Arbitration

in 49 jurisdictions worldwide

2014

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Arbitration 2014

Contributing editors:
Gerhard Wegen and Stephan Wilske
Gleiss Lutz

Getting the Deal Through is delighted to publish the ninth edition of Arbitration, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 49 jurisdictions featured. New jurisdictions this year include Equatorial Guinea, Mexico, Nigeria and Scotland.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. Getting the Deal Through publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editors Gerhard Wegen and Stephan Wilske of Gleiss Lutz for their continued assistance with this volume.

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Laws and institutions

1 Multilateral conventions relating to arbitration

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards has been in force in Belgium since 16 November 1975. Belgium made a reciprocity reservation under article I(3) and declared that it would apply the Convention only to recognition and enforcement of awards made in the territory of another contracting state. Belgium is also a party to the following conventions and treaties: the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (in force in Belgium since 26 September 1970); the European Convention on International Commercial Arbitration of 1961 (Belgium ratified on 9 October 1975); the Energy Charter Treaty (in force in Belgium since 6 August 1998).

2 Bilateral investment treaties

As of December 2013, Belgium has signed 93 bilateral investment treaties (BITs). Of these, 67 are currently in force. The majority of BITs provide either for ICSID or ad hoc arbitration under the UNCITRAL Model Law.

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

Chapter Six of the Belgian Judicial Code (BJC) contains the new Law on Arbitration of 24 June 2013 that came into effect on 1 September 2013. It applies to arbitration proceedings, both domestic and international, that commence as from that date if the seat of the arbitration is in Belgium, irrespective of the parties’ nationality. The previous Law on Arbitration remains applicable to arbitration proceedings introduced prior to 1 September 2013. The procedural steps for recognition and enforcement of awards, both Belgian and foreign, are contained in articles 1719 to 1722. The below questions are answered according to the new Law on Arbitration of 24 June 2013.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

The new Law on Arbitration of 24 June 2013 is based on the UNCITRAL Model Law (the Model Law). The major differences compared to the Model Law concern the recourse against an arbitral award and interim measures. The legislature kept three additional grounds for annulment: if an award does not state reasons (article 1717.3 (a), (iv)); if an arbitral tribunal has exceeded its powers (article 1717.3 (a), (v)); and if an award was obtained by fraud (article 1717.3 (b), (iii)). By analogy with the grounds for annulment, the Belgian arbitration law provides two additional grounds for refusal of the recognition and enforcement of an arbitral award: if an award does not state reasons (article 1721.1(a), (iv)); and if the arbitral tribunal has exceeded its powers (article 1721.1(a), (vii)).

As to the interim measures, unlike the Model Law, the BJC does not give powers to the arbitral tribunal to issue preliminary orders (see question 30).

Another noteworthy difference is a Chapter IX ‘Time bar’. Article 1722 of the BJC stipulates that the enforcement of an arbitral award is barred for ten years from the date the award has been communicated.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The parties are free to determine the rules of the arbitral proceedings. However, this freedom is not absolute. Article 1699 of the BJC outlines the mandatory obligation of equal treatment and the principle of adversarial proceedings. Also, the requirement of an uneven number of arbitrators is mandatory (article 1684.2 of the BJC). Further, the arbitral award must be in writing, reasoned and signed by the arbitrators (article 1713 of the BJC).

Article 1676.8 of the BJC lists certain provisions that apply irrespective of the place of arbitration and notwithstanding any clause to the contrary: articles 1682, 1683, 1696–1698, 1708 and 1718–1721.

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

As a general rule, the parties to an arbitration may freely decide on the law applicable to the merits of the case. If the parties failed to decide this, the arbitral tribunal applies the law determined by the conflict of laws rules that it considers applicable (article 1710.2 of the BJC). The arbitrators have the power to decide on an ex aequo et bono basis only if the parties have expressly authorised them to
do so (article 1710.3 of the BJC). Additionally, the arbitrators shall always decide in accordance with the terms of the contract if the dispute opposing the parties is contractual in nature and shall take into account the usages of the trade if the dispute is between commercial parties (article 1710.4 of the BJC).

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

Belgian Centre for Arbitration and Mediation (CEPANI/CEPINA)
Rue des Sols, 8
1000 Brussels
Belgium
Tel: +32 2 515 08 35
info@cepina-cepani.be
www.cepani.be

The Belgian Centre for Mediation and Arbitration (CEPANI) adopted new Arbitration Rules and new Mediation Rules that came into force on 1 January 2013. The new Rules have undergone a substantial revision and were inspired by the 2012 ICC Arbitration Rules. The most significant innovations include:

- the inclusion of additional provisions on multiparty and multi-claim arbitration; joinder and consolidation;
- now it is possible to request interim and conservatory measures before the tribunal is constituted via an emergency arbitrator procedure; and
- a limitation of the liability of CEPANI and the arbitrators: liability is excluded for acts or omissions when a tribunal is carrying out their functions of ruling on a dispute with the exception of fraud.

