they encounter a problem, do not have the administrative support of an institution or its rules of arbitration(such as the Rules of Arbitration of the LAC). This interaction between the national courts and arbitration can improve the latter by making it safer and avoiding situation of deadlock.

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powered by the Luxembourg Chamber of Commerce

> **During institutional arbitration,** if there is a failure by the arbitration institution or if neither the arbitrator nor the arbitration institution have the power to make the decision sought (e.g. to order the production of evidence held by a third party). However, recourse to national courts is infrequent in the case of institutional arbitration. Indeed, the decision-making bodies of the center provide support to proceedings based on its rules of arbitration.

> **After the completion of the arbitration proceedings,** to give the award the same value as a court ruling, or to decide on a challenge to the award *(see p.20 / The Arbitration Award and Means of Recourse)*.

The Seat of Arbitration

It is the place of arbitration, i.e. the seat, that determines the jurisdiction of the relevant court (or supporting judge) throughout the arbitration process (before, during and after arbitration proceedings).

For example, if the seat of arbitration is Luxembourg, the Luxembourg supporting judge will have jurisdiction. Moreover, the arbitration award is also deemed to have been rendered at the place of arbitration. Consequently, the choice of the seat will also determine whether the award can easily be enforced abroad under the New York Convention. *(see p.20 / The Arbitration Award and Means of Recourse)*

This seat does not necessarily correspond to the place in which the proceedings – particularly hearings – take place physically *(see p.16 / A Window into an Arbitration Hearing)* but reflects a choice made by the parties in the arbitration agreement.

The seat of arbitration therefore has important implications, and parties are advised to choose it carefully.

Testimonials

Mr André Prüm

Luxembourg Arbitration Association (luxarbitration.lu)

What is the main role of your association?
Founded in 1996, at the initiative of a group of arbitration practitioners, the Luxembourg Arbitration Association (LAA) has two main roles:

1. Promoting Luxembourg as an arbitration venue for both domestic and international disputes by:

   - working alongside the Ministry of Justice, the Arbitration Center of the Luxembourg Chamber of Commerce and the Think Tank for Arbitration, to the development of an arbitration-friendly legal and institutional framework;
   - providing information on the opportunity that the country has to offer in this field;
   - encouraging businesses to include arbitration clauses in their contracts.

2. Developing local arbitration expertise by,

   - organising conferences and training sessions for arbitration practitioners – arbitrators, legal counsels, and legal professionals or paralegals acting as secretaries in an arbitral proceedings – on matters such as the drafting of awards, case management, conflicts of interest etc;
   - exchanging experience with peer associations in nearby countries such as Belgium, France, Netherlands and Switzerland, especially during joint workshops;
   - using its website (luxarbitration.lu) to publish a list of practitioners who available to act as arbitrators, lawyers or secretaries. With more than 70 names included, this list serves as a valuable resource for companies and their legal representatives, as well as for the Arbitration Center of the Luxembourg Chamber of Commerce. It offers a range of choices based on specific expertise, nationality, and language proficiency when searching for arbitrators or legal counsels for specific disputes.

What is the composition of this pool of arbitration practitioners?
It is primarily composed of lawyers, former judges and of university professors. The association welcomes not only local legal professionals but also members established in other countries and trained in other legal systems. It strives to ensure the widest diversity in terms of gender, nationality and even age, to maintain an open and sustainable source of arbitration practitioners.

Are these the practitioners that are chosen by the Luxembourg Arbitration Center (LAC) to arbitrate disputes?
In theory, it is the parties to the dispute who, with the help of their lawyers, name the arbitrators; the president of the tribunal being chosen by the arbitrators appointed by the parties. The LAC intervenes in the constitution of an arbitral tribunal only when one of the parties does not appoint an arbitrator, or the arbitrators appointed by the parties cannot agree on the chairman. The list provided by the association can assist the LAC in finding the appropriate person, especially in a smaller ecosystem like that of Luxembourg in which conflicts of interest are common. However, the LAC obviously remains free to choose an arbitrator who is not on the list of the association.

Why choose Luxembourg as place of arbitration?
Luxembourg is the natural place for arbitration between Luxembourg businesses, although there is no restriction preventing them from taking their dispute to an arbitral tribunal seated abroad.

The real question is whether Luxembourg has the advantages to also attract arbitrations between foreign companies or where at least one party to the dispute is not established in Luxembourg. Paris and Geneva, to give but two examples, have made a name for themselves in hosting such international arbitration cases.

As an international business hub, Luxembourg has the legal and linguistic skills and resources necessary to meet the challenge of attracting a share of the international arbitration market. The recent arbitration law voted on 23 March 2023, prepared by the Think Tank, brings our legislation on in line with that of other countries *(see p.11 / Testimonial of Mr Patrick Kinsch)*.

