

# Luxembourg

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## Litigation

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### 1 What is the structure of the civil court system?

The Luxembourg civil court system is based on three levels of jurisdiction after the French Napoleonic system:

#### First instance courts

These are:

- the Court of Appeals;
- the Supreme Court (Court of Cassation);
- judgment handed down by the lower Courts may be appealed before a higher jurisdiction and a higher Court's decision can also be reviewed by the Supreme Court; and
- first instance courts can be subdivided in two categories: Justices of Peace and District Courts.

#### Justices of Peace

There are three Justices of the Peace in Luxembourg: Luxembourg City, Esch-sur-Alzette and Diekirch.

The Justices of Peace have jurisdiction over civil claims up to an amount of €10,000, and for specific cases such as tenancy law, seizure on wages or certain family matters (support payments).

Cases before Justices of Peace are handled by one judge: the Judge of Peace.

#### District courts

There are two district courts in Luxembourg: Luxembourg City and Diekirch.

The district courts have jurisdiction on all matters where the value of the claim exceeds €10,000. Some matters are exclusively reserved by law to the district courts as matters related to the procedure of exequatur.

The district courts of Luxembourg have also jurisdiction over judgments handed down by the justices of Peace in appeal provided that the value of the claim exceeds €2,000.

Cases before district courts are handled by chambers composed of one or three judges depending on the nature of the proceedings. Chambers composed of one judge mostly deal with urgent applications. The other district courts chambers are all composed of three judges.

#### Courts of Commerce

In fact there is no independent Court of Commerce in Luxembourg. The Courts of Commerce are embedded in the district courts. They have jurisdiction over commercial matters such as disputes regarding corporations, shareholders and insolvency proceedings.

As with the district courts, chambers of the Courts of Commerce are composed of three judges.

#### Court of Appeal

There is one Court of Appeal in Luxembourg (Luxembourg City). It has jurisdiction over judgments handed down by District Courts and Commercial Courts. There is no second appeal of a judgment handed down by a District Court or Commercial Court in Appeal of a judgment rendered by the Justice of Peace. Chambers of the Court of Appeal are composed of three judges.

#### Supreme Court

There is only one Supreme Court in Luxembourg (Luxembourg city).

The Supreme Court has jurisdiction over decisions handed down by the lower courts provided that all appeals have been exhausted.

Judgments of the Justice of Peace which are not subject to appeal (when the value of the judgment does not exceed €2,000) and judgments rendered in appeal from the District Courts on decisions of the Justice of Peace as well as decisions handed down by the Courts of Appeal can be reviewed by the Supreme Court.

The main characteristic of the Supreme Court is that it does not review the facts of the matters, but only whether the first instance judges or the judges of the Court of Appeal have properly interpreted the law, treaties or binding supranational regulations.

As a rule, the Supreme Court does not properly settle the dispute. The Court confirms the judgment or quashes it and sends the matter back to another court at the same level of jurisdiction as the court whose judgment has been cancelled.

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### 2 What is the role of the judge and the jury in civil proceedings?

There are no juries involved in civil actions in Luxembourg.

Civil proceedings are adversarial and the judges have a passive role as judgments will be handed down on facts and evidences submitted by the parties.

However, the judge can order an inquiry on party's request or require submission of certain documents by himself, if this is necessary for the Court before rendering its judgment.

But often the role of the judge is passive as the parties need only to submit the facts and evidences to the judge who will apply the law accordingly.

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### 3 What are the time limits for bringing civil claims?

Under Luxembourg legislation, time limits for bringing civil claims depend on the nature of the claim.

The most common time limit regarding 'real action' (debt collection, real estate) is 30 years. Most other claims have a time limitation of 10 or two years (eg, under construction law or divorce matters) Claims of consumers on a lack of conformity of purchased goods are limited to a period of two years.

The parties cannot agree to suspend time limits and such an agreement will be considered as void.

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### 4 Are there any pre-action considerations the parties should take into account?