A significant role in the appointment of arbitrators under the CEPANI rules is given to the appointments committee, which is the nomination body attached to the CEPANI, or the President of the CEPANI. Whenever the parties appoint an arbitrator, either a sole arbitrator or a panel of three arbitrators, the chosen arbitrators are subject to the confirmation of the appointments committee or the president. If the appointments committee or the president refuses to confirm the nomination of the arbitrator, the committee or the president shall replace that arbitrator within one month of the notification of this refusal to the parties. If the parties fail to appoint the arbitrators within the set time limit, the appointments committee or the president shall proceed with the appointment.

Arbitration costs include the fees and expenses of the arbitrators, as well as the administrative expenses of the CEPANI. They shall be fixed by the secretariat on the basis of the amount of the principal claim and of any counterclaim, according to the Scale of Costs for Arbitration in effect on the date of the commencement of the arbitration. The CEPANI Arbitration Cost Calculator may be consulted for determining general administrative costs.

Institute of Arbitration
Central Clerk’s Office
68b, Drève Sainte Anne
1020 Brussels, Belgium
Tel: +32 2 790 12 66
info@euro-arbitration.org
www.euro-arbitration.org

One of the distinguishing features of the Institute is that an arbitral award can be appealed within the Institute before another arbitral tribunal. Under the Institute’s Standard Dispute Rules (SDR) effective from 15 April 2013, unless the parties agree otherwise, the clerk’s office shall appoint one arbitrator in the first instance and three for the appeal level. If an arbitrator dies or is legally impeded from fulfilling his or her function, the clerk’s office is in charge of finding a replacement. The seat of arbitration shall be considered as the place of the award. The arbitral tribunal may seat in any country. Unless agreed otherwise, the clerk’s office determines the seat of arbitration and the place of the debates. The parties shall choose the language of the proceedings. The proceedings may take place in several languages. In the absence of an agreement, the languages of the proceedings are those of the countries of the parties or English.

The administrative cost is €100 for each demand not submitted via www.lisdirect.net, and €200 for the appeal level. Parties who submit a request must pay in advance, within 15 working days upon demand from the secretary or clerk, under penalty of the inadmissibility of the case in the first instance or a loss of the possibility to appeal. The cost for arbitration is at least €500 plus a maximum percentage of the amount of the claim, counterclaim and additional claim, each party funds its part. The detailed information on percentages can be found in Part IV of the SDR. The arbitration costs are doubled on appeal or when the Arbitral Court is composed of three arbitrators. Additionally, the new 2013 Rules introduced the requirement for arbitrators to reduce their fees if they declare themselves incompetent or for a default award in the first instance.

The Chamber of Arbitration and Mediation
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info@arbitrage-mediation.be
www.arbitrage-mediation.be

The Chamber of Arbitration and Mediation mainly deals with cases regarding real estate and rental agreements. The costs of arbitration vary from €100 to €5,000. The claim has to be submitted in French or Dutch. If all parties agree, the hearing can be conducted in another language, provided all parties and an arbitrator know that language.

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

Pursuant to article 1676, any dispute of a pecuniary nature can be subject to arbitration. This is a very broad notion involving all claims that present, at least for one party, an interest that can be assessed in monetary terms. Non-pecuniary matters also may be subject to arbitration proceedings if it is legally permitted to settle the matter by arbitration. Restrictions on arbitrability of certain types of disputes shall be clearly provided by specific legislation.

- Pursuant to article 1676.5, arbitration agreements in respect of the disputes belonging to the jurisdiction of the labour courts, without prejudice to the exceptions provided by law, shall be automatically null and void if concluded prior to the moment the dispute arises.
- Within the area of intellectual property, the Act on Patents dated 28 March 1984 excludes disputes relating to mandatory licences from arbitration.
- Under article 4 of the Belgian Law dated 27 July 1961 on Unilateral Termination of Exclusive Distribution Agreements of Indefinite Duration (the Law of 1961), if an exclusive distributor has suffered damage further to the unilateral termination of a distribution agreement effective on all or part of Belgian territory, he or she may always initiate legal proceedings before the courts of Belgium. In such cases the courts must apply Belgian law exclusively. Article 6 of the Law of 1961 adds that the provisions of
the Law will prevail over any contrary stipulations of the parties, agreed upon prior to contract termination.

