



Arbitration Guide
IBA Arbitration Committee

BELGIUM
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I. Background

- (i) **How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?**

While the majority of disputes in Belgium are decided by state courts, arbitration is an increasingly popular method of dispute resolution, especially in international business relationships.

Generally, the perceived advantages to arbitration are speed, confidentiality and flexibility of the proceedings and specialization of the arbitrators. At the same time, especially among small and mid-sized enterprises, costs are sometimes perceived as a concern. Hence, at the domestic level, arbitration is sometimes seen as a dispute resolution method more suitable for larger companies. At the international level, the neutrality of international arbitral tribunals and the use of an easily understandable language (generally English) make arbitration a popular method of dispute resolution, regardless of the size of the parties.

- (ii) **Is most arbitration institutional or *ad hoc*? Domestic or international? Which institutions and/or rules are most commonly used?**

No statistics are available on *ad hoc* arbitration in Belgium. Most institutional arbitrations in Belgium take place under the rules of CEPANI, the oldest and largest Belgian arbitration and mediation centre, located in Brussels, followed by arbitrations under the rules of international arbitration institutions, such as the ICC. There are also regional or industry-focused arbitral institutions. Among the cases handled by CEPANI, a little over 50 per cent are domestic, with the remainder at least involving one non-Belgian party. Arbitration proceedings are conducted in Dutch, French and English. In the vast majority of the cases, the seat of the arbitration is Brussels.

- (iii) **What types of disputes are typically arbitrated?**

Most disputes under CEPANI rules relate to cooperation/services agreements, transfers of shares, post-mergers and acquisitions, commercial contracts (distribution, agency, franchising) and construction.

- (iv) **How long do arbitral proceedings usually last in your country?**

CEPANI reports an average duration between the filing of the request for arbitration and the final arbitral award of approximately 13 months.

- (v) **Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?**

No statutory restrictions limit whether foreign nationals may act as arbitrators in Belgium. Moreover, the conditions imposed on attorneys to act before Belgian courts are not applicable to arbitration. Parties are therefore free to select the counsel of their choice, regardless of his nationality and admission to a bar association or law society.

II. Arbitration Laws

- (i) **What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

The Belgian law on arbitration (BLA) is included as Title VI in the Belgian Judicial Code (*Code judiciaire / Gerechtelijk Wetboek*) (BJC) and ranges from Article 1676 to 1722 BJC.

In 2013, Belgium entirely reformed its arbitration law and adopted the UNCITRAL Model Law with a number of additions. The BLA entered into force on 1 September 2013. In the *travaux préparatoires*, the Belgian legislator explained this change to reflect its desire to create an efficient arbitration-friendly legal framework. Under the same spirit, the BLA was fine-tuned on 30 December 2016 through the implementation of a few minor changes and corrections.

The BLA applies indistinctively to both domestic and international arbitrations with seat in Belgium, unless the parties have expressly or by implication excluded its application in a valid manner. However, parties cannot exclude the application of mandatory provisions of the BLA, a number of which are expressly listed in Article 1676, § 8 BJC.

- (ii) **Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

The BLA does not draw a distinction between domestic and international arbitration and generally applies to all arbitrations with seat in Belgium alike.

A few exceptions, however, apply. When none of the parties to an arbitration seated in Belgium is a Belgian national or resident, or a legal person with registered office or a branch office in Belgium, the parties may exclude the possibility to set aside the award in the arbitration agreement or by a later agreement. Furthermore, slightly different rules apply in situations where Belgian courts are seized in support of arbitration proceedings seated outside Belgium.

- (iii) **What international treaties relating to arbitration have been adopted (e.g. New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

Belgium adopted the 1958 New York Convention subject to the reciprocity reservation (ie Belgium will only apply the Convention to the recognition and enforcement of awards made in the territory of another contracting State). Belgium also adopted the European Convention on International Commercial Arbitration of 21 April 1961, as well as the Washington Convention on the Settlement of Investment Disputes.