There is no pre-action behaviour required unless the parties agreed not to start legal actions before alternative dispute resolution by way of mediation for instance.

It is, however, advisable to send an official reminder letter to a debtor. This may also have the effect of making the interests run.

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### 5 How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement?

Civil proceedings start with a service of a writ of summons notified by bailiff to the defendant.

In certain cases, for instance, before the Justices of Peace, the writ of claims can also be sent to the opposing party by the court clerk.

The delivery of the writ of claims summons the defendant to appear before the court.

Under Luxembourg law, the writ of claims needs to be drafted very carefully and evidence on which the claim is based must be mentioned in the writ. New pieces of evidence can be brought to light and communicated to the opposing party at a later stage of the proceedings.

#### **6 What is the typical procedure and timetable for a civil claim?**

Luxembourg civil proceedings can be divided into six points:

- service or notice of the writ of summons;
- registration of the writ at the court;
- introductory hearing;
- exchange of written submissions (as regards the written proceedings);
- oral pleadings; and
- judgment.

Usually after having served the summons to the defendant, the claimant must register the claim with the court clerk.

The case will be called the first time at an introductory hearing. At this hearing the case will be postponed in order for the parties to exchange written submissions or evidence documents.

Once the parties have exchanged all their written arguments, the judge will set the case for oral pleadings.

Regarding written proceedings, from the service of the summons until the judgment, the proceedings will usually last between 10 and 18 months.

Claims before the Justices of Peace that do not require a service through a bailiff will automatically be registered with the court clerk.

After registration the clerk will schedule an introductory hearing before the Justices of Peace at which the case will be directly postponed for oral pleadings.

Some commercial proceedings also follow the same proceedings as before the Justices of Peace where no written arguments are exchanged.

#### **7 Can the parties control the procedure and the timetable?**

The parties are traditionally in charge of the procedure, particularly the claimant. They have influence on the timetable as they can decide when to submit their written arguments.

However, if there is an unfair delay for one party to submit its written arguments, the court may deliver an injunction against him, forcing him to submit under threat of foreclosure.

Unless the party under injunction submits its arguments, the judge can close the case and set it for oral pleadings.

Written arguments can be exchanged as often as necessary until all arguments have been debated. However, the judge can speed up the proceedings if necessary.

Proceedings before the Supreme Court is specific as the timetable for submitting written arguments are set up in the law, which is two months after serving and registering the writ of summons.

#### **8 Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?**

There is no general duty to disclose all documents relating to the case.

The parties shall only disclose the evidence on which they intend to rely.

However, a party can ask the court to issue an order on the other party to disclose evidence.

#### **9 Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?**

Some documents could be deemed privileged as communications between lawyers of the Luxembourg Bar association.

The privilege can be waived if the sending document is marked as being official.

Advice from an in-house lawyer is usually not privileged.

#### **10 Do parties exchange written evidence from witnesses and experts prior to trial?**

The parties do not usually exchange evidence prior to trial.

It may, however, be part of litigation tactics to exchange evidence to impress the other side to exchange evidence beforehand in order to find an out-of court solution.

#### **11 How is evidence presented at trial? Do witnesses and experts give oral evidence?**

Evidence documents are often presented as written documents.

Oral evidence is possible under Luxembourg legislation but very rarely used in civil proceedings.

#### **12 What interim remedies are available?**

A wide range of interim remedies is available provided that the case is urgent and the evidence submitted to the court is not seriously disputed.

Some interim measures of injunctions under summary proceedings are also available.

#### **13 What substantive remedies are available?**

A Luxembourg court can enjoin a party to perform an obligation or refrain from an action or behaviour under penalties.

The court can also grant damages, cancel contracts or appoint experts with specific tasks.

#### **14 What means of enforcement are available?**

Decisions of Luxembourg courts are not automatically enforceable. It depends on the court concerned, the type of claim and on the content of the judgment.

Enforceability means that a bailiff can enforce the judgment once it has been notified or served to the other side if the judgment is automatically enforceable.