- The situation is not entirely clear with regards to the Law of 13 April 1995 on commercial agency contracts. The decision from the Belgian Supreme court in United Antwerp Maritime Agencies (Unamar) NV v Navigation Maritime Bulgare (NMB) is expected to clarify the issue.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

Article 1681 of the BJC mirrors article 7 Option II of the UNCITRAL Model Law that defines the arbitration agreement in a manner that omits any formal requirement. Hence, in order to be valid under Belgian law, an arbitration agreement does not have to be concluded in writing. That means that an oral arbitration agreement is valid as long as it can be proven. The travaux préparatoires provide that witness testimonies can serve as proof.

As a general rule, public legal entities may only enter into an arbitration agreement if the object thereof is to resolve disputes relating to an agreement. The conditions that apply to entering into an agreement, which constitutes the object of the arbitration, also apply to entering into an arbitration agreement. Moreover, public legal entities may enter into arbitration agreements on all matters defined by law or by royal decree decided by the Council of Ministers. The decree may also set forth the conditions and rules to be respected for entering into such an agreement.

Courts in Belgium generally uphold arbitration clauses contained in general terms and conditions. In particular such clauses were upheld when:

- the clause was contained in general conditions of a seller with whom the buyer had a long-standing commercial relationship;
- the seller sent the buyer a model contract containing an arbitration clause and the parties thereafter agreed to conclude the sale on the conditions of the model contract; and
- the clause was contained in general insurance conditions and the signature of the special insurance conditions implied acceptance of the general conditions.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

Neither voidance of an underlying contract nor the death of a party shall result in the nullity of the arbitration agreement. However, the law explicitly provides for the automatic lapse of the arbitration agreement, unless the parties agree otherwise, in cases when the arbitrator has been named in the arbitration agreement and when that arbitrator dies or becomes unable in fact or in law to continue his or her mission, or refuses it or fails to carry it out, or if the parties agree to terminate it or if the award is not rendered within the set time limit.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

Although an arbitration agreement is binding only on the parties to it, in certain cases non-signatories may also be forced to participate in arbitration proceedings. This happens, for example, if the original contract has been assigned or if the original party has undergone a takeover. A receiver in bankruptcy will be bound by an arbitration clause contained in a contract to which the company that went bankrupt was a party.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

According to article 1709.1 of the BJC, any interested third party may apply to the arbitral tribunal to join the proceedings. The request must be put to the arbitrators in writing, and the tribunal shall communicate it to the parties. Also, a party may take the initiative in calling upon a third party to intervene in the proceedings. In any event, the admissibility of such interventions requires an arbitration agreement between the third party and the parties involved in the arbitration. Such joinder is subject to the unanimous consent of the arbitral tribunal.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the ‘group of companies’ doctrine?

Belgian jurisprudence recognises that a non-signatory parent company can, in particular circumstances, be considered liable for the obligations of its subsidiary. In the Badger case, the American parent company rejected any responsibility regarding pensions obligations for its insolvent Belgian subsidiary. Belgium persistently pursued the parent company, which ultimately had to admit its obligation and proceed with the necessary financing.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The BJC does not contain any provisions specifically regulating the validity of a multiparty arbitration agreement. At the same time, the possibility of multiparty arbitrations is not excluded. Consequently, if there is a multiparty arbitration the general provisions on arbitration must be respected.

The institutional rules provide a special regulation for multiparty arbitrations. For example, the new 2013 CEPANI Arbitration Rules introduced provisions regarding multiple parties, multiple contracts, intervention, consolidation and the jurisdiction of arbitral tribunals in such cases. In particular, the Rules contain provisions instructing, if the dispute is referred to three arbitrators, the multiple claimants jointly and the multiple respondents jointly to nominate one arbitrator for approval. In the absence of such a joint nomination and where all parties are unable to agree on a method for the constitution of the arbitral tribunal, the appointments committee or the chairman may appoint each member of the arbitral tribunal and shall designate one of them to act as chairman.

15 Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

Article 1685.1 of the BJC mirrors article 11.1 of the UNCITRAL Model Law: ‘No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.’ According to article 298 of the BJC, judges may not act as arbitrators for compensation. There are no provisions in Belgian legislation on arbitration requiring arbitrators to be selected from a list of arbitrators.
16 Default appointment of arbitrators
Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

If the parties have not determined the number of arbitrators in the arbitration agreement, and cannot agree on such a number, the tribunal shall be composed of three arbitrators. If the parties failed to agree on a procedure for appointing arbitrators, in an arbitration with:

• three arbitrators, each party shall appoint one arbitrator, and these two arbitrators shall appoint the third arbitrator; if a party fails to appoint an 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;

• a sole arbitrator, if the parties are unable to agree on the selection of the arbitrator, shall be appointed by the president of the Court of First Instance, ruling on the request of the most diligent party;

• more than three arbitrators, if the parties are unable to agree on the composition of the arbitral tribunal, it shall be appointed by the president of the Court of First Instance, ruling on the request of the most diligent party.

