

BELGIUM

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

MAXIME BERLINGIN AND LOUIS LANTONNOIS
OF FIELDFISHER

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Due to its pragmatic, arbitration-friendly legal environment, Belgium is an attractive location for international arbitral proceedings. Belgium is a multilingual country and home to many EU and international institutions. The Belgian Arbitration Act is based on the UNCITRAL Model Law, which is well known by arbitration practitioners around the World. The leading arbitration institution in Belgium is CEPANI.

Key places of arbitration in the jurisdiction	Brussels, the capital of Belgium and home to many European Union institutions, has the complete range of facilities needed for arbitral proceedings.
Civil law / Common law environment?	Civil law.
Confidentiality of arbitrations?	The Belgian Arbitration Act does not expressly provide for confidentiality obligations. However, hearings are usually held behind closed doors and awards are not published.
Requirement to retain (local) counsel?	This is common practice but not legally required.
Ability to present party employee witness testimony?	The parties may submit employee witness testimony. The arbitral tribunal has discretion to consider such evidence.
Ability to hold meetings and/or hearings outside of the seat?	The parties may choose to hold meetings outside of the seat. Unless the parties have agreed on a specific venue, the arbitral tribunal has discretion to decide where to hold hearings and meetings.
Availability of interest as a remedy?	This depends on the applicable substantive law. The arbitral tribunal may award (compound) interest.
Ability to claim for reasonable costs incurred for the arbitration?	The arbitral tribunal has discretion to determine the allocation of costs. It must decide which party shall bear the costs incurred for the arbitration or in which proportion the costs are to be divided between the parties.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Belgian lawyers may not charge contingency fees. Third-party funding is allowed but not common.
Party to the New York Convention?	Yes, with the reservation of reciprocity.
Other key points to note?	<ul style="list-style-type: none"> • The parties can agree to exclude an application to set aside the arbitral award if none of the parties is Belgian. • The Belgian Arbitration Act and case law are based on the principle of <i>favour arbitrandum</i>. There is a positive attitude towards arbitration. • Belgium is often chosen as the seat of arbitration since it is a multilingual country and home to European Union and other international institutions.
WJP Civil Justice score (2019)	Belgium ranks 15 th out of 126 countries, with a score of 0.76.

ARBITRATION PRACTITIONER SUMMARY

The Belgian Arbitration Act is closely modeled on the UNCITRAL Model Law, with some specificities drawn from Belgian arbitration practice.

The Belgian Arbitration Act applies to both international and domestic arbitration when the seat of arbitration is in Belgium.

The Belgian Arbitration Act and case law are based on the principle of *favour arbitrandum*. There is a positive attitude towards arbitration.

Date of arbitration law?	Arbitration in Belgium is governed by Part VI of the Judicial Code adopted on 24 June 2013 (the " Belgian Arbitration Act "), amended on 25 December 2016 and 18 June 2018.
UNCITRAL Model Law? If so, any key changes thereto?	The Belgian Arbitration Act is mainly based on the UNCITRAL Model Law, with specificities drawn from Belgian arbitration practice.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Only five courts can hear arbitration-related matters (<i>i.e.</i> , the Brussels, Liège, Mons, Ghent and Antwerp Courts of First Instance). Moreover, within these courts, arbitration-related cases are usually assigned to a specific division (<i>chambre/kamer</i>) to ensure a certain level of knowledge and experience.
Availability of <i>ex parte</i> pre-arbitration interim measures?	The courts may grant <i>ex parte</i> pre-arbitration interim measures.
Courts' attitude towards the competence-competence principle?	The competence-competence principle is widely accepted in Belgium. The Judicial Code expressly provides that an arbitral tribunal may rule on the question of its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. An arbitral tribunal may rule on its jurisdiction either as a preliminary question or in the award on the merits. The arbitral tribunal's decision that it has jurisdiction may only be contested together with the award on the merits. However, at the request of a party, the court of first instance can rule on the merits of the arbitral tribunal's decision that it lacks jurisdiction.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	The grounds for annulment of an award are the same as in the New York Convention. However, having regard to the specificities of Belgian arbitration practice, three additional grounds are included in the Judicial Code: the award is not reasoned; the arbitral tribunal exceeded its powers (<i>e.g.</i> , by not complying with the timing to render the award); the award was obtained by fraud.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Courts cannot recognize and/or enforce awards which have been annulled at the seat of arbitration.