On the other hand, a court decision is only enforceable when it becomes final (ie, either not subject to appeal or if any appeal has been lodged against that judgment after expiry of the appeal deadline).

#### **15 Are court hearings held in public? Are court documents available to the public?**

Court hearings are held in public, except if the court has decided otherwise.

#### **16 Does the court have power to order costs?**

There is no court fees strictly speaking in Luxembourg. However the court indeed usually imposed cost on the unsuccessful party to be paid to the opposing party. These costs are based on the amount in dispute and are assessed pursuant to a Grand-Ducal Regulation.

The amount is increased if the matter is particularly complex or requires several submissions from the parties.

In addition, the unsuccessful party is often sentenced to cover a fair share of the lawyers' fees engaged by the successful party.

Under Luxembourg legislation, the total amount granted rarely covers all the costs.

Also under Luxembourg legislation a Luxembourg defendant may require from a non-EU plaintiff a deposit of a guarantee (caution judicatum solvi).

The deposit is not required if there is a treaty to this end between Luxembourg and the country of the foreign plaintiff.

#### **17 Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?**

Luxembourg law strictly prohibits the quota litis pact or 'no win no fee' agreements.

However, a success fee may be agreed in addition to the regular lawyers' fees or flat fee.

Luxembourg lawyers rules require lawyers to charge fees with moderation, fairness and according to the complexity of the case.

#### **18 Is insurance available to cover all or part of a party's legal costs?**

Insurance to cover all or part of legal costs is available in Luxembourg.

### Update and trends

The government of Luxembourg is since 2013 discussing major reforms of the justice system of Luxembourg in the form of two bills.

The first bill concerns the introduction of a National Justice Council that shall guarantee independence of the judiciary and good administration of justice.

The second concerns the institutionalisation of a Supreme Court which shall replace the existing Court of Cassation and the Constitutional Court of Luxembourg.

Further proposals by the government include:

- reform of the prosecution;
- generally changing the organisation of the civil and criminal courts;
- reform of the organisation and procedure of the administrative courts;
- reform of the position of employees of the justice system; and
- changing proceedings relating to appeals and cassation.

The discussions are still ongoing and only recently in April 2016, the current Ministry of Justice openly discussed further proposals submitted by the former Public Prosecutor requesting the abolition of the District Court of Diekirch and the limitation of powers of the state prosecution.

Historically two district courts were necessary to assure access to the judiciary to people living in the north of the country. However, as Luxembourg city and Diekirch are only 50km away it is debatable whether this should still be upheld today.

The discussions are still ongoing and is rather unlikely that the reform will see the light before 2017.

On the other hand, a recent decision from the Court of Appeal needs to be emphasised.

The Luxembourg Court of Appeals sanctioned in a judgment dated 16 December 2015 the 'mailbox companies' business activity.

In this case, a company raised a claim before the courts of Luxembourg for non-payment of bills regarding performed services and unpaid rents for rented office.

The Court just requalified the lease agreement into a contract of domiciliation as the claimant not only rented the office but was also acting as service provider for the defendant.

This decision is seen as a real sanction for service providers that use in Luxembourg to rent offices and offer similar services as the 'Domiciliation' to companies without being authorised by the law.

In fact, only certain category of professionals (eg lawyers, accountants, company auditors) may exercise the 'Domiciliation' activity under Luxembourg legislation.

Furthermore, the Court of Appel has considered the activity as regards these 'mailbox companies' as illegal practice of Domiciliation.

The court recalled that the law of 31 May 1999 on Domiciliation is a public order policy, breach of which may be penalised.

Given the reactions of the professionals concerned, it should not be surprising that the Luxembourg Legislator will be forced to act again on this question.

#### 19 May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Class actions, as they are known in the United States, do not exist in Luxembourg.

However, several claimants can file together a claim against one or many defendants and defending their interests.

The part claim of each plaintiff must be however determined clearly from the claim of the other plaintiffs.

#### 20 On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Any judgment can be appealed.

The main exceptions are those ruled by the law as, for instance, matters before the Justice of Peace with a claim threshold of €2,000.