The above-mentioned decisions of the president of the Court of First Instance cannot be appealed (article 1680.5 of the BJC).

Pursuant to article 15 of the CEPANI Arbitration Rules, where the parties have not agreed upon the number of arbitrators, the dispute shall be settled by a sole arbitrator. However, at the request of one of the parties or on its or his own motion, the appointments committee or the president may decide that the case shall be heard by a tribunal of three arbitrators.

If the parties have agreed to settle their dispute through a sole arbitrator but failed to agree within one month of the notification of the Request for Arbitration to the respondent, or within such additional time as may be allowed by the secretariat, the sole arbitrator shall be automatically appointed by the appointments committee or by the president.

If the parties have agreed to have three arbitrators, but a party refrains from nominating its arbitrator or if the latter is not confirmed, the appointments committee or the president shall automatically appoint the arbitrator. The appointments committee or the president also shall appoint a chair of the arbitral tribunal unless the parties have agreed upon another procedure for such appointment, in which case the appointment shall be subject to confirmation by the appointing authority.

Should such procedure not result in an appointment within the time limit fixed by the parties or the secretariat, the third arbitrator shall be automatically appointed by the appointments committee or the president.

17 Challenge and replacement of arbitrators
On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or if he does not have the qualifications agreed to by the parties. A party may challenge an arbitrator appointed by the said party, or in whose appointment it participated, only for reasons of which it becomes aware after the appointment has been made.

The parties are free to agree on a procedure for challenging an arbitrator. This can be done, for example, by reference to the institutional arbitration rules. The IBA Guidelines on Conflicts of Interest in International Arbitration are often used as a source of guidance. If the parties failed to agree on such procedure, the challenge is to be notified to the arbitrators and to the opposing party. This must be done within 15 days after the challenging party has become aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance that forms a ground for a challenge.

If the challenged arbitrator does not withdraw or the other party agrees to the challenge within 10 days of the challenging statement being sent, the challenging party shall summon the arbitrator and the other parties within 10 days to appear before the president of the Court of First Instance. In contrast with the previous law, the tribunal may now continue proceedings and render an award while the challenging procedure is pending before the court. The court’s decision cannot be appealed.

If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office if the parties agree on the termination of the mandate or with the authorisation of the Court of First Instance. If an arbitrator fails to withdraw, the most diligent party shall summon the other party and the arbitrator referred to appear before the president of the Court of First Instance.

In all cases where the arbitrator’s mandate is terminated before the final award is made, a substitute arbitrator shall be appointed. This appointment shall be made in accordance with the rules that were applicable to the appointment of the arbitrator being replaced unless otherwise agreed by the parties. Failing such replacement, either party may refer the matter to the president of the Court of First Instance.

18 Relationship between parties and arbitrators
What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration, and expenses of arbitrators.

The parties may agree, in the arbitration agreement, to exclude certain categories of persons from becoming arbitrators. If such an exclusion has been ignored when the arbitral tribunal was appointed, the challenge proceedings can be initiated. The appointment of an arbitrator, once notified, cannot be withdrawn, and an arbitrator cannot withdraw once he or she has accepted his or her mission, unless with the parties’ consent or with the authorisation of the Court of First Instance.

Unless provided otherwise by the parties, the arbitrators themselves determine their remuneration. If an arbitrator who has not yet accepted his or her mission disagrees with the remuneration offered or agreed upon by the parties, he or she may refuse to act as an arbitrator for them. If an arbitrator disagrees with the offered remuneration after accepting the mission, he or she can only withdraw if the Court of First Instance allows him or her to do so upon his or her request. It is forbidden for a party to come to a separate financial arrangement with that party-appointed arbitrator as it might affect that arbitrator’s neutrality.

Unless parties agree otherwise, they should pay the advance jointly. Where one of the parties refuses to pay its part of the advance, one party might transfer the whole amount of the advance.

19 Immunity of arbitrators from liability
To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

Although arbitrators do not enjoy the same immunity as judges, it is generally accepted that they are immune from liability if a committed
fault or negligence pertains to the exercise of the strictly jurisdictional function. The arbitrator may be found liable for other types of faults, provided the parties prove that such fault entailed damages, because the common rules of contractual professional liability become applicable.

Article 37 of the new CEPANI Arbitration Rules specifically provides for a limitation of the liability of the arbitrator. Liability is excluded for an act or omission when a tribunal carrying out their functions of ruling on a dispute (with the exception of fraud). For any other act or omission by the arbitrator or the CEPANI, liability can incur in cases of gross negligence or fraud.