Many foreigner players view Luxembourg as a neutral seat, and the Arbitration Center of the Chamber of Commerce can offer them an effective framework and infrastructure. Luxembourg possesses all the essential attributes. The only remaining task is to spread the word, which is precisely the ambition of the association.

What do you think are the main benefits of arbitration for a business?
alongside the traditional advantages of speed and simplicity of the proceedings, the main benefits of arbitration are:

- its flexibility – with the possibility of parties to allow arbitrators to base their decision on equity (amiable composition) – and its confidential nature;
- arbitration is often a less confrontational way for parties to settle a dispute than taking it before the national courts;
- discussions take place before arbitrators chosen by the parties, in whom they both trust, both in terms of technical expertise and their ability to find the right solution to the dispute;
- the case is held behind closed doors, leaving plenty of room for conciliation, which is not the case before a national court having little interest in encouraging an arrangement between the parties.

How do you explain the development of arbitration in Luxembourg over recent years?
Luxembour, like other jurisdictions,benefits from the willingness of the local businesses to embrace arbitration, which can be explained by:

- the increasing congestion of the courts;
- the impossibility of making submissions and obtaining a judgment in a language other than French when going to court;
- insufficient specialisation of the judges in fields that require highly specific technical knowledge.

Additionally Luxembourg is home to thousands of companies, most of which are formed by a small number of sharholders who are frequently bound by confidential. In case of disagreements, these agreements provide fertile ground for arbitration.

LUXEMBOURG ARBITRATION CENTER

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An initiative of
CHAMBER OF COMMERCE LUXEMBOURG

Glossary

AMIABLE COMPOSITION: in arbitration proceedings, the parties authorise the arbitrator to act as "amiable compositeur", i.e. to deviate from strict rules of law and judge on the basis of equity.

INSTITUTIONAL/AD HOC ARBITRATION: either the arbitration is administered by an arbitration centre or, more generally, an arbitral institution (institutional arbitration), or the parties and their legal counsels organise the entire rocedure themselves (ad hoc arbitration). In the latter case, the smooth running of an arbitration proceeding depends on the cooperation between the parties and do not benefit from an arbitration centre's rules of arbitration.

CASE MANAGEMENT CONFERENCE: stage of arbitral proceedings allowing the arbitrator and parties to decide on a number of aspects of the proceedings for their proper conduct (timetable, number of submissions/briefs, means of communication, etc.)

THE MERITS: an arbitrator ruling on the merits must decide on issues that the parties have submitted with regard to the very content of the claim – as opposed to procedural issues (e.g. deadlines) as well as any conservatory or interim measures that may be taken.

ARBITRATION AGREEMENT: this is the agreement between the parties to refer their dispute to arbitration. The agreement may take the form of an arbitration clause inserted into their contract(s) before the dispute arises, or of an agreement, i.e. an oral or written agreement between the parties to go to arbitration after a dispute has arisen *(see p.10 / The Arbitration Agreement: Best Practices)*

ADVERSARIAL PROCEDURE: as with any legal proceedings, the adversarial principle must be upheld to ensure fairness and equality between the parties: they must be aware of the proceedings, the arguments and the evidence submitted in case file, and be able to argue freely.

DEFENDANT/RESPONDENT: The party who defends themselves in response to the claimant's request to resolve the dispute through arbitration (opposing party to the claimant).

CLAIMANT the party asking to resolve a dispute through arbitration by submitting arequest for arbitration.

EXEQUATUR: Latin term meaning "to enforce/to respect". Decision made by certain national courts recognising the arbitration award as valid in the legal order of the state in question and granting it " enforceability". In other words, giving the beneficiary of the award the possibility of using any legal means in this state to force the other party to uphold the decision made by the arbitral tribunal (e.g. attachments of goods, forced eviction etc).

ARBITRATION COSTS: arbitration costs include the arbitrators' fees and expenses and in the case of institutional arbitration the Center's administrative costs *(see p.18 / Costs and Funding of Arbitration)*. They also include the normal expenses that the parties incur for their defence, as well as any expert fees and expenses, and the cost of arranging hearings.

CASE LAW: all rulings and judgments delivered by the courts and tribunals of a country to resolve a given legal situation.

ADR: alternative dispute resolution – By resorting to ADR, the parties resolve their disputes in private rather than before the national courts. Examples of ADR are arbitration, mediation and conciliation.

SUBMISSIONS/REPLY (REJOINDER): these are the written submissions (memoranda containing legal and factual arguments, and evidence including "exhibits") that the parties put before the arbitral tribunal to support their position.

INTERIM/CONSERVATORY MEASURES: temporary decision against a party. Often takes the form of an **ORDER** before a final decision can be made.

AWARD: Document containing the decision rendered by an arbitral tribunal regarding the parties' claims. It may be a partial award (during proceedings the arbitral tribunal reaches a decision on only part of the dispute) or a final award (resolving the merits of the dispute definitively and brings an end to proceedings).