#### 21 What procedures exist for recognition and enforcement of foreign judgments?

Foreign judgments from courts of EU member states are easily recognised and enforced in Luxembourg in accordance with Regulation No. 1215/2012 of 12 December 2012, provided that they have been rendered in compliance with due process requirements and with Luxembourg public policy principles.

As concerns judgments from courts of states other than those covered by this regulation, specific rules may result from international treaties.

#### 22 Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Between member states of the European Union (except Denmark) Council Regulation No. 1206/2001 of 28 May 2001 on Cooperation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters applies.

According to the Regulation, courts must directly address their requests to the Luxembourg courts that have jurisdiction on the witness to be heard or the person holding the request document.

Where Council Regulation 1206/2001 does not apply, specific bilateral or multilateral conventions may apply.

### Arbitration

#### 23 Is the arbitration law based on the UNCITRAL Model Law?

Luxembourg arbitration rules are not based on the UNCITRAL Model Law.

Luxembourg law makes a distinction between international arbitration and domestic arbitration and provides for a different set of rules applicable to each of those two categories of arbitration.

#### 24 What are the formal requirements for an enforceable arbitration agreement?

Except for the fact that arbitration agreements must result from an agreement signed by both parties, they are no subject to any formal requirement.

They are enforceable provided that they evidence the intention of the parties to resort to arbitration.

#### 25 If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the agreement is silent on the appointment of the arbitrators, Luxembourg law requires the designation of three arbitrators.

Each party must appoint one arbitrator and the third one shall be appointed by mutual consent of the parties.

If the parties failed to appoint their arbitrator, the president of the district court may appoint the arbitrators.

#### 26 Does the domestic law contain substantive requirements for the procedure to be followed?

Luxembourg arbitration law grants the parties and the arbitrators much freedom to organise the arbitral proceedings.

Otherwise Luxembourg law requires a speed procedure within three months.

#### 27 On what grounds can the court intervene during an arbitration?

The courts will not interfere directly with arbitral proceedings unless the parties or arbitrators or both ask the courts to intervene on a specific question.

As long as the agreement is in accordance with Luxembourg law (especially article 1244 of the New Civil Procedure Code (NCPC)), it can override the court's power.

#### 28 Do arbitrators have powers to grant interim relief?

An arbitral jurisdiction is entitled to order provisional or protective measures, such as conservatory measures to preserve evidence or prevent irreparable harm.

#### 29 When and in what form must the award be delivered?

Luxembourg law provides for specific rules. The award must be delivered within three months unless otherwise agreed by parties.

The award must be motivated and contain the date of the award and the names of the arbitrators.

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**30 On what grounds can an award be appealed to the court?**

Arbitral awards can only be appealed to request its annulment under specific conditions outlined in article 1244 NCPC.

The same applies to international arbitration.

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**31 What procedures exist for enforcement of foreign and domestic awards?**

A domestic award can only be enforced after an order delivered by the president of the District Court further to the arbitration. This order is a mere formality.

As regards international awards, these could be enforced by way of an *exequatur* procedure in Luxembourg.

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**32 Can a successful party recover its costs?**

There are no rules for allocating costs to a party under an arbitration unless otherwise agreed by parties.

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**Alternative dispute resolution**

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**33 What types of ADR process are commonly used? Is a particular ADR process popular?**

Under Luxembourg law there is no statutory obligation to consider alternative dispute resolution before resorting to litigation or arbitration.

However, parties may agree in a contract to refrain from starting a court action until they have failed to resolve their dispute through an alternative dispute resolution mechanism.

If such a clause has been agreed upon, Luxembourg courts and arbitral tribunals will refuse to hear the case unless the claimant gives evidence that the clause has been given full effect.

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**34 Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?**

Courts cannot compel the parties to participate in an ADR process, which requires their consent, but the writ of summons must mention the diligences made to organise such method before introducing court actions.

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**Miscellaneous**

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**35 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?**

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