Other key points to note?

- The parties can agree to exclude an application to set aside the award when neither party is Belgian.
- Partial awards are recognized and enforced in accordance with the New York Convention.
- Arbitration agreements need not be in writing in order to be valid.

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law?

The Belgian Arbitration Act is largely based on the UNCITRAL Model law.

The Arbitration Act is found in Part VI of the Judicial Code and applies to both domestic and international arbitration when the seat of arbitration is in Belgium.

As the UNCITRAL Model Law concerns only international commercial arbitration, the Belgian Arbitration Act includes some specificities drawn from Belgian arbitration practice and comparative legal studies.

The Belgian Arbitration Act differs from the UNCITRAL Model Law¹ on a number of minor points, including:

- the parties can opt out of the possibility to set aside the award;
- the arbitral tribunal cannot order *ex parte* interim/preventive measures;
- the arbitral tribunal is not allowed to amend, suspend or terminate the interim measures *ex officio*;
- the parties to an arbitration seated in Belgium may not agree that the award need not be reasoned;
- absence of reasons, excess of powers (*e.g.*, by not complying with the timing to render the award) and the existence of fraud are additional grounds to set aside an award rendered in arbitration seated in Belgium and will prevent recognition and enforcement in Belgium.

1.2 When was the arbitration law last revised?

Part VI of the Judicial Code was adopted on 24 June 2013 (the “**Belgian Arbitration Act**”) and slightly amended on 25 December 2016 and 18 June 2018.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The arbitration agreement is governed by Belgian law when the seat of arbitration is located in Belgium or when the parties have agreed accordingly.²

When the seat of arbitration is not located in Belgium or when the parties have not reached an agreement on this point, the courts will apply the rules of private international law.³

In practice, when the seat of arbitration is not located in Belgium or when the parties have not reached an agreement, the law governing the agreement in which the arbitration clause is contained will often also govern the arbitration.

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Yes, the principle of severability of arbitration agreements is provided for by Article 1690 §1 of the Judicial Code pursuant to which an arbitration clause/agreement that forms part of a contract shall be treated as an agreement independent of the other contract terms.

¹ Projet de loi modifiant la sixième partie du Code judiciaire relative à l'arbitrage, *Doc., Ch.*, 2012-2013, n° 2743/001, available at: <https://www.lachambre.be/FLWB/pdf/53/2743/53K2743001.pdf>.

² Article 1676 §6 Judicial Code.

³ Keeping in mind that EU Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I) expressly excludes arbitration agreements from its scope (Art. 1(2)(e)).

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

The Belgian Arbitration Act defines an arbitration agreement as “an agreement by which the parties submit to arbitration all or certain disputes which have arisen or may arise between them in respect of a legal relationship, whether contractual or not.”⁴

The Belgian Arbitration Act does not impose specific formal requirements for the validity of an arbitration agreement. In particular, an arbitration agreement need not be in writing in order to be valid.⁵ Oral agreements are valid under Belgian law, provided they can be proven.

Consequently, an arbitration agreement need only meet the regular validity requirements applicable in Belgium, namely (i) there must be a valid object (ii) and a valid cause, (iii) the parties must have legal capacity to enter into the agreement and (iv) the parties must consent to the agreement.

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

As stated above, an arbitration agreement requires the consent of the parties in order to be enforceable against them. Hence, a party relying on an arbitration agreement must (be able to) prove the express or implied consent of the parties to the agreement.

However, despite this clear rule, a number of situations are identified in the legal literature where a person who has not consented to an arbitration agreement is deemed bound by the agreement. Examples include inheritance, representation, subrogation, assignment, transfer of a contract, etc.⁶

2.5 Are there restrictions to arbitrability?

Under Belgian law, as a matter of principle, any pecuniary claim can be submitted to arbitration. For non-pecuniary claims, arbitration is allowed if it is possible to conclude a settlement agreement.⁷

However, there are a number of exceptions to these rules. For some matters, a decision to submit the issue to arbitration may only be taken after a dispute has arisen. This is the case, for instance, with disputes arising from employment contracts⁸ and certain insurance contracts (e.g., car or fire insurance). In these cases, the parties may validly decide to resolve their dispute through arbitration only once the dispute has arisen.

2.5.1 Do these restrictions relate to specific domains (such as IP, corporate law etc.)?

In addition to the general principles set out above, Belgian law provides for certain restrictions on arbitrability in specific areas, such as:

- tax matters;
- bankruptcy and judicial reorganisation procedures (*procédure de réorganisation judiciaire/gerechtigde reorganisatie*);
- labour law disputes;
- certain insurance matters;
- residential lease agreements;
- with respect to intellectual property rights, recourse to arbitration depends on the type of right at stake, e.g., disputes relating to compulsory licences or the expiry of a patent are not arbitrable.

⁴ Article 1681 Judicial Code.

⁵ Under the previous Arbitration Act, a written *instrumentum* was required.

⁶ M. BERLINGIN, “L’extension de la convention d’arbitrage à des tiers participant à l’exécution du contrat au regard du droit belge”, *b-Arbitra 2015/1*, pp. 144-145 ; N. BASSIRI and M. DRAYE (eds.), *Arbitration in Belgium*, Alphen aan den Rijn, Kluwer International, 2016, 395 ; PH. DE BOURNONVILLE, *L’arbitrage*, Bruxelles, Larcier, 2016, para. 194.

⁷ Article 1676 §1 Judicial Code.

⁸ Article 1676 §5 Judicial Code.

2.5.2 Do these restrictions relate to specific persons (i.e., State entities, consumers etc.)?

There are few restrictions with respect to specific persons. Under Belgian arbitration law, a distinction is made between private and public legal entities (such as the State, municipalities, public services, etc.). Generally, private legal entities have legal capacity to settle a dispute through arbitration.

Unless otherwise provided by law, public legal entities may only enter into an arbitration agreement if the object thereof is to resolve a dispute relating to an agreement. Moreover, public legal entities may enter into an arbitration agreement for all matters determined by law or royal decree, as determined by the Council of Ministers.⁹ For example, Article 29 of the articles of association of the National Bank of Belgium authorizes the management committee of the National Bank to settle disputes (through arbitration).

Furthermore, autonomous public companies (such as the postal service, railway company, etc.) are also allowed to settle their disputes through arbitration provided, however, that arbitration agreements with natural persons may only be entered into after the dispute has arisen.¹⁰

Finally, arbitration agreements between businesses and consumers are not enforceable, unless the agreement is entered into after the dispute has arisen.¹¹

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

The court before which a dispute that forms the object of an arbitration agreement is brought shall declare itself without jurisdiction at the request of a party made prior to any other plea or defence (*in limine litis*) unless the court finds that the arbitration agreement is null and void with regard to the dispute or has been terminated.¹²

Where such an action is pending before a court, arbitral proceedings may nevertheless be commenced or continued, and an award may be rendered.¹³

3.1.1 If the place of the arbitration is inside of the jurisdiction?

This makes no difference.

3.1.2 If the place of the arbitration is outside of the jurisdiction?

This makes no difference.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

Foreign or domestic arbitrators are allowed to issue anti-suit injunctions in support of arbitration.

⁹ Article 1676 §3 Judicial Code.

¹⁰ Article 14 of the Act of 21 March 1991 on the reform of certain public economic companies.

¹¹ Article VI.83(23) of the Belgian Code of Economic Law.

¹² Article 1682 §1 of the Judicial Code. See also, M. BERLINGIN, "L'exception de juridiction fondée sur une convention d'arbitrage: un *momentum* à respecter", *b-Arbitra*, 2019/1, p. 207 *et seq.*, note on the Brussels Court of Appeal's decision of 25 October 2018, R.G. 2013/AR/1830.

¹³ Article 1682 §2 Judicial Code.

As the Court of Justice of the European Union ruled in the *Gazprom* case (C-536/13), such injunctions issued by an arbitral tribunal are compatible with the Brussels I Regulation¹⁴, which is not the case for anti-suit injunctions issued by the domestic courts.¹⁵

The enforceability of such an injunction falls under the scope of the New York Convention and, as the case may be, under Article 1697 (*recognition and enforcement of interim measures*) and Article 1721 (*recognition and enforcement of awards*) of the Judicial Code.¹⁶

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunction but not only)

In some cases, the Belgian courts may intervene in arbitration regardless of the place of arbitration and notwithstanding any clause to the contrary.¹⁷

In this respect, the Belgian courts are entitled to grant interim and preventive measures before or during arbitral proceedings even if the seat of the arbitration is located outside Belgium.¹⁸

In addition, when an arbitral tribunal orders interim and preventive measures, such measures shall have binding effect and be recognized as binding and enforced by the court of first instance regardless of the country in which the measures were issued, subject, of course, to the grounds for the refusal of recognition and enforcement provided for by Article 1697 of the Judicial Code,¹⁹ *i.e.*:

- if the refusal is based on a ground for refusal of the recognition and enforcement of an award (*e.g.*, lack of reasoning); or
- if the potential arbitral tribunal's decision with respect to the provision of security has not been complied with; or
- if the interim and preventive measure has been 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 whose law the interim measure was granted; or
- if the court of first instance finds that:
 - the subject matter of the dispute is not arbitrable; or
 - the recognition or enforcement of the measure would be contrary to public policy.

Furthermore, subject to the agreement of the arbitral tribunal, a party may petition the president of the court of first instance ruling as in summary proceedings (*comme en référé/zoals in kort geding*) to order any measure with respect to the gathering of evidence.²⁰

4. The conduct of the proceedings

4.1 Can parties retain outside counsel or be self-represented?

Both situations are possible. In practice, in most arbitration cases, the parties are assisted by outside counsel, which is highly advisable.

¹⁴ Regulation (EC) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

¹⁵ N. BASSIRI and M. DRAYE (eds.), *op. cit.*, para. 259-260.

¹⁶ N. BASSIRI and M. DRAYE (eds.), *op. cit.*, para. 260-261.

¹⁷ Article 1676 §8 Judicial Code.

¹⁸ Article 1683 Judicial Code.

¹⁹ Article 1696 Judicial Code.

²⁰ Article 1708 Judicial Code.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

Arbitrators must be independent and impartial. In this respect, when a person is about to be appointed as an arbitrator, s/he should disclose any circumstances likely to give rise to legitimate doubts regarding his/her independence and/or impartiality.

As from the date of appointment and throughout the arbitral proceedings, arbitrators must disclose any new circumstances likely to be of such a nature without delay.²¹

It is complicated to determine whether the failure to disclose a circumstance giving rise to legitimate doubts as to an arbitrator's independence or impartiality is sufficient to challenge the arbitrator's appointment, as much depends on the circumstances of the case. Obviously, failure to disclose a (new) circumstance which raises questions as to an arbitrator's independence or impartiality is a ground for legitimate concern regarding that person's independence or impartiality. Hence, depending on the factual circumstances, this could be sufficient to challenge the arbitrator's appointment.

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of ad hoc arbitration)?

In the event of difficulty to form an arbitral tribunal, the president of the court of first instance ruling as in summary proceedings (*comme en référé/zoals in kort geding*) shall appoint one or more arbitrators at the request of a party, unless the arbitration agreement provides for another appointment procedure.²²

When appointing an arbitrator, the president of the court of first instance shall consider any qualifications required by the agreement as well as considerations likely to ensure the appointment of independent and impartial arbitrators.²³

4.4 Do courts have the power to issue interim measures in connection with arbitrations?

Yes, the courts are allowed to grant interim or measures before or during arbitration. A request for interim measures is not incompatible with an arbitration agreement and does not imply the waiver by either party of recourse to arbitration.²⁴ This being said, some legal scholars argue that one must consider that, in order not to violate the formal choice made by the parties through their arbitration agreement, claims for interim measures must be decided as a matter of priority by arbitral tribunals.²⁵

4.4.1 If so, are they willing to consider *ex parte* requests?

The Belgian courts may grant interim measures on the basis of an *ex parte* request.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

Pursuant to Article 1699 of the Judicial Code, notwithstanding any agreement to the contrary, the parties must be treated equally and each party shall be given a full opportunity to present its case, pleas in law and

²¹ Article 1686 Judicial Code.

²² Article 1685 §§ 3 and 4 Judicial Code.; see also, C. DE BOE AND M. BERLINGIN, "La mission du juge étatique avant l'instance arbitrale et pendant ses prémices", in *L'arbitre et le juge étatique, Etudes de droit comparé à la mémoire de Giuseppe Tarzia*, Brussels, Bruylant, 2014, para. 53 *et seq.*

²³ Article 1685 §5 Judicial Code.

²⁴ Article 1683 Judicial Code..

²⁵ O. CAPRASSE, "Mesures provisoires et conservatoires en présence d'une convention d'arbitrage: conditions de l'intervention du juge des référés", *b-arbitra*, 2015/2, para. 343 *et seq.*

arguments in accordance with the principle of adversarial proceedings. The arbitral tribunal shall hence ensure that this requirement and the principle of a fair trial are respected.²⁶

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The Belgian Arbitration Act does not expressly provide for the confidentiality of arbitration proceedings. However, hearings are usually not public. Arbitration institutions often provide in their rules for the confidentiality of arbitration proceedings.

Despite the fact that arbitration proceedings are typically confidential, it is recommended to include a confidentiality clause in the arbitration agreement or in other documents governing the proceedings (e.g., the terms of reference).

4.5.2 Does it regulate the length of arbitration proceedings?

The Belgian Arbitration Act provides that the parties may determine the time limit within which the arbitral tribunal must render an award. In the absence of a provision to this effect, if the arbitral tribunal does not render an award six months after appointment of the last arbitrator, the president of the court of first instance may impose a deadline on the arbitral tribunal, at the request of a party.²⁷

4.5.3 Does it regulate the place where hearings and/or meetings may be held?

The parties are free to agree on the place of arbitration. In the absence of an agreement, the place of arbitration will be determined by the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties.²⁸

Unless the parties agree otherwise, the arbitral tribunal may, after consulting the parties, hold hearings and meetings at any place it deems appropriate.²⁹

4.5.4 Does it allow for arbitrators to issue interim measures?

Without prejudice to the court's authority to issue interim measures (see Section 4.4 above) and unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order interim or preventive measures it deems necessary in respect of the subject-matter of the dispute. However, the arbitral tribunal may neither authorise attachment orders, nor *ex parte* interim or preventive measures.

4.5.4.1 In the affirmative, under what conditions?

If the arbitration agreement does not exclude the power of the arbitral tribunal to order interim or preventive measures, few limits apply to such measures. The tribunal can order the measures "*it deems necessary*". The arbitral tribunal may, however, neither authorise attachment orders,³⁰ nor *ex parte* interim or preventive measures. The arbitral tribunal may require the party requesting an interim or preventive measure to provide an appropriate guarantee.

As mentioned above (see Section 3.3), interim or preventive measures ordered by an arbitral tribunal may be enforced by the Belgian courts at the request of a party.³¹

²⁶ Article 1699 Judicial Code.

²⁷ Article 1713 §2 Judicial Code.

²⁸ Article 1701 §1 Judicial Code.

²⁹ Article 1701 §2 Judicial Code.

³⁰ Article 1691 Judicial Code.

³¹ Article 1696 Judicial Code.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence?

Unless otherwise agreed by the parties, the arbitral tribunal is entitled to determine the admissibility of evidence and to assess its evidentiary value.³²

4.5.5.1 For example, are there any restrictions to the presentation of testimony by a party employee?

There are no such restrictions. The arbitral tribunal may hear any person, without an oath.³³

4.5.6 Does it make it mandatory to hold a hearing?

Unless the parties agreed that there will be no hearing(s), the arbitral tribunal must hold hearings at an appropriate stage of the proceedings if so requested by a party.³⁴

4.5.7 Does it prescribe principles governing the awarding of interest?

The Belgian Arbitration Act does not prescribe principles governing the awarding of interest.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

The Belgian Arbitration Act provides that the arbitral award must allocate the arbitration costs and decide which of the parties shall bear the costs or – as the case may be – in which proportion they shall be borne by the parties.³⁵

Unless the parties agree otherwise, the costs include (i) the fees and expenses of the arbitrators, (ii) the fees and expenses of the parties' counsel and representatives, (iii) the costs of services rendered by the institution in charge of administering the arbitration and any other costs arising from the arbitral proceedings.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

Belgian law does not provide for the immunity of arbitrators. Thus, under certain circumstances, arbitrators may be held liable.³⁶ However, it has been found that arbitrators cannot be held liable for an error in judgment.³⁷ Arbitration institutes often provide for a limitation of liability in favour of arbitrators.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

There are no particular concerns arising from potential criminal liability for any of the participants in arbitration proceedings.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

No. Under Belgian arbitration law, all awards must be reasoned.³⁸ Awards governed by foreign rules of law requiring reasoning must also be reasoned to be recognized and enforced in Belgium.

³² Article 1700 §3 Judicial Code.

³³ Article 1700 §4 Judicial Code.

³⁴ Article 1705 §1 Judicial Code.

³⁵ Article 1713 §6 Judicial Code.

³⁶ PH. DE BOURNONVILLE, *op. cit.*, 136.

³⁷ Brussels Court of Appeal, 8 January 2002, *J.T.*, 2002, para. 792.

³⁸ Article 1713 §4 Judicial Code; this differs from the UNCITRAL Model Law.

5.2 Can parties waive the right to seek the annulment of the award?

Parties can only waive their right to seek annulment of an award rendered in Belgium or abroad by expressly including such a waiver in the arbitration agreement and provided no party is (i) a Belgian national (or an individual domiciled or having his/her principal residence in Belgium) or (ii) a legal entity with its registered office, principal establishment or a branch in Belgium.³⁹ In other words, this option is only available when all parties to the arbitration are non-Belgian (or not established in Belgium).

It is important to note that the parties must expressly waive the right to seek annulment of the award in their arbitration agreement (or any further agreement). As a consequence, a provision contained in the chosen arbitration rules providing such a waiver is not sufficient.⁴⁰

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

Awards rendered by an arbitral tribunal in accordance with Belgian arbitration law must be in writing and state the reasons on which they are based (be justified). The award must be signed by the arbitrators.⁴¹

In addition, an award must contain various items of information such as the name and address of the parties and the arbitrators, the object of the dispute and the date and place of arbitration.⁴²

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

Provided this possibility has been provided for in the arbitration agreement, it is possible to appeal an arbitral award. Unless agreed otherwise, an appeal must be filed within one month from communication of the award.⁴³

An appeal shall be heard by an appeal panel of arbitrators and not by a domestic court.

In practice, the possibility to appeal an award is rarely provided for in arbitration agreements governed by Belgian law. As arbitration proceedings are preferred for reasons of time and cost efficiency, providing for such a possibility would undermine two important benefits of arbitration.⁴⁴

5.4.1 If yes, what are the grounds for appeal?

Belgian law does not stipulate specific grounds for appeal.

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

There is no distinction between domestic and foreign awards. That being said, if there is a treaty between Belgium and the country in which the award was rendered, the treaty shall prevail.⁴⁵ It should be noted that Belgium has ratified the New York Convention, with one reservation of reciprocity, meaning that Belgium will apply the New York Convention provided the award has been issued in a contracting State to the Convention. Other treaties which have been ratified by Belgium include:

- A bilateral treaty with France dated 8 July 1899;
- A bilateral treaty with The Netherlands dated 28 March 1925;

³⁹ Article 1718 Judicial Code.

⁴⁰ PH. DE BOURNONVILLE, *op. cit.*, 199.

⁴¹ The signature of a majority of the arbitrators is sufficient provided, however, that the reason for the absence of a signature is stated in the award.

⁴² Article 1713 Judicial Code.

⁴³ Article 1716 Judicial Code.

⁴⁴ G. KEUTGEN, G-A DAL, M. DAL, *op. cit.*, para. 42.

⁴⁵ Article 1721 §3 Judicial Code.

- A bilateral treaty with Germany dated 30 June 1958;
- A bilateral treaty with Switzerland dated 29 April 1959;
- A bilateral treaty with Austria dated 16 June 1959;
- The Convention for the Settlement of Investment Disputes between States and Nationals of Other States dated 18 March 1965 (the ICSID Convention).

It is admitted that the petitioner can choose to submit the enforcement proceedings to any of the applicable treaties or to the provisions of the Belgian Arbitration Act where these are more favourable.⁴⁶

An arbitral award rendered in Belgium or abroad may only be enforced after the court of first instance has ordered enforcement (*exequatur*) in whole or in part, which it can only do if the award can no longer be contested before the arbitrator(s) (*i.e.*, application for enforcement is inadmissible as long as the award may still be appealed) or if the arbitrator(s) have declared it to be provisionally enforceable notwithstanding the possibility of appeal.⁴⁷

An application for the recognition and enforcement of an arbitral award is made by filing an *ex parte* petition with the court of first instance in the appellate judicial district where the person against whom enforcement is requested is domiciled or, in the absence of a domicile, habitually resides or, where applicable, has its registered office or, failing this, a place of business or branch office.

If a person has no domicile, residence, registered office, place of business or branch in Belgium, the application must be filed with the court of first instance in the appellate judicial district where the award is to be enforced (*e.g.*, where the assets are located)⁴⁸

The Belgian Arbitration Act provides for a limited number of circumstances justifying the refusal of recognition or enforcement of an award, *viz.*:⁴⁹

- if a party against which recognition or enforcement is sought establishes that:
 - a party to the arbitration agreement was incapacitated or the agreement is invalid under its governing law or – failing any such indication – under the law of the country where the award was rendered; or
 - it was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case; in this case, recognition or enforcement of the arbitral award may not be refused if it is established that the irregularity had no effect on the arbitral award; or
 - the award deals with a dispute not contemplated by, or not falling within, the terms of the arbitration agreement, or it 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 portion of the award which contains decisions on matters submitted to arbitration may be recognised or enforced; or
 - the award is not reasoned whereas reasoning is required by the rules of law applicable to the arbitral proceedings under which the award was rendered; or
 - the composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties or, in the absence of such an agreement, was not in accordance with the law of the country where the arbitration took place; with the exception of an irregularity affecting the composition of the arbitral tribunal, such irregularities may however not give rise to a refusal to recognise or enforce the arbitral award if it is established that they had no effect on the award; or

⁴⁶ N. BASSIRI and M. Draye (eds.), *op. cit.*, para. 517

⁴⁷ Article 1719 §2 Judicial Code.

⁴⁸ Article 1720§§1-2 *juncto* Article 1680 §6 Judicial Code..

⁴⁹ *Ibid.*, Article 1721 Judicial Code..

- the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the laws of which, the award was made; or
- the arbitral tribunal has exceeded its powers; or
- if the court of first instance finds out (*ex officio*) that:
 - the subject-matter of the dispute is not capable of being settled by arbitration; or
 - the recognition or enforcement of the award would be contrary to public policy.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

No, annulment proceedings do not suspend the enforcement of an arbitral award in Belgium unless the parties agree otherwise.⁵⁰

Awards capable of being appealed may be enforced if the arbitral tribunal orders provisional enforcement notwithstanding the possibility of appeal.⁵¹ When such provisional enforcement has not been ordered in the award, the tribunal of first instance handling the request of *exequatur* cannot recognize and enforce an appealed award.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

Yes, when an award rendered abroad has been annulled, it can no longer be recognized and enforced by Belgian courts.⁵²

5.8 Are foreign awards readily enforceable in practice?

Yes.

6. Funding arrangements

6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?

Yes.

6.1.1 If so, what is the practical and/or legal impact of such restrictions?

Belgian lawyers may not charge contingency fees. Success fees are however permitted.

Third-party funding is authorized but rarely used in Belgium.

7. Is there likely to be any significant reform of the arbitration law in the near future?

No significant changes to the Belgian Arbitration Act are expected in the near future.

⁵⁰ PH. DE BOURNONVILLE, *op. cit.*, 2016, para. 194.

⁵¹ Article 1719 §2 Judicial Code.

⁵² Article 1721 §1(a)(vi) Judicial Code.