

***Code Of Civil Procedure Part II, Book III, Sole Title -
Arbitration (Decreed on 29 April 1806. Promulgated on 9 May
1806) as amended by Grand Ducal Decree of 8 December
1981 - Luxembourg***

- **Article 1003**

Any person may submit to arbitration the rights which are at his free disposal.

- **Article 1004**

There shall be no submission to arbitration in matters concerning the status and capacity of persons, conjugal relations, divorce petitions and applications for legal separation, representation of persons subject to incapacity, the rights of action of persons subject to incapacity and those of persons who are, or are deemed to be, absent (Grand Ducal Regulation of 8 December 1981).

- **Article 1005**

The submission (compromis) may be in the form of a record drawn up before the chosen arbitrators, or an instrument attested by a notary, or a private document.

- **Article 1006**

(Law of 20 April 1939) The submission shall indicate the subject-matter of the dispute and the names of the arbitrators, failing which it shall be void.

A promise to submit to arbitration is not subject to this rule.

In the absence of any contractual provisions concerning the appointment of the arbitrator or arbitrators, and if no amicable agreement in that regard is reached by the parties, the following procedure shall be followed:

The dispute shall be decided by three arbitrators.

Each party shall appoint his arbitrator and shall give the arbitrator's name to the other party. If either party fails to appoint his arbitrator and notify the name thereof, that party shall be called upon to do so within eight days from receipt of a registered letter to be sent to him for that purpose.

If no appointment is made within the period specified, the appointment shall be made by the President of the District Court (Tribunal d'Arrondissement) in response to an application and shall not be open to appeal.

Copies of the application and order shall, within eight days, be served on the defaulting party and on the arbitrators together with instructions that they proceed to discharge their duties.

The arbitrators shall agree on the appointment of the chairman. If they fail to agree, the appointment shall be made by the President of the District Court on the application of either party, the other party being present or duly summoned to attend. If there are more than two parties with distinct interests in the dispute, they shall agree on the

three arbitrators to be appointed. In default of agreement, the appointments shall be made by the President of the District Court on the application of any party, the other parties being present or duly summoned to attend.

- **Article 1007**

The submission shall be valid even if it fixes no time-limit; in any such case, the term of office of the arbitrators shall be only three months as from the date of the submission.

- **Article 1008**

During the arbitration period, the arbitrators may be removed only with the unanimous consent of the parties.

- **Article 1009**

During the procedure, the parties and the arbitrators shall observe the time-limits and forms laid down for the courts unless the parties have agreed otherwise.

- **Article 1010**

The parties may, at the time of the submission and thereafter, waive the right to appeal.

Where the arbitration is open to appeal or special civil appeal (*requête civile*), the court's judgment thereon shall be final and not open to further appeal.

- **Article 1011**

Any measures of preparatory inquiry shall be carried out, and the records of the proceedings of the arbitrators shall be prepared, by all the arbitrators, unless the submission authorizes delegation to one of them.

- **Article 1012**

A submission shall lapse: 1. by reason of the death, refusal, withdrawal or prevention from acting of any of the arbitrators, unless there is a clause that such events shall be disregarded or that the replacement shall be a matter for the parties or for the remaining arbitrator or arbitrators; 2. by reason of the expiry of the stipulated period or the period of three months if no period was agreed; 3. by reason of an equality of opposing votes if the arbitrators were not empowered to appoint an umpire.

- **Article 1013**

Death, where all the heirs are of full age, shall not cause the submission to lapse; the time-limit for preparatory inquiries and the making of the award shall be suspended for the period necessary for an inventory and deliberation concerning the estate.

- **Article 1014**

Arbitrators may not withdraw once their proceedings have commenced; they may not be challenged except on grounds emerging after the submission.

- **Article 1015**

If proceedings, including merely civil proceedings, are instituted to establish that a document is not authentic, or if an incidental issue of a criminal nature is raised, the arbitrators shall allow the parties to appeal and the time-limit for the arbitration shall recommence from the day on which judgment is given on the incidental issue.

- **Article 1016**

Each of the parties shall be required to produce his defence submissions and

documents at least fifteen days before the expiry of the time-limit for the arbitration: and the arbitrators shall be required to make their award on the basis of what is produced.

The award shall be signed by each of the arbitrators; and if there are more than two arbitrators and a minority refuses to sign, mention of that fact shall be made by the other arbitrators, and the award shall have the same effect as if it had been signed by each of the arbitrators.

An arbitral award shall not, in any circumstances, be subject to proceedings to secure withdrawal or review thereof.

- **Article 1017**

In the event of an equality of votes, arbitrators empowered to appoint an umpire shall be required to do so by means of the decision announcing the equality of votes; if they cannot agree they shall so state in the records of the proceedings and the umpire shall be appointed by the President of the court upon whom it is incumbent to order enforcement of the arbitral award.

For that purpose application shall be made by either party.

In both cases, the arbitrators who are unable to agree shall be required to draw up their own reasoned opinion either in the same document or in separate documents.

- **Article 1018**

The umpire shall make his award within a month of acceptance of appointment unless that period was extended in the document recording his appointment; he may not make his decision until he has conferred with the arbitrators, who were unable to agree, and the latter will be formally called upon to meet for that purpose.

If all the arbitrators do not meet, the umpire shall make his award alone; nevertheless he shall be required to make an award in conformity with the opinion of one of the other arbitrators.

- **Article 1019**

Arbitrators and umpires shall make their awards in accordance with the rules of law unless the submission empowers them to give a decision as amiables compositeurs.

- **Article 1020**

The arbitral award shall be made enforceable by order of the President of the District Court in the district in which the award is made. For that purpose the original of the award shall be deposited at the registry of the court by one of the arbitrators or one of the parties.

If it was agreed that the arbitral award would be open to appeal, the arbitral award shall be deposited at the registry of the appeal court and the order shall be made by the President of that court.

Proceedings in respect of costs for deposit of the award and registration duties may be brought only against the parties (Grand Ducal Regulation of 8 December 1981).

- **Article 1021**

Arbitral awards, even those of a preparatory nature, may only be enforced after an

order has been given for that purpose by the President of the Court at the foot or in the margin of the original, without the need for notification thereof to the Public Prosecutor's Office (Ministère Public); and an official copy of that order shall be issued following the issue of an official copy of the award.

Review of the enforcement of the award shall be a matter for the court which made the order.

- **Article 1022**

Arbitral awards may not in any circumstances be relied on as against third parties.

- **Article 1023**

An arbitral award may be contested before a District Court only by way of an action for annulment.

Annulment may be declared only in the following cases:

1. if the award is contrary to public policy
2. if the dispute was not susceptible of settlement by arbitration
3. if there was no valid agreement as to arbitration
4. if the arbitral tribunal exceeded its terms of reference or powers
5. if the arbitral tribunal failed to rule on one or more matters in dispute and if the matters omitted cannot be dissociated from the matters on which a ruling was given
6. if the award was made by an irregularly constituted arbitral tribunal
7. if there was any failure to observe the right to a fair hearing
8. if the award does not state the reasons on which it is based, unless the parties released the arbitrators from that requirement
9. if the award contains contradictory provisions
10. if the award was obtained by fraud
11. if the award is based on evidence which is declared false by an irrevocable judicial decision or on evidence admitted to be false
12. if after the award is made a document or other item of evidence is discovered which would have had a decisive influence on the award and was held back by action of the opposite party.

The cases mentioned in paragraphs 3, 4 and 6 shall not be treated as grounds for annulment where the party seeking to rely on them had notice of them during the arbitral procedure and did not raise them at that time (Grand Ducal Regulation of 8 December 1981).

- **Article 1024**

All grounds for annulment of an arbitral award must - failing which they shall be inoperative - be put forward by the interested party in the same proceedings, save however for the grounds for annulment envisaged in Article 1023 nos. 10, 11 and 12 where they become known only subsequently.

An application for annulment shall be admissible only if the award can no longer be contested before the arbitrators (Grand Ducal Regulation of 8 December 1981).

- **Article 1025**

The District Court shall be seized of the action for annulment by way of an application (opposition) directed against the order for enforcement made by the President of the Court. The application shall be served by summons.

An application based on any of the grounds set out in Article 1023 nos. 1 to 9 must be filed within a period of one month after the day on which the order for enforcement was notified to the parties, failing which it shall be time-barred; however, time shall not commence to run until the day on which the award ceases to be capable of being contested before the arbitrators.

An application founded on the grounds set out in Article 1023 nos. 10 to 12 must be filed within a period of one month after either the discovery of the fraud, document or other item of evidence or the day on which the evidence was declared false or admitted to be false and provided that a period of five years has not elapsed since the day on which the order for enforcement was notified to the parties (Grand Ducal Regulation of 8 December 1981).

- **Article 1026**

If a ground for annulment concerns only part of the award, only that part will be annulled if it can be dissociated from the other parts of the award (Grand Ducal Regulation of 8 December 1981).

- **Article 1027**

If the arbitral tribunal has failed to rule on one or more matters in dispute which may be dissociated from the matters on which it did rule, the tribunal may, at the request of either of the parties, complete its award, even if the period accorded to the arbitrators has expired, unless the other party denies that the matters in question have been omitted or that the matters omitted can be dissociated from those on which it ruled. In such cases the objection shall be brought by the party concerned before the District Court. If the District Court decides, that the omitted matters can be dissociated from the matters ruled on it shall refer the parties back to the arbitral tribunal in order to have the award completed (Grand Ducal Regulation of 8 December 1981).

- **Article 1028**

The arbitral tribunal may order provisional enforcement of its award notwithstanding appeal, with or without security (Grand Ducal Regulation of 8 December 1981).

- **Article 1028-1**

The order for enforcement (exequatur) of an arbitral award made abroad shall be given by the President of the District Court, in response to an application.

The application shall be made to the President of the District Court in the district in which the person against whom enforcement is sought has his domicile or, if he has no domicile, his residence. If that person has neither a domicile nor a residence in Luxembourg, the application shall be made to the President of the District Court of the place where the award is to be enforced.

The applicant must give an address for service in the district of the court to which application is made.

He shall annex to his application the original of the award and of the arbitration agreement or a copy meeting the requirements for authenticity.

In addition, there shall be observed the rules applicable to the enforcement of foreign judgments given in accordance with a convention on the recognition and enforcement of such judgments (Grand Ducal Regulation of 8 December 1981).

- **Article 1028-2**

Subject to the provisions of international conventions, the judge shall refuse to grant an order for enforcement (exequatur):

1. if the award may still be attacked before the arbitrators and the arbitrators have not ordered provisional enforcement notwithstanding appeal
2. if the award or its enforcement is contrary to public policy or if the dispute was not susceptible of settlement by arbitration
3. if it is established that there exist grounds for annulment envisaged in Article 1023 nos. 3 to 12 (Grand Ducal Regulation of 8 December 1981).