**Jurisdiction and competence of arbitral tribunal**

20 **Court proceedings contrary to arbitration agreements**

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

The court before which a dispute is brought shall declare itself without jurisdiction at the request of a party, unless the arbitration agreement is invalid with regard to this dispute or has ceased to exist. Jurisdictional objections must be raised before any other plea or defence. However, a claim for conservatory or provisional measures brought before a court is not inconsistent with the arbitration agreement, nor shall it imply a waiver thereof.

21 **Jurisdiction of arbitral tribunal**

What is the procedure for disputes over jurisdiction if the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

The arbitral tribunal is empowered to rule on its own jurisdiction and, to this end, examine the validity of the arbitration agreement. A finding that the contract is null and void shall not entail the nullity of the arbitration agreement that it contains. The arbitral tribunal’s decision that it has jurisdiction may only be contested together with the award on the main issue and through the same proceedings. The Court may, at the request of a party, rule on the merits of the arbitral tribunal’s decision that it lacks jurisdiction. The fact that a party has appointed an arbitrator does not prevent it from claiming that the arbitral tribunal lacks jurisdiction.

The asserting party shall raise an objection that the arbitral tribunal does not have jurisdiction not later than its communication of the first written pleadings. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. In either case, the arbitral tribunal may admit a later plea if it considers the delay justified.

**Arbitral proceedings**

22 **Place and language of arbitration**

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

If the parties failed to agree, the arbitrators determine the language of the arbitral proceedings and the place of arbitration. If neither the parties nor the arbitrators determined the place of arbitration, the place where the award is rendered is deemed to be the place of arbitration. Unless otherwise agreed by the parties, and after consulting with them, the arbitral tribunal may hold its hearings and meetings in any other location that it considers appropriate.

23 **Commencement of arbitration**

How are arbitral proceedings initiated?

The BJC provides that the arbitral proceedings start on the date on which an arbitration application is received by the respondent, unless otherwise agreed by the parties.

If the new 2013 CEPANI Arbitration Rules apply, the date of commencement of the arbitral proceedings is the date on which the secretariat receives the request for arbitration and the payment of the registration costs. The request shall include information about the parties, their counsel and the contact details; a succinct recital of the nature and circumstances of the dispute giving rise to the claim; a statement of the relief sought, a summary of the grounds for the claim, and, if possible, a financial estimate of the amount of the claim; all relevant information regarding the number of arbitrators and the nomination procedure; any comments as to the place of the arbitration, the language of the arbitration and the applicable rules of law. The claimant shall provide copies of all agreements, in particular the arbitration agreement. The claimant shall attach to the request proof of its dispatch to the respondent. The request and the documents annexed thereto shall be supplied in a number of copies sufficient to provide one copy for each arbitrator and one for the secretariat. Under the BJC or the CEPANI Rules, there is no signature requirement.

24 **Hearing**

Is a hearing required and what rules apply?

Unless the parties have agreed that no hearings will be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party. In any case, the parties shall be treated with equality and each party shall be given a full opportunity to present its case, pleas in law and arguments in conformity with the principle of adversarial proceedings and the principle of fairness of debate. If there is a hearing, the chairman of the arbitral tribunal will set the schedule of the hearings and preside over them. If any party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Under the CEPANI Rules, arbitrators may decide the case solely on the basis of the documents submitted by the parties, unless the parties or one of them requests a hearing.

25 **Evidence**

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

The arbitral tribunal is free to assess the admissibility and weight of the evidence, unless otherwise agreed by the parties. The arbitral tribunal may hear any person but without administering an oath. It may call witnesses, appoint experts, organise site visits and order the personal appearance of the parties. It may also order a party to disclose documents on pain of a penalty payment. Additionally, under the new Law on Arbitration of 24 June 2013, the arbitrators have the power to rule on applications to verify the authenticity of documents and to rule on allegedly forged documents. For applications relating to authentic instruments, the arbitral tribunal will leave it to the parties to refer the matter to the Court of First Instance within a given time limit. The parties may challenge experts appointed by an arbitral tribunal in arbitration proceedings. A party may, with the consent of the arbitral tribunal, ask a court to order measures with regard to the taking of evidence.

The IBA Rules on the Taking of Evidence in International Arbitration are often considered as guidelines in the international arbitration proceedings.
Interim measures and sanctioning powers

28 Interim measures by the courts
What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

A party may seek interim measures from courts notwithstanding an arbitration agreement. A claim for conservatory or provisional measures may be brought before a court at any time of the proceedings and even prior to them. Only a state court can issue attachment orders.

29 Interim measures by an emergency arbitrator
Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

Chapter 6 of the BJC does not provide for an emergency arbitrator prior to the constitution of the arbitral tribunal. However, according to article 584 of the BJC, in cases of urgency and prior to the constitution of the arbitral tribunal, a party may request a Court of First Instance hearing for any interim relief provided that there is an application for article 584 of the BJC, in cases of urgency and prior to the constitution of the arbitral tribunal. However, the arbitral tribunal may order any interim or conservatory measures it deems necessary. As a general rule, the arbitral tribunal may order any interim or conservatory measures it deems necessary. However, the arbitral tribunal may not authorise attachment orders. Also, it cannot issue preliminary orders at the unilateral request of a party, before the other party is informed thereof (ex parte measures). Further, at the request of one of the parties, the arbitral tribunal may amend, suspend or terminate an interim or conservatory measure. The arbitral tribunal may require the party requesting an interim or conservatory order to provide appropriate security.

Decisions of the arbitral tribunal with regard to interim measures are recognized as binding and shall be enforced by the Court of First Instance irrespective of the country where such measures are issued. The conditions under which such a recognition or enforcement may be refused correspond to article 171 of the UNCITRAL Model Law:
- if such refusal is warranted on the grounds listed in article 1721 (answer to question 44);
- if the party has not complied with the arbitral tribunal’s decision with respect to the provision of security; or
- if the interim or conservatory measure has terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the state in which the arbitration takes place or under the law of which that interim measure was granted.

Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use ‘guerrilla tactics’ in arbitration?

Pursuant to article 1700.4 of the BJC, if a party holds a piece of evidence, the arbitral tribunal may enjoin it to disclose the evidence according to such terms as the arbitral tribunal shall decide and, if necessary, on pain of a penalty payment.

Article 23.1 of the new CEPANI Rules provides that in the conduct of the proceedings the arbitral tribunal and the parties shall act in a timely manner and in good faith. In particular, the parties shall abstain from any dilatory acts as well as from any other action having the object or effect of delaying the proceedings.

The IBA Guidelines on Party Representation in International Arbitration will most probably be used as a source of guidance in such cases.

Awards

32 Decisions by the arbitral tribunal
Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

Any decision of the arbitral tribunal shall be made by an absolute majority, unless the parties have agreed upon another type of majority. The parties are also free to decide that the chairman’s vote shall be decisive where no majority can be formed. The parties shall be given advance notice of the intention to make an award without the arbitrator refusing to participate in the deliberations or in the vote. The award is rendered in writing and signed by the arbitrators. Should one or more of the arbitrators be unable to sign, or refuse to do so, the reason shall be stated in the award; however, the award must bear at least as many signatures as are necessary to form a majority of arbitrators.
33 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

The only requirement, under Belgian legislation, if one or more of the arbitrators disagree with the award and refuse to sign it, is that it will have to be mentioned on the award and the parties shall be given advance notice.

34 Form and content requirements

What form and content requirements exist for an award?

The award must be rendered in writing and signed by the majority of arbitrators. 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 contain the decision, 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, the seat of arbitration and the place where the award is rendered. It is important that the award states the reasons upon which it is based. The lack of reasoning makes the award susceptible to challenge.

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.

35 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

The parties may determine the time limit within which the arbitral tribunal must render its award, or the terms for setting such time limit until the date on which the first arbitrator accepts his or her mission. If the parties have not set the time limit nor determined the terms for doing so, and if a period of six months has elapsed from the date on which all of the arbitrators have accepted their mission, the president of the Court of First Instance may, at the request of one of the parties, impose a time limit on the arbitrators. The president's decision is not subject to appeal. The mission of the arbitrators ends if the award is not rendered in a timely manner, unless this time limit is extended by an agreement between the parties.

Under the CEPANI Rules the arbitral tribunal shall render the Award within six months of the date of the Terms of Reference. However, this time limit may be extended pursuant to a reasoned request from the arbitral tribunal, or upon its own motion, by the secretariat.

36 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

The date of the award is decisive in respect of the arbitrators’ possibility to correct, interpret or supplement the award at their own initiative (see answer to question 41 with regard to the time limits for correction and interpretation). Parties may also request such measures but within one month of receipt of the award. This date is also important regarding the question of whether the arbitral tribunal is late in rendering its award. As a general rule, the award shall be rendered within a period of six months starting from the date on which the last arbitrator has been appointed unless the president of the Court of First Instance, at the request of one of the parties, extends this time limit.

The date of delivery of the award is decisive in respect of the time limits for requesting an additional award and challenging the award. Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within one month of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within two months. The default time limit for an appeal of the award is one month as of the award's notification if the parties have provided for that possibility in the arbitration agreement. The request for setting aside the award for the majority of the causes must be filed within three months of the date on which it was notified to the parties.

Finally, the new Belgian law on arbitration introduced the time bar for enforcement of an award. After a period of 10 years following the date on which the arbitral award is communicated, the condemnation pronounced by an award is time barred.

37 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

The arbitral tribunal shall make a final decision or render interlocutory decisions by way of one or several awards. If, during the arbitral proceedings, the parties come to a settlement, their agreement may be recorded in the form of an award on agreed terms. Such an award has the same status and effect as any other award on the merits of the case.

38 Termination of proceedings

By what other means than an award can proceedings be terminated?

The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

- the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute; and
- the parties agree on the termination of the proceedings.

39 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards?

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, the costs of the arbitration 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.

40 Interest

May interest be awarded for principal claims and for costs and at what rate?

In principle, arbitrators may award any type of interest provided they do not exceed the actual damages that the party incurred. The only restriction applies to compound interest, which may be awarded if the interest has accrued for at least one year and a formal request in its respect has been filed in writing during the proceedings.

Proceedings subsequent to issuance of award

41 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties’ initiative? What time limits apply?

A party may request the arbitral tribunal to correct any clerical, computational or typographical error, or any other error of a similar nature, provided it notifies its request to the other party within 30 days of the notification of the award, and unless the parties have agreed on another time limit. The arbitral tribunal may, on its own...
motion, correct any of the above-mentioned errors within 30 days of the date of the award.

A party may also request that the arbitral tribunal interpret a given point or passage of its award, provided the parties have so agreed and provided one party has notified its request to the other. The time limit for filing a request for interpretation is within 30 days of the notification of the award. If the arbitral tribunal considers the request founded, it shall correct or interpret its award within 30 days of the request. The interpretation is part of the award. The arbitral tribunal may, if necessary, extend the time limit in which it is allowed to correct or interpret its award. When the same arbitrators cannot be reunited, the request for interpretation or correction of the award shall be submitted to a court, whose president has jurisdiction to render the award enforceable in accordance with the applicable rules of jurisdiction.

42 Challenge of awards

How and on what grounds can awards be challenged and set aside?

The BJC provides for an opt-out system allowing the parties to agree to exclude any application for the setting aside of an award if there is no connection with Belgium other than the location of the seat of arbitration.

The time limit for initiating setting aside proceedings is three months since the award's notification to the parties. However, that time limit cannot start before the day on which the award can no longer be contested before the arbitrators. In order to challenge an award, a party shall file a writ of summons to the Court of First Instance. The grounds on which an arbitral award can be set aside are exhaustively listed in article 1717 BJC. The arbitral award may be set aside only if:

(a) the party making the application furnishes proof that:
   (i) a party to the arbitration agreement was under some incapacity or the arbitration agreement is not valid; or
   (ii) the party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case and that irregularity had affected the arbitral award; or
   (iii) the award deals with a dispute not provided for in, or not falling within, the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement, provided that, if the provisions of the award on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
   (iv) the award is not reasoned; or
   (v) the composition of the arbitral tribunal or the arbitral proceedings were not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of Part 6 of this Code; with the exception of an irregularity affecting the composition of the arbitral tribunal, such irregularities may however not give rise to a setting aside of the arbitral award if it is established that they have had no effect on the award; or
   (vi) the arbitral tribunal has exceeded its powers; or
   (b) the Court of First Instance finds:
      (i) that the subject-matter of the dispute is not capable of settlement by arbitration; or
      (ii) that the award is in conflict with public policy; or
      (iii) that the award was obtained by fraud.

It is important to know that the Court of First Instance may remit an award to the arbitral tribunal in order to ‘save’ an award. Where appropriate and if so requested by a party, the Court may suspend the setting-aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take an action which will eliminate the grounds for setting aside.

A specific feature of Belgian law on arbitration is the possibility to appeal an award if the parties have provided for that possibility in the arbitration agreement. An appeal must be filed before another arbitral tribunal and is not admissible before the court.

43 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

Pursuant to article 1717.2 of the BJC, annulment proceedings are conducted before the Court of First Instance, with no possibility to go to the Court of Appeal. However, article 609 of the BJC gives a possibility to file for ‘cassation’ with the Supreme Court but only on limited grounds.

44 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

Generally, courts in Belgium tend to look favourably upon enforcing awards. The Court of First Instance has jurisdiction over an application relating to the recognition and enforcement of an arbitral award rendered in Belgium or abroad. A party should file an application to the Court of First Instance of the seat of the Court of Appeal in the jurisdiction of which the person against whom the enforcement is requested has his domicile or, in the absence of a domicile, his usual place of residence or, where applicable, its registered office or, failing this, its place of business or branch office. If that person is neither domiciled in, or is a resident of, Belgium, nor has its registered office, place of business or branch office in Belgium, the application is made to the Court of First Instance of the seat of the Court of Appeal in the jurisdiction of which the award is to be enforced. The applicant shall enclose with his request the original copy or a certified copy of the arbitral award and of the arbitration agreement.

The award shall no longer be contested before the arbitrators or arbitrators declared the award to be provisionally enforceable regardless of any potential appeal. Besides adopting all grounds for refusing recognition or enforcement listed by the Model Law, the BJC provides two additional grounds: lack of reasons on which an award is based when such reasons are mandatory pursuant to the law applicable to arbitration proceedings; and the excess of mandate by an arbitral tribunal. Additionally, pursuant to article 1127 of the BJC, the enforcement judge may, at the request of a party, suspend provisionally, in whole or in part, the enforcement of an award.

45 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

The setting aside of an award by the courts at the place of arbitration does not prevent the award’s recognition and enforcement in Belgium.

46 Cost of enforcement

What costs are incurred in enforcing awards?

If the enforcement of the award is sought through legal proceedings, a registration tax of 3 per cent of the total amount awarded is levied. After the Court holds to enforce an award, there will also be the costs related to the bailiff’s participation.
Update and trends

The latest development in the field of arbitration in Belgium is a major reform of the Law on Arbitration. Belgium has made a revolutionary step towards harmonisation of its legislation on arbitration with the UNCITRAL Model Law, as amended in 2006. The travaux préparatoires mention that inspiration was drawn from the national arbitration laws of Germany, Switzerland and France.

The main goals of the reform are to clarify legal uncertainties, to increase the efficiency of arbitration by facilitating the intervention of domestic courts and to enhance Belgium’s position as a forum for arbitration by restating that Belgium is open to arbitration and offers modern and progressive legislation.

Important changes brought by the reform include: centralisation and ‘arbitration specialisation’ within five courts of first instance that have their seat with the courts of appeal; fast-track proceedings before the president of the Court of First Instance for many arbitration related claims; a detailed set of rules for interim measures by an arbitral tribunal; and a shortened list of grounds for setting aside an award.

As to jurisprudence, the decision from the Belgian Supreme Court in United Antwerp Maritime Agencies (Unamar) NV v Navigation Maritime Bulgarie (NMB) shall soon clarify whether certain provisions of the Law of 13 April 1995 on commercial agency contracts have such mandatory character that they should be applied even though the parties agreed to arbitration under Bulgarian law. Regarding investment arbitration, Belgium is currently a respondent in the ICSID case Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v Kingdom of Belgium (ICSID Case No. ARB/12/29). This is the first case where Belgium has been sued pursuant to a BIT. The claimant insurance group is seeking compensation of US$2.3 billion for the loss on its investment in Fortis, a Belgian-Dutch financial group.

Other

47 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

Traditionally, the rules of conduct of Belgian Bar Associations, like in many other civil law countries, have prohibited their members from contacting witnesses. Any preparation of witnesses by attorneys was considered as an influence on a witness obstructing the course of justice. Such strict regulations led to a rare use of witness evidence in court proceedings. Consequently, some bar associations introduced exemptions to their rules of conduct.

For example, as early as 26 June 1989, the Dutch-speaking Brussels Bar allowed its members to contact witnesses in international arbitration cases. However, only since 11 January 2011 has this exemption became applicable to domestic arbitration as well. The French-speaking Brussels Bar in a decision of 12 October 2010 adopted an exemption to its professional rules and allowed counsel to have prior contact with witnesses for the purposes of written statements and oral hearings in international or domestic arbitration and other alternative dispute resolution proceedings, such as mediation or conciliation.

Besides elevating the rights of Belgian lawyers regarding taking witness evidence to the same level as their colleagues from other jurisdictions, the initiative increases the role of witness evidence in domestic arbitration. By facilitating the collection and presentation of oral evidence, the authorisation of preparatory contacts with witnesses offers a true alternative to Belgian litigation proceedings, which may enhance the use of arbitration in Belgium.

The tribunal may order a party to disclose documents subject to the same rules as used in court proceedings (ie, only if there are serious grounds to believe that the documents held by the party contain evidence regarding a fact that is relevant and material for the outcome of the proceedings). The production of certain types of documents may be restricted due to legal privileges. In arbitration, parties have freedom to agree on the rules applicable to the production of evidence. The IBA Rules of Evidence might be used as guidelines for the disclosure process.

48 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

The restrictions on the appearance of foreign lawyers in Belgian court proceedings are not applicable in arbitration. Each party has the right to be represented by anyone specifically empowered in writing and admitted by the arbitral tribunal. Foreign practitioners will be subject to the usual visa requirements depending on their citizenship. If a foreign practitioner works in Belgium for longer than three months he or she becomes obliged to pay income taxes.
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