- (iv) **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?**

The arbitral tribunal shall decide the dispute in accordance with the rules of law, unless the parties have provided otherwise (Art. 1710 BJC).

Where a choice of law has been made, the arbitral tribunal must apply the law chosen by the parties. Unless provided otherwise, any reference to the law of a State is deemed to refer directly to the substantive law of that State, with exclusion of its conflict-of-law rules (Art. 1710, § 1 BJC).

If no choice is made, the arbitral tribunal will determine the applicable substantive law by using the conflict of law rules it considers applicable. Arbitral tribunals should therefore use the *voie indirecte*, determining first the appropriate choice of law rule, to then apply this choice of law rule to determine the applicable substantive law (Art. 1710, § 2 BJC).

Arbitrators must apply rules of law and may only decide *ex aequo et bono* if they have been authorized to do so through an express agreement between the parties. (Art. 1710, § 3 BJC).

Finally, in all cases, arbitral tribunals must decide contractual disputes in accordance with the contract, taking into account relevant trade usages in case the dispute is between commercial parties (Art. 1710, § 4 BJC).

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

The BLA puts forward few requirements for the validity of an arbitration agreement.

In terms of substance, like any agreement under Belgian law, an arbitration agreement must have a valid object and cause and requires valid consent by parties having the capacity to contract. The key substantive requirement for an arbitration agreement under Belgian law is that it must express the intention of the parties to submit their dispute to a final resolution of their dispute through arbitration (Art. 1681 BJC). All existing or future disputes involving an economic interest - or if not, which are capable of being settled - may be submitted to arbitration. Limited exceptions to this general rule can be found in specific legislation (Art. 1676 BJC). Parties are further free to decide whether they want to include further procedural issues in their arbitration agreement. It is generally recommended to at least include a choice for institutional or *ad hoc* arbitration; the place of arbitration; a method for the appointment of arbitrators; and for the language of the arbitration. It is important to note that an arbitration agreement whereby one of the parties is given a preferential position regarding the appointment of the arbitrator(s) is invalid. This is no longer stated expressly in the BLA, but follows indirectly from the general equal treatment requirement in Article 1699 BJC.

Finally, the BLA does not put forward any formal requirements for arbitration agreements. Accordingly, unlike the New York Convention, Belgian law does not require an arbitration agreement to be in writing to be valid. The burden to prove the existence of the arbitration agreement lies on the party seeking to rely on such agreement. This burden may be satisfied, not only by a written and signed document, but by any other means that can establish a binding agreement to arbitrate between the parties, including an exchange of documents, letters, e-mails or other forms of electronic communication.

(ii) What is the approach of Courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an agreement will not be enforced?

Belgian courts generally have a pro-enforcement approach as soon as the intention of the parties to arbitrate is apparent. When a dispute falls within the scope of an arbitration agreement, the court must declare itself without jurisdiction at the request of either party, unless the arbitration agreement is not valid or has ceased to exist (Art. 1682, § 1 BJC). A defendant must raise its objection to the state court's jurisdiction *in limine litis*, that is, during the first submissions and prior to any defence on the merits. A failure to raise this objection in a timely fashion will be considered a waiver of the arbitration agreement.

As indicated above, an arbitration agreement that gives a preferential position to one party for the constitution of the arbitral tribunal is invalid and will not be enforced. Furthermore, an arbitration agreement may not be enforceable if it is irreparably pathological, or when an arbitration agreement is invoked where the dispute that has arisen is not arbitrable under Belgian law.

- (iii) **Are multi-tier clauses (eg, arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Multi-tier clauses are valid under Belgian law and do occur in practice.

If a clause containing an unequivocal obligation for the parties to take recourse to mediation prior to starting arbitration proceedings is raised before an arbitral tribunal, it should suspend the examination of the case at the request of a party (Art. 1725, § 2 BJC). Such request must be raised *in limine litis* (i.e. at the outset of the proceedings, prior to any defence on the merits) in order to be valid. The case may be resumed as soon as any party gives notification that the mediation has failed.

- (iv) **What are the requirements for a valid multi-party arbitration agreement?**

The BLA does not contain any specific requirements for multi-party arbitration agreements. Like bilateral arbitration agreements, a multi-party arbitration agreement must express the intention of all parties to submit disputes to arbitration.

Specific attention is required where the arbitration agreement contains a method to appoint the arbitral tribunal. In multi-party arbitrations, the rule that no party may have a preferential position to appoint members of the arbitral tribunal must be observed vis-à-vis all parties. Particular concerns in this connection may arise where multiple respondents would have different interests and could not jointly agree on an arbitrator, where the claimant(s) did get to appoint their arbitrator. One solution is to provide that in such case an appointing authority, for example an arbitral institution, shall appoint all members of the arbitral tribunal..

- (v) **Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

The BLA only requires a clear intention to arbitrate for the validity of an arbitration agreement. Within the limits put forward by due process restated in Article 1699 BJC, and provided that none of the parties is given a preferential treatment in the selection of the arbitrator(s), the parties are further free to

determine the modalities they see fit. Provided that these conditions are met, parties may agree on asymmetric clauses, and may therefore agree that the right to arbitrate is only given to one party.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

Pursuant to Article 1165 of the Belgian Civil Code (BCC), agreements only bind the signatories to the agreement and cannot be extended to third parties. This general rule applies equally to arbitration agreements. An extension of the arbitration agreement to non-signatories may, however, be possible under several legal theories such as consent by conduct, assignment of contract, subrogation and legal succession of parties.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – Courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

Pursuant to Article 1676 BJC, unless any restrictions exist in specific legislation, any dispute involving an economic interest may be submitted to arbitration. Disputes not involving an economic interest may be submitted to arbitration if they are available for settlement.

Under this definition, most commercial disputes are arbitrable, with the exclusion of certain particular issues reserved by specific laws to fall under the exclusive competence of courts.

Disputes arising from the termination of exclusive distributorship agreements and from commercial agency agreements remain one notable exception, despite an ongoing controversy: to the extent that the territory of the distributorship is Belgium or that the commercial agent is established in Belgium, such disputes are, under the existing prevailing case law, arbitrable only if the arbitrators are bound to apply the mandatory provisions of the Belgian statutes protecting distributors and commercial agents.

Specific legislation restricting the arbitrability of disputes can be found with regard to, for example, labour law, disputes involving consumers, and certain insurance contracts.

The issue of arbitrability is generally considered an issue of jurisdiction and will therefore in principle be assessed by arbitral tribunals as part of the *competence-competence* principle set out in Article 1697(1) BJC. State courts may, however,

have to assess arbitrability when a dispute falls within the scope of an arbitration agreement, either when dealing with a defence of denial of jurisdiction or at the enforcement stage or when an application to set aside is made.

Finally, unless excluded by specific laws, public legal entities may enter into arbitration agreements only if the object is to resolve a contractual dispute. The right for public entities to conclude arbitration agreements may, however, be extended by law or royal decree (Art. 1676, § 2 BJC).

(ii) What is the procedure for disputes over jurisdiction if Court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in Court proceedings?

When a dispute falls within the scope of an arbitration agreement, a court must declare itself without jurisdiction at the request of either party (Art. 1682, § 1 BJC).

Such objection to jurisdiction must be raised *in limine litis*, that is, in the first submissions and prior to any defence on the merits of the case and will, in principle, be decided by the court as a preliminary matter (thus before the merits of the dispute are reviewed).

Provided that such objection is timely raised, the participation of a party in court proceedings is not considered a waiver of a right to arbitrate. Furthermore, the fact that proceedings concerning the validity and/or enforcement of an arbitration agreement are initiated before a State court does not prevent the commencement and/or continuation of arbitration proceedings (Art. 1682, § 2 BJC).

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of *competence-competence* applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by Courts on the tribunal's jurisdiction?

The BLA confirms the *competence-competence* principle. Pursuant to Article 1690, § 1 BJC, the arbitral tribunal may rule on its own jurisdiction and examine, for this purpose, the existence and validity of the arbitration agreement.

A decision by which the arbitral tribunal assumes jurisdiction may only be contested together with the final award and by the same procedure (Art. 1690, § 4, first sentence BJC).

A decision by which the arbitral tribunal declares that it does not have jurisdiction, may be appealed before the court of first instance (Art. 1690, § 4, second sentence BJC).

V. Selection of Arbitrators

(i) How are arbitrators selected? Do Courts play a role?

The BLA gives prevalence to party autonomy, both in selecting the number of arbitrators and their method of appointment (Art. 1684, § 1 and 1685, § 2 BJC).

Parties may agree on the number of arbitrators, provided this is an odd number. There may be a sole arbitrator. Where an even number of arbitrators is provided for, an additional arbitrator shall be appointed by operation of law. Failing a determination of the number of arbitrators, the number of arbitrators shall be three (Art. 1684 BJC).

Parties may further agree on a method to appoint the arbitral tribunal, either directly or by reference to the rules of an arbitral institution. As indicated above, such method may not give a preferential treatment to a party.

Courts may only play a role if no method has been agreed, or if the agreed method does not allow to validly secure the appointment of an arbitral tribunal. This may be the case where the agreed method is inoperable or blocked, e.g. where a party, an arbitrator or an appointing authority fails to act (Art. 1680, § 1 and 1685, §§ 3 and 4 BJC). In this case, a party may turn to the president of the court of first instance for support. The president of the court must have due regard to any party agreement on arbitrator qualifications (Art. 1685, § 5 BJC).

The decision by the president to appoint an arbitrator is not subject to any recourse. As an exception to the general exclusion of any recourse against the president of the court's decisions under the BLA, a decision rejecting a request to appoint an arbitrator may be appealed before the Court of Appeal (Art. 1680, § 1 BJC).

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do Courts play a role in challenges and what is the procedure?

Arbitrators must be impartial and independent. Arbitrators have a statutory duty to disclose any circumstances likely to give rise to justifiable doubts as to their independence or impartiality. This is an ongoing duty, requiring an arbitrator to make additional disclosures of such circumstances at any time between the time of his or her appointment and the end of the arbitral proceedings (Art. 1686, § 1 BJC). The BLA does not include any guidelines on which specific situations require disclosure. It is generally considered that the arbitrator's failure to disclose a specific circumstances does not, in itself, constitute a ground for challenge.

In CEPANI arbitrations, some guidance can be found in the ‘Rules of Good Conduct for Procedures Organized by CEPANI’, which are added as Annex III to the CEPANI Rules (hereafter ‘CEPANI Rules of Good Conduct’). However, these rules do not contain an extensive list of guidelines for specific situations. In international arbitrations, arbitrators will therefore often refer to the detailed lists contained in the IBA Guidelines on Conflicts of Interest in International Arbitration for guidance.

A party may challenge an arbitrator when justifiable doubts as to his or her impartiality or independence exist, or if the arbitrator does not have the qualifications agreed upon by the parties. When a party appointed – or participated in the appointment of – the arbitrator, a challenge is only possible for reasons of which a party becomes aware after the appointment has been made (Art. 1686, § 2 BJC).

Parties may agree on a challenge procedure (1687, § 1 BJC). In practice, this is generally done by reference to institutional arbitration rules, which generally provide for a challenge mechanism.

Failing an agreed challenge procedure, the Parties may turn to the president of the competent court of first instance (Art. 1680, § 2 and 1687, § 2 BJC). The BLA provides for a two-tier procedure: within fifteen days of becoming aware of a circumstance giving rise to justifiable doubts, a party must notify a statement setting out the reasons for its challenge to the arbitrator. If an arbitrator does not resign within ten days after receiving such notification, the challenging party may turn to the president of the court of first instance, again within ten days. Pending a decision by the president of the court, the arbitral tribunal may continue the arbitration proceedings and make an award (Art. 1687 BJC). The decision of the president of the court is not subject to any recourse (cf. Article 1680, § 2 BJC).

In case of a resignation, failure to act or a successful challenge, the arbitrator shall be replaced in accordance with the rules governing his appointment (Art. 1689, § 1 BJC). Again, the president of the court of first instance may be turned to for subsidiary support (Art. 1680, § 1 and 1689, § 2 BJC). If the arbitrator who has resigned, failed to act or was successfully challenged was named in the arbitration agreement, the agreement shall in this case terminate by operation of law, unless the parties have provided or agree otherwise.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Any person above the age of 18 who is capable of entering into an agreement; is not under the supervision of a legal administrator; and has full voting rights may act as an arbitrator. The BLA does not contain any requirements or limitations with regard to education, nationality, experience or residence. Parties are free to

agree on such requirements and may furthermore agree to exclude certain categories of persons. This includes the right to restrict or exclude nationalities (Art. 1685, § 1 BJC).

The BLA prescribes a number of duties for arbitrators, such as the obligation for an arbitrator to complete his mission once accepted (Art. 1685, §7 BJC), the duty to be impartial and independent and the ongoing duty to disclose any circumstances that may give reasonable doubts as to such independence and impartiality (Art. 1686, § 1 BJC). The arbitral tribunal is further the guardian of due process and must ensure the fair and equal treatment of the parties (Art. 1699 BJC). However, no specific set of ethical rules for arbitrators exists. Nonetheless, a number of such ethical rules have been identified in legal doctrine: in addition to the obligations above, the arbitrator must make himself available and act with diligence, respect the confidentiality of the proceedings and make every effort to render an enforceable award.

Specific ethical rules may, moreover, be imposed by arbitration institutions. In CEPANI arbitrations, for example, arbitrators must commit to act in line with the CEPANI Rules of Good Conduct. These rules impose on arbitrators to regularly inform the CEPANI Secretariat of the progress of the arbitration; to immediately inform the Secretariat of any issues that could call into question his independence or impartiality; not to act as a representative or agent for the party which has appointed him or undertake any further bilateral contacts with this party or its counsel during the course of the arbitration; show utmost impartiality during the proceedings, especially when asking questions or suggesting an amicable settlement; proceed with diligence in rendering the award; and treat the arbitration proceedings as strictly confidential.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

The BLA requires arbitrators to be impartial and independent and imposes an ongoing duty to disclose circumstances likely to raise justifiable doubt as to his or her impartiality and independence (Art. 1686, § 1 BJC), but does not contain any specific rules or codes of conduct regarding conflicts of interest. In CEPANI arbitrations, the CEPANI Rules of Good Conduct contain some general guidelines and require arbitrators to communicate any potential issue to the CEPANI Secretariat. However, these rules do not contain any specific guidelines either.

In practice, in international arbitration proceedings seated in Belgium, arbitrators will tend to refer to the specific lists set out in the IBA Guidelines on Conflicts of Interest in International Arbitration for guidance.

VI. Interim Measures

- (i) **Can arbitrators enter interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in Courts?**

Unless the parties have agreed otherwise, arbitral tribunals have the power to order the interim or protective measures they deem necessary. Similar to courts, arbitrators can order three sorts of interim measures: preliminary measures of investigation, preliminary measures aimed at a temporary arrangement of the situation between the parties and (in case of urgency) interim relief. Arbitral tribunals may not, however, order the attachment of goods (Art. 1691 BJC)..

Parties may agree to exclude or limit the possibility for arbitrators to decide on interim or protective measures.

Arbitral tribunals finally decide or render interlocutory decisions by means of one or several awards (Art. 1713, § 1 BJC). The BLA does not put forward any requirements of form for interim or conservatory measures, which may therefore be issued under the form of either an award or a procedural order.

Arbitral awards may be enforced as such. Furthermore, regardless of the seat of the arbitration, Belgian courts enforce interim or conservatory measures issued as procedural orders, under generally the same conditions as arbitral awards. The Court may, however, require appropriate security (Art. 1696 BJC). Enforcement of interim or conservatory measures may only be refused on the grounds listed in Article 1697 BJC, which mirror the grounds for refusal of enforcement of arbitral awards discussed below.

To increase the chance of voluntary compliance, arbitrators may order a party to pay a penalty ("*astreinte*" / "*dwangsom*") in case of non-compliance with an injunction (Art. 1713, § 7 BJC and Articles 1385 *bis* through *octies* BJC). Arbitral tribunals may in any case draw the consequences they deem appropriate from a party's refusal to comply with its decision on interim measures, regardless of the form in which this decision was taken.

- (ii) **Will Courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the Arbitral Tribunal? Will any Court ordered provisional relief remain in force following constitution of the Arbitral Tribunal?**

The competent courts of first instance may grant provisional relief in support of arbitration proceedings, regardless of whether such arbitration is seated in Belgium or abroad. The court has the same powers as it does in relation to state

court proceedings, but shall take into account the “specific features” of arbitration (Art. 1698 BJC).

An application for interim measures from the courts is not considered a waiver of arbitration (Art. 1683 BJC).

Accordingly, with the exception of the possibility to order attachments or hear *ex parte* applications, the power of courts and tribunals to order interim or conservatory measures run parallel. While parties may restrict the powers of tribunals (Art. 1691 BJC), they may not restrict the court of first instance’s powers.

Court ordered provisional relief ordered prior to the constitution of the arbitral tribunal will in principle remain in force following the constitution of the arbitral tribunal. If the facts on which such provisional relief has been ordered have changed, a party may, however, always apply to the arbitral tribunal (or, in light of the circumstances, the court) for new provisional relief or a modification of the measures imposed.

(iii) To what extent may Courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal’s consent if the latter is in place?

The BLA provides the parties with an opportunity to seek support of the president of the court of first instance for obtaining “all necessary measures for the taking of evidence” (Art. 1680, §4 and 1708 BJC). Such measures may include measures to preserve evidence, to obtain the right to visit a site, to order a (third) party to produce documents, etc. The president’s decision is not subject to any recourse.

When the arbitral tribunal has been constituted, this recourse requires prior approval from the arbitral tribunal (Art. 1708 BJC). The tribunal may deny such approval if it is of the opinion that the intended measures are inadmissible or irrelevant for the ongoing proceedings and may impose a time limit for such an application. The tribunal is, moreover, not required to suspend the proceedings pending a ruling of the president of the court.

One important exception applies, which is, however, rare in practice. In case of a dispute regarding the forgery of authentic instruments (“*acte authentique*”/“*authentieke akte*”), the tribunal must give the parties the opportunity to bring the dispute before the competent court of first instance. The arbitral tribunal may impose a time limit (Art. 1680, § 5 and 1700, § 5 BJC). In this case, the arbitration is suspended by operation of law until the date on which the ruling of the court of first instance is notified by one of the parties. The court of first instance decides in first and last instance.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

‘American-style discovery’ does not exist in proceedings before Belgian courts and is considered to be inappropriate in arbitration proceedings by the unanimous Belgian doctrine.

Disclosure of documents is possible in litigation before the Belgian courts, albeit under very strict conditions and limited to a specific document only. The same restrictions do not apply to arbitration. Arbitral tribunals may order the production of documents according to the terms they deem appropriate and impose a penalty (“*dwangsom*” / “*astreinte*”) in case of non-compliance (Art. 1700, §4 BJC). This includes the possibility to order defined categories of documents, which is not available in proceedings before Belgian state courts.

Given their lack of *imperium*, arbitral tribunals cannot order production of documents by third parties. As discussed above, parties may in that case seek support of the president of the competent court of instance (Art. 1708 BJC).

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

If the parties have not agreed to the scope of disclosure or discovery, this will be determined by the arbitral tribunal after consulting the parties (Art. 1700, § 4 BJC).

The possibility for parties to agree or arbitrators to decide on a system for disclosure or discovery is not subject to particular limitations. It is, however, unanimously agreed in Belgian doctrine that US-style discovery is not appropriate in arbitration proceedings.

(iii) Are there special rules for handling electronically stored information?

The BLA does not contain any special rules or guidance for handling electronically stored information. