DISPUTE RESOLUTION

Belgium

LEXOLOGY
Getting The Deal Through

Consulting editor
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Dispute Resolution

Consulting editors

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Latham & Watkins LLP

Quick reference guide enabling side-by-side comparison of local insights into litigation, arbitration and alternative dispute resolution (ADR) worldwide, including court systems; judges and juries; limitation issues; pre-action behaviour, starting proceedings and timetable for proceedings; case management; evidence; remedies; enforcement; public access; costs; funding arrangements; insurance; class action; appeals; foreign judgments and proceedings; the role of the UNCITRAL Model Law on International Commercial Arbitration; choice of arbitrator; arbitration agreements and arbitral procedure; court interventions in arbitrations; awards; types of ADR; requirements for ADR; other interesting local features; and recent trends.

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LITIGATION

Court system

What is the structure of the civil court system?

The Belgian judicial system was modelled on the French one and can be described as follows.

At the top of the judicial hierarchy sits the Supreme Court, which hears appeals on points of law and may not review the case on the merits. The Supreme Court has jurisdiction provided that all appeals have been exhausted. It does not settle the dispute but merely confirms the judgment being reviewed or quashes it and remands the dispute to another court at the same level of jurisdiction.

Below are the five courts of appeal, each located in one of the five major judicial areas: Brussels, Liege, Mons, Ghent and Antwerp. They deal with all civil, commercial and criminal cases. Similarly, there are five labour courts of appeal, also allocated between the five judicial areas. They have jurisdiction over all judgments issued by lower labour courts.

Below the courts of appeal are the 13 courts of first instance. They are allocated between the 12 judicial districts. In practice, each judicial district has its own court of first instance, with the exception of Brussels, which has two courts of first instance, one being Dutch speaking and the other being French speaking. A court of first instance has a general jurisdiction over all matters in which the disputed amount exceeds €5,000 (with the exception of a few disputes that are expressly reserved by law to other jurisdictions) and with certain disputes over which it has exclusive jurisdiction, regardless of the amount in dispute, such as claims for authorisation to enforce arbitral awards and foreign judgments.

In addition, there are nine labour tribunals and nine business courts , also allocated between the 12 judicial districts. A business court has general jurisdiction over all disputes between businesses regarding matters in which the disputed amount exceeds €5,000, except when the dispute belongs to the exclusive jurisdiction of another court. It also has exclusive jurisdiction over disputes relating to, among others, intellectual property and claims against directors (ie, regardless of the amount in dispute). Cases before a business court are handled by chambers composed of three judges: one professional judge and two lay judges (usually businesspeople).

At the bottom of the judicial hierarchy sit the 162 justices of the peace, which jurisdictions cover the 162 judicial cantons. These are small claim courts that deal with matters in which the disputed amount does not exceed €5,000 (with the exception of a few disputes that are expressly reserved by law to other jurisdictions) and with certain disputes over which they have exclusive jurisdiction, regardless of the amount in dispute, such as rental disputes, certain family disputes and consumer credits. Judgments handed down by a justice of the peace may be appealed before the court of first instance or the business court, depending on the subject matter of the dispute, provided that the disputed amount exceeds €2,000.

In addition to the above, Belgium also has a specialised administrative court, namely the Council of State, and a Constitutional Court.

Law stated - 05 April 2022

Judges and juries

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

Under the principle of party disposition, the parties exercise sole control over legal proceedings. They delimit the subject matter of the dispute. As a result, the role of the judge is simply to advocate the dispute between the parties: they may not rule on matters that were not brought to them by the parties or award more than was claimed by the parties. They must also respond to all factual and legal arguments brought before them. Failing to do so would be considered as a denial of justice. Finally, the judge is also entrusted with the task of protecting the interest of society as

a whole by making sure that public policy is not violated.

Belgian civil litigation is adversarial in nature (although the judge is entitled to intervene to some extent), meaning that each party is responsible for submitting the evidence on which it bases its claim. In theory, the judge should then be able to identify and apply the law to decide the case. Although not required to do so by law, lawyers tend to support their claim by discussing points of law at length. As a result, the main role of the judge is to oversee the production of evidence and prevent discussions that are irrelevant.

Judges are appointed by the King under the conditions and in the manner specified by law. They are appointed for life. The different ways to be appointed as a judge vary depending on the experience of the candidate as a lawyer or an in-house counsel. The Superior Council of Justice is tasked with selecting the best candidate for the vacant position.

In Belgium, jury trials are not available in civil law cases.

Law stated - 05 April 2022

Limitation issues

What are the time limits for bringing civil claims?

The most common limitation periods are:

- 30 years (in some cases 10 years) for claims relating to the recovery or protection of real estate property;
- five years for tort claims as of the day on which the plaintiff became aware of the injury as well as of the identity of the person liable for his or her injury and, in any case, no later than 20 years following the events; and
- 10 years for most other claims, including contractual claims.

One should, however, be careful not to make any mistakes as many specific mandatory provisions deviate from the above-described general principles.

Law stated - 05 April 2022

Pre-action behaviour

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

Belgian law does not require any action to be taken before commencing legal proceedings. There is also no pretrial discovery process in Belgium.

If the prospective plaintiff fears that the defendant may dissipate assets, move assets out of the jurisdiction or become insolvent, the plaintiff is allowed to request precautionary attachment of the defendant's assets by filing an ex parte application before the attachment judge (ie, a division of the court of first instance) having territorial jurisdiction.

Law stated - 05 April 2022

Starting proceedings

How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

In most cases, a writ of summons will have to be served on the defendant. The writ of summons is prepared by the

plaintiff and served on the defendant by the bailiff. It generally contains a summary of the facts, legal arguments, claims and relief sought. The bailiff is also charged with enrolling the case at the court's docket. The law requires that the defendant be left with a minimum of eight days between the day of service and the day of the first preliminary hearing. In urgent cases, this period can be shortened to two days.

In some cases, the law provides that proceedings can be initiated by filing of an inter partes petition directly with the court, which then sends a notice to the defendant by registered mail.

Finally, in very limited cases, proceedings may be initiated by filing an ex parte request with the court (eg, to request exequatur of a foreign judgment or of a foreign arbitral award).

The Belgian justice system has been undergoing reforms relating to digitalisation and the reduction of the backlog of the judiciary (especially that of the Court of Appeal of Brussels), but full implementation remains outstanding. This backlog can delay the adjudication of a dispute for several years. Belgium has been condemned several times by the European Court of Human Rights for its enormous backlog.

Law stated - 05 April 2022

Timetable

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

After service, the parties will be requested to attend a preliminary hearing where the parties or the court will set the procedural timetable determining the deadlines by which written briefs must be filed by each party.

There is no specific procedure for small claims, although article 735 of the Belgian Judicial Code provides for a fast-track procedure. This procedure is not limited to small claims but rather to claims that do not require lengthy discussions (ie, in particular, simple claims, uncontested claims, interim measures and language issues).

After the exchange of briefs, a date will be set for the oral pleadings of the case. Please note that the business court generally sets an interlocutory hearing in between the preliminary hearing and the oral arguments to verify that the case is ready to be heard by the court.

Although the judgment should, in principle, be issued within one month of the closure of the proceedings, the Brussels business court usually takes more time (ie, two to four months).

Proceedings generally last between (at least) 12 and 18 months.

Law stated - 05 April 2022

Case management

Can the parties control the procedure and the timetable?

Under the principle of party disposition, the power of initiative rests mainly within the parties, particularly with the claimant. The court will not take any initiative and will act only if a party has requested it to do so. For example, the parties may ask jointly for the postponing of the case for an indefinite period. The court also sets the procedural calendar only when the parties do not reach an agreement on it.

Law stated - 05 April 2022

Evidence – documents

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

The Belgian Judicial Code does not provide for discovery or pretrial disclosure proceedings. In addition, there is no general duty to preserve documents and other evidence pending trial. However, such obligation may result from other specific laws, such as tax and accounting laws forcing companies to keep records and accounts for a certain period of time.

As a general rule, the burden of proof rests with the claimant. However, parties have an obligation to act loyally in the production of evidence. Production of a specific document or data can also be ordered by the court or at the request of a party whenever there is a credible, specific and consistent presumption that a party (or a third party) holds it.

Law stated - 05 April 2022

Evidence – privilege

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

Communication between lawyers who are a member of the Flemish (OVB) or the French and German Bar (OBFG) and their clients is privileged under Belgian law and will not be admissible in court. The privilege extends to any information received by the lawyer (in their capacity as lawyer) or obtained in the context of the provision of legal advice, legal proceedings or any dispute in general. It may include correspondence, emails, notes, advice or recordings. Disclosing such information is even subject to criminal sanctions under Belgian law. To avoid any doubts, it is common practice to mark the document as being privileged as clearly as possible.

Correspondence between lawyers in their capacity as counsel is also confidential and cannot be brought to court. Such confidentiality may, however, be lifted in a limited set of circumstances.

Article 5 of the act of 1 March 2000 creating the Belgian Institute for In-House Counsel provides for the confidentiality of legal advice given by in-house counsel, for the benefit of their employer and in the framework of their activity as legal counsel. Confidentiality is therefore more limited.

Law stated - 05 April 2022

Evidence – pretrial

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

There is no pretrial discovery process in Belgium.

Law stated - 05 April 2022

Evidence – trial

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

In Belgium, arguments are generally developed in writing and parties rarely call on witnesses. Whenever they do so, they produce written statements (affidavits) that are filed with the court and added to the list of exhibits. The court may also decide to hear witnesses at the request of a party or ex officio. In such case, the judge will administer the oath to

the witness and take their deposition. There is no right of cross-examination under Belgian law. Questions to witnesses must first be filed with the judge, who is charged with deciding whether they are relevant. The credibility of witnesses' statements is left to the appreciation of the judge. They cannot be ignored but are generally given less credit than statements supported by written documents.

Experts may be appointed by the court ex officio or at the request of the parties. After being appointed, the expert will typically meet with the parties, carry out an investigation and, finally, submit a preliminary report to the parties. Parties have the right to reply by submitting comments (including by producing party-appointed reports) before the final report is filed by the court-appointed expert. Please note that the court is not bound by the expert's findings.

Law stated - 05 April 2022

Interim remedies

What interim remedies are available?

Interim remedies can be requested before the chair of the competent court (both in first instance and in appeal) in inter partes proceedings. In such case, the claimant must prove that (1) urgent relief is needed; (2) he or she has a prima facie case against the defendant; and (3) the balance of interests is in favour of granting the requested measures (which cannot affect the substance of the case and must be of a temporary nature).

Under exceptional circumstances, these measures can even be obtained ex parte (eg, because the adverse party needs to be taken by surprise). As such, attachment or garnishment measures are available as a pretrial remedy if the claimant can show that he or she has a prima facie claim against the debtor and there is a risk that the debtor may become insolvent or try to avoid payment.

Law stated - 05 April 2022

Remedies

What substantive remedies are available?

Belgian civil law is based on the idea of fair compensation for damages and unjustified enrichment. There is no system of punitive damages. Immaterial losses may be compensated, but the mechanism is based solely on the idea of a fair compensation for damages suffered.

Law stated - 05 April 2022

Enforcement

What means of enforcement are available?

Since the reform of 2015, any judgment may, in principle, be enforced without being final (ie, the judgment can still be appealed or has already been appealed). This means that contrary to what prevailed before the reform, filing an appeal does not have any automatic suspensive effect.

In practice, enforcement is usually carried out by a bailiff, who (1) collects payment by laying attachment(s) and garnishment(s) on the debtor's assets and receivables and (2) serves the order for specific performance and collects the non-compliance penalties (if any).

The judgment creditor will ultimately be in a position to force the debtor into bankruptcy.

Law stated - 05 April 2022

Public access

Are court hearings held in public? Are court documents available to the public?

Article 148 of the Belgian Constitution provides that court hearings shall be public. Exceptionally, the law or the court itself may depart from this general principle in the interest of the rights of minors, the right to privacy or the protection of moral or public order.

Even though the Belgian Judicial Code provides that judgments shall be delivered in public, in practice, however, judgments are rarely made available to the public. Publicity depends on the judges and lawyers working on the case. In addition, court clerks tend to refuse to provide a copy of the judgment if a special interest is not demonstrated. This was supposed to be remedied by the law of 5 May 2019, which aimed at creating a publicly available database where all judgments would be made available after having been previously anonymised (see the proposed version of article 782-bis of the Belgian Judicial Code). This law was supposed to enter into force on 1 September 2020. However, the Belgian legislator decided to postpone its entry into force, first to 1 September 2021 and then to 1 September 2022.

Lastly, please note that court filings such as submissions, expert reports and witness testimonies are not made public in Belgium.

Law stated - 05 April 2022

Costs

Does the court have power to order costs?

The court has the power to order the unsuccessful party to pay the costs of the proceedings and may even do so ex officio. However, the different costs that the unsuccessful party may incur are exhaustively listed under article 1018 of the Belgian Judicial Code and include the following:

- costs of filing, registration and service;
- costs of all investigation measures (including costs of expertise and witness deposition, if any);
- procedural indemnity consisting of a lump sum aiming at contributing to the lawyer's fees of the successful party (ranging from €180 to €18,000 for monetary claims and amounting to €1,440 for non-monetary claims); and
- registration fee of 3 per cent of the total payable amount, provided that such amount is in excess of €12,500.

The cost of civil proceedings in Belgium is therefore relatively low compared with other (common-law) countries.

Law stated - 05 April 2022

Funding arrangements

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?

As per article 446-ter of the Belgian Judicial Code, contingency agreements under which the determination of lawyers' fees depends exclusively on the outcome of the case to be litigated are prohibited. However, it is generally accepted for Belgian lawyers to enter into contingency agreements provided that the success fee is limited to a reasonable amount

and that such agreement provides for a minimal remuneration of the lawyer, regardless of the outcome of the case.

Belgian law does not contain any specific provision dealing directly with third-party funding, and its admissibility has, to our knowledge, never been reviewed by Belgian courts. This creates uncertainty, which might explain why third-party funding has remained relatively limited. Other factors include the limited amount of damages awarded by domestic courts, the tremendous backlog of the Court of Appeal of Brussels and the regulation of the contingency fees agreement for lawyers.

In addition, the Belgian Civil Code provides that one against whom a litigious right has been assigned may obtain a release from the assignee by reimbursing them the actual price paid for the assignment, plus costs and reasonable expenses, plus interest calculated from the date on which the assignee paid the price of the assignment made to them.

Law stated - 05 April 2022

Insurance

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

Insurance for legal costs (either for its own costs or for its potential liability for an opponent's costs) has long been available in Belgium and is very common.

Law stated - 05 April 2022

Class action

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

The possibility to file class actions was introduced in Belgium in 2014 in the Belgian Code of Economic Law (BCEL).

The BCEL contains an exhaustive list of the types of claims based on which class actions may be filed. More precisely, such actions can be filed only in the case of:

- potential violations by an undertaking of its contractual obligations; or
- potential violation by an undertaking of certain Belgian and European laws and regulations that are exhaustively listed in article XVII.37 of the BCEL (the Laws). The Laws relate to, for example, competition law, market practices and consumer protection, products and services safety, consumers' health and energy. In this regard, it appears from the preparatory work of the Class Action Law that the legislator selected the Laws because they all provide (some) protection to consumers' rights.

The BCEL thus limits the types of claims that may be filed as class actions to certain violations committed by undertakings. The defendant in a class action will therefore always be an undertaking, which the BCEL defines as (1) any natural person exercising a professional activity as a self-employed person; (2) any legal person; or (3) any other organisation without legal personality, with certain exceptions. For instance, the federal state, the regions and the communities are excluded from the definition of undertaking.

Finally, a class action may only be brought on behalf of a group of (1) consumers or (2) small and medium-sized enterprises (SMEs) by a representative of the group members (the Group Representative). The claimant in a class action (ie, the Group Representative) can therefore act only on behalf of consumers and SMEs, to the exclusion of any other person or entity.

So far, few class actions have been initiated. More precisely, since the entry into force of the law of 28 March 2014 that introduced class action under Belgian law, only 10 of these actions have been filed. Two of these actions were filed in 2015, three in 2016, one in 2017, two in 2018, one in 2019 and one in 2020. Class actions are thus relatively rare and there are currently no signs that they will become more frequent in the near future. However, it remains to be seen whether Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers adopted by the European Parliament on 25 November 2020 (the Directive) will have any impact on the frequency of class actions once it is implemented in Belgian law. At this stage, we anticipate that the implementation of the Directive is unlikely to bring any major increase to the number of class actions filed, considering that Belgian law is already substantially in line with the Directive.

Out of the 10 class actions filed to date only one action has been decided on the merits (and the Court of Appeal rejected the claim as unfounded), four have been settled, four are still pending and one has been declared inadmissible.

Law stated - 05 April 2022

Appeal

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

All judgments can, in principle, be appealed on the merits and on the application of the law (ie, appellate courts hear the case de novo) provided that the lower court issued a judgment on a claim amounting to more than €2,000 (justice of the peace) or €2,500 (court of first instance and business court). The appellant does not need to obtain permission to file an appeal.

There is a right of further appeal to the Court of Cassation on limited grounds (ie, on the application of the law but not on the merits of the case).

Law stated - 05 April 2022

Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

The procedures to obtain recognition and enforcement of a foreign judgment in Belgium vary depending on the country in which the judgment was rendered.

Judgments issued in the European Union

Judgments issued in a member state of the European Union on or after 10 January 2015 will be recognised and enforced in Belgium in accordance with Regulation (EU) No. 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). Under this instrument, judgments given in a member state shall be recognised in Belgium without any special procedure being requested. In addition (and most importantly), judgments given in a member state and enforceable in that state shall be enforceable in Belgium without the need to request a declaration of enforceability. In practice, the requesting party will only have to provide to the enforcing court a copy of the judgment and a standard certificate delivered by the court that rendered the judgment.

The person against whom enforcement is sought may, however, resist enforcement on the grounds set out in article 45, which are limited and which prohibit the judge to re-examine the case on the merits.

Judgment issued before 10 January 2015 will have to be enforced under Regulation (EC) No. 44/2001 of the European Council on jurisdiction and the recognition and enforcement of judgment in civil and commercial matters, which required to obtain exequatur before being able to enforce the judgment in a foreign member state. Similar rules apply under the Brussels Convention and the Lugano Convention.

Judgments issued outside of the European Union

Judgments issued in a third country party to an international convention to which Belgium is also a party

Judgments issued outside of the European Union in a country that is party to an international convention on the enforcement of foreign judgments to which Belgium is a party must be enforced under such international convention. In this respect, we note the existence of the Hague Choice of Court Convention, which currently applies to all EU member states and, inter alia, Mexico.

Judgments issued in a third country with which Belgium does not have a treaty

In the absence of any international treaty, foreign judgments are enforced in Belgium in accordance with the rules laid down in the Belgian Code of Private International Law. In practice, a request for exequatur must be filed with the competent court of first instance together with the following documents:

- a certified copy of the foreign judgment;
- if the judgment was handed down by default, evidence that the claim was served or notified to the other party; and
- evidence that the judgment is enforceable in the country of origin and that it has been served or notified to the other party.

Domestic courts can refuse to enforce a foreign judgment on the following grounds:

- incompatibility with Belgian international public policy;
- violation of due process;
- the judgment was issued as a result of an attempt to avoid the application of a mandatory law that would apply under Belgian private international law;
- the judgment is not final;
- conflicting domestic or foreign judgment;
- the claim was initiated abroad after a claim had been brought before Belgian courts between the same parties and with the same object;
- Belgian courts had exclusive jurisdiction to hear the case;
- jurisdiction of the foreign court was founded solely on the defendant being present or having assets in the foreign jurisdiction, without any relation between that presence or those assets and the claim; or
- enforcement would be contrary to the grounds for refusal provided for under articles 39, 57, 72, 95, 115 and 121 of the Belgian Code of Private International Law.

Such procedures tend to go quite quickly in Belgium. A decision is generally obtained within one week from the application. The person against whom enforcement is sought may challenge the decision of the court of first instance within a period of one month from the date of service of the enforcement order.

Law stated - 05 April 2022

Foreign proceedings

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

Rules to obtain evidence in Belgium in support of proceedings in another member state of the European Union or in another member state in support of proceedings in Belgium are laid down in Regulation (EC) No. 1206/2001 on cooperation between the member states in the taking of evidence in civil and commercial matters (the Regulation).

If evidence needs to be collected in a state that is not bound by the Regulation, Belgium applies the Hague Convention of 1 March 1954 on civil procedure (or any applicable bilateral treaty).

In the absence of any treaty between Belgium and the other jurisdiction, Belgium will enforce foreign requests pursuant to the relevant provisions of the Belgian Judicial Code.

Law stated - 05 April 2022

ARBITRATION

UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

Arbitration in Belgium is governed by the law of 24 June 2013 that entirely replaced articles 1676–1723 of Part VI of the Belgian Judicial Code, which contained the (former) Belgian law on arbitration. It entered into force on 1 September 2013 and applies to arbitration proceedings initiated after that date.

The goal of the 2013 reform was to bring the rules in line with recent changes in international practice and the 1985 UNCITRAL Model Law while increasing the attractiveness of Belgium as a place for arbitration. However, instead of simply copying the 1985 UNCITRAL Model Law, the Belgian legislator took into account specificities of Belgian arbitration practice. As such, Belgian arbitration law is not limited to international commercial arbitration but applies instead to all types of arbitration, whether domestic or international.

Law stated - 05 April 2022

Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

Belgian law contains no formal requirement for arbitration agreements to be valid. This is illustrated by article 1681 of the Belgian Judicial Code, which defines arbitration agreement as 'an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.' Arbitration agreements may therefore be concluded orally, as long as their existence can be established (eg, by witness or through performance of the agreement). They may also be inserted in the general conditions of a sale and purchase agreement, provided that one can demonstrate acceptance.

Law stated - 05 April 2022

Choice of arbitrator

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?

Where the parties have not agreed on the number of arbitrators, the arbitral tribunal shall be composed of three arbitrators (article 1584 of the Belgian Judicial Code).

As to their appointments, if the parties have not settled the question in the arbitration agreement, they may do so once the dispute arises. If they do not agree at that time, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. If a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of the appointment of the second arbitrator, the appointment shall be made by the president of the court of first instance, ruling on the request of the most diligent party (article 1685(3) of the Belgian Judicial Code). This decision cannot be challenged, unless the president of the court of first instance decides that there are no grounds for an appointment (article 1680(1) of the Belgian Judicial Code).

An arbitrator may be challenged only on the following grounds (article 1686 of the Belgian Judicial Code):

- circumstances exist that give rise to justifiable doubts as to his or her independence or impartiality; or
- he or she does not have the qualifications required by law or agreed to by the parties.

Any challenge may be brought until the rendering of the award but only for a reason of which it becomes aware after the appointment was made (article 1686(2) of the Belgian Judicial Code). In this respect, the parties are free to agree on a procedure for challenging an arbitrator. Absent any agreement, Belgian law provides for a default procedure detailed under article 1687 of the Belgian Judicial Code.

Law stated - 05 April 2022

Arbitrator options

What are the options when choosing an arbitrator or arbitrators?

Belgian law does not require any specific qualifications in order to be appointed as an arbitrator. Thus, apart from legal capacity and the general requirements of independence and impartiality, the parties have the utmost freedom. They may, for example, determine the required qualifications in the arbitration agreement or preclude certain persons from acting as an arbitrator by reason of their nationalities. Absent any agreement, the parties have complete freedom to appoint whoever they believe is best fit for the task.

Law stated - 05 April 2022

Arbitral procedure

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

The vast majority of the procedural rules set out in Part VI of the Belgian Judicial Code apply only in the absence of any contrary agreement between the parties (either by setting the procedural rules themselves or by making reference to a set of arbitration rules prepared by a specific institution). However, the parties are legally required to be treated with equality and each party shall be given a full opportunity of presenting its case, pleas in law and arguments in

conformity with the principle of adversarial proceedings (article 1699 of the Belgian Judicial Code). In addition, the parties may not derogate from the general requirement of independence and impartiality of the arbitrator(s) (article 1685(2) of the Belgian Judicial Code).

Absent any agreement on the procedure, the arbitral tribunal may determine the rules of procedure as it deems appropriate, subject to the provisions of Part VI of the Belgian Judicial Code (article 1700 of the Belgian Judicial Code). These rules are set out in chronological order:

- the arbitration agreement (articles 1681–1683);
- the composition of the arbitral tribunal (articles 1684–1689);
- the conduct of the proceedings (articles 1699–1709-bis);
- the arbitral award and the termination of the proceedings (articles 1710–1715);
- the challenges that may be initiated against the arbitral award (articles 1716–1718); and
- the recognition and enforcement of arbitral awards (articles 1719–1721).

Law stated - 05 April 2022

Court intervention

On what grounds can the court intervene during an arbitration?

Domestic courts can intervene during arbitration proceedings to:

- order urgent interim relief (article 1683);
- appoint an arbitrator whenever (1) a party fails to act as required; (2) the parties or the party-appointed arbitrators are unable to reach an agreement; or (3) a third party, including an institution, fails to perform any function entrusted to it under the applicable procedure (articles 1585(3) and 1585(4));
- rule on the withdrawal of an arbitrator after they accepted their mission (article 1685(7));
- rule on the challenge of an arbitrator (article 1687(2));
- settle any controversy relating to an arbitrator's failure or inability to act (article 1688(2));
- order all necessary measures for the taking of evidence (article 1708); and
- impose a time limit on the arbitral tribunal to render its award (article 1713(2)).

Law stated - 05 April 2022

Interim relief

Do arbitrators have powers to grant interim relief?

Unless otherwise agreed by the parties, the arbitral tribunal may order any interim or conservatory measures it deems necessary. The arbitral tribunal may also amend, suspend or terminate an interim or conservatory measure, regardless of whether it granted the measure itself or whether it was granted by a domestic court.

However, the arbitral tribunal may not authorise attachment orders as these fall under the exclusive jurisdiction of domestic courts. In addition, please note that the arbitral tribunal may not order ex parte interim measures. The possibility for domestic courts to order urgent interim measures, when not excluded by the parties, is therefore of great importance. In this respect, article 1698 of the Belgian Judicial Code provides that domestic courts shall have the same power to grant interim measures in relation to arbitration proceedings as they have when seized in matters relating to court proceedings. As a result, interim measures shall be granted by domestic courts only if urgency so requires.

Law stated - 05 April 2022

Award

When and in what form must the award be delivered?

The parties may determine the time limit within which the arbitral tribunal must render its award, or the terms for setting such a time limit. Failing this, if the arbitral tribunal is late in rendering its award, and a period of six months has elapsed between the date on which the last arbitrator has been appointed, the president of the court of first instance, at the request of one of the parties, may impose a time limit on the arbitral tribunal.

The award shall be made in writing and shall be signed by the arbitrator. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

The award shall state the reasons upon which it is based. In addition to the decision itself, the award shall contain, inter alia:

- the names and domiciles of the arbitrators;
- the names and domiciles of the parties;
- the object of the dispute;
- the date on which the award is rendered; and
- the place of arbitration determined in accordance with article 1701, paragraph 1.

A copy of the award shall be communicated to each party by the sole arbitrator or by the chair of the arbitral tribunal in accordance with article 1678 of the Belgian Judicial Code.

Law stated - 05 April 2022

Appeal

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

Under Belgian law, an arbitral award may be challenged in three ways.

Rectification/interpretation

First, the parties may request the arbitral tribunal to rectify any material error in the award or, if so agreed by the parties, to give an interpretation of a specific part of the award. This must be done within one month of the communication of the award unless another period of time has been agreed upon.

Appeal

Second, the parties may appeal an arbitral award before another arbitral tribunal. This will be allowed only if such possibility was expressly provided for in the arbitration agreement. In such case, the appeal must be lodged within one month of the communication of the first award. In practice, however, this is extremely rare as most arbitration agreements provide that the award shall be final (ie, the parties cannot request an arbitral tribunal to determine the merits of the case for a second time).

Request for setting aside

Third, in accordance with article 1717 of the Belgian Judicial Code, the parties may request the court of first instance to set aside the award (ie, to file a claim for annulment). Under article 1717, an award may be set aside only on the following grounds:

- there is no valid arbitration agreement;
- the party making the application was not given proper notice of the arbitral proceedings or was otherwise unable to present its case, unless it is established that the irregularity has had no effect on the arbitral award;
- the award deals with a dispute that does not fall within the arbitration agreement or contains decisions on matters beyond the scope of the arbitration agreement (and, in that case, only those parts of the award may be annulled if they can be separated from the decisions on matters that do fall under the arbitration agreement);
- the award is not reasoned;
- the arbitral tribunal was not set up or the arbitral proceedings were not conducted according to the applicable rules, unless, in the latter case, the irregularity had no impact on the award;
- the arbitral tribunal has exceeded its powers;
- the subject matter of the dispute is not arbitrable;
- the award is contrary to Belgian rules of international public policy; or
- the award was obtained by fraud.

In theory, a claim for annulment may be filed only when the award can no longer be challenged before the arbitrators. It must be filed before the court of first instance within three months of the communication of the award to the party requesting the award to be set aside. Please note that when asked to set aside an arbitral award, the court of first instance may suspend the proceedings for a specific period of time in order to enable the arbitral tribunal to resume the arbitral proceedings or to eliminate the grounds for annulment.

Finally, please note that article 1718 of the Belgian Judicial Code provides that the parties may exclude any application for the setting aside of an arbitral award. However, this may be done only whenever none of the parties is a natural person of Belgian nationally or a natural person having his or her domicile or normal residence in Belgium or a legal person having its registered office, its main place of business or a branch office in Belgium.

Law stated - 05 April 2022

Enforcement

What procedures exist for enforcement of foreign and domestic awards?

In accordance with articles 1719–1721 of the Belgian Judicial Code, authorisation to enforce an arbitral award, either Belgian or foreign, may be requested before the court of first instance by means of an ex parte application. An original or a certified copy of the award must be filed.

Article 1721(3) of the Belgian Judicial Code provides that a treaty concluded between Belgium and the country where the arbitral award was rendered takes precedence over domestic rules. Belgium has adopted the New York Convention subject to reciprocity and will apply the convention to both commercial and civil disputes. In addition, Belgium signed several bilateral conventions regarding the recognition and enforcement of foreign arbitral awards. This provision must be read together with the 'more favourable law' provision of the New York Convention, which provides that the convention does not take precedence over legislation that is more favourable to recognition and enforcement.

Pursuant to article 1721 of the Belgian Judicial Code, enforcement of the award may be denied only on the following

grounds:

- there is no valid arbitration agreement;
- the party against whom the claim for leave to enforce is made was not given proper notice of the arbitral proceedings or was otherwise unable to present their case, unless this irregularity had no impact on the award;
- the award deals with a dispute that does not fall within the arbitration agreement or contains decisions on matters beyond the scope of the arbitration agreement (and, in that case, only those parts of the award may be annulled if they can be separated from the decisions on matters that do fall under the arbitration agreement);
- the award is not reasoned whereas such reasons are prescribed by the rules of law applicable to the arbitral proceedings under which the award was rendered;
- the arbitral tribunal was not set up or the arbitral proceedings were not conducted according to the applicable rules, unless, in the latter case, the irregularity had no impact on the award;
- the award has not yet become compulsory for the parties or has been annulled or suspended by a court in the state where it was rendered;
- the arbitral tribunal has exceeded its powers;
- the subject matter of the dispute is not arbitrable; or
- the recognition or the enforcement of the award would be contrary to rules of Belgian international public policy.

As with any other ex parte judgment, it can be appealed by the party against whom enforcement is sought before the same court (the court of first instance) (ie, a third-party opposition may be filed before the same judge). The judgment cannot, however, be appealed before the Court of Appeal (but can nevertheless be contested before the Court of Cassation).

In practice, Belgian courts tend to look favourably upon enforcing awards and do not apply the grounds listed above extensively.

Law stated - 05 April 2022

Costs

Can a successful party recover its costs?

Pursuant to article 1713(6) of the Belgian Judicial Code, the final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties. Unless otherwise agreed by the parties, these costs shall include the fees and expenses of the arbitrators, the fees and expenses of the parties' counsel and representatives, the costs of services rendered by the instances in charge of the administration of the arbitration and all other expenses arising from the arbitral proceedings. Legal scholars generally consider that such costs must be reasonable.

Belgian arbitration law does not specifically address third-party funding. It could be argued, however, that given the general terms of article 1713(6), third-party funding costs could be taken into account by the arbitral tribunal.

Law stated - 05 April 2022

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

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

In international commercial disputes, the most common type of ADR used in Belgium is arbitration. The practice of resorting to conciliation or mediation is also expanding beyond the scope of small family matters (which, for obvious reasons, have always been prone to resort to these two types of ADR). This may be explained by the substantial increase in the procedural indemnity having to be paid at the end of domestic litigation as well as the tremendous backlog of the Court of Appeal of Brussels.

In addition, please note that arbitration clauses in Belgium regularly provide that the parties shall recourse to conciliation or mediation before resorting to arbitration. If such prerequisite has not been complied with and provided that the respondent invokes this irregularity in limine litis , the arbitral tribunal will be forced to suspend its mission.

Law stated - 05 April 2022

Requirements for ADR

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?

When the parties have agreed to ADR, domestic courts will generally give effect to their agreement. In the absence of any agreement, domestic courts may suggest and encourage resorting to a certain type of ADR. In 2018, the Belgian parliament decided to reform certain provisions of the Belgian Judicial Code in order to promote alternative forms of dispute resolution. As of 12 July 2018, article 1734 now provides that the judge may order the parties to resort to mediation. As the parties may only oppose it jointly, it is sufficient for one party to be in favour of mediation to obtain a court order imposing it on the parties. In practice, however, this possibility is rarely used in commercial matters. The 2018 reform also amended article 444 of the Belgian Judicial Code, which now forces lawyers to consider ADR before going to trial.

Law stated - 05 April 2022

MISCELLANEOUS

Interesting features

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

Not applicable.

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UPDATE AND TRENDS

Recent developments

Are there any proposals for dispute resolution reform? When will any reforms take effect?

The reform of the Belgian Civil Code is still under way. As part of this reform, the rules on evidence have been updated and entered into force on 1 November 2020. On 1 September 2021, the law of 4 February 2020 containing Book 3, 'Goods', of the Civil Code also entered into force. Further reforms relating to, inter alia, personal status and families, successions and obligations will shortly be approved by the Belgian parliament.

New reforms of the Belgian judicial system are also expected to take place to further pursue the digitalisation of the Belgian judicial system and reduce the current backlog of cases, though little progress has been made in the past year.

Law stated - 05 April 2022

Jurisdictions

Australia	Clayton Utz
Austria	OBLIN Attorneys at Law
Belgium	White & Case LLP
Cayman Islands	Campbells
China	Buren NV
Cyprus	AG Erotocritou LLC
Denmark	Lund Elmer Sandager
Ecuador	Paz Horowitz
Egypt	Soliman, Hashish & Partners
Germany	Martens Rechtsanwälte
Greece	Bernitsas Law
Hong Kong	Hill Dickinson LLP
India	Cyril Amarchand Mangaldas
Indonesia	SSEK Legal Consultants
Israel	Lipa Meir & Co
Japan	Anderson Mōri & Tomotsune
Liechtenstein	Marxer & Partner Rechtsanwälte
Luxembourg	Baker McKenzie
Malaysia	SKRINE
Malta	MAMO TCV Advocates
Pakistan	RIAA Barker Gillette
Panama	Patton Moreno & Asvat
Philippines	Ocampo, Manalo, Valdez & Lim Law Firm
Romania	Zamfirescu Racoți Vasile & Partners
Russia	Morgan, Lewis & Bockius LLP

South Korea	Jipyong
Switzerland	Wenger Vieli Ltd
Thailand	Pisut & Partners
United Arab Emirates	Kennedys Law LLP
United Kingdom - England & Wales	Latham & Watkins LLP
USA - California	Ervin Cohen & Jessup LLP
USA - New York	Dewey Pegno & Kramarsky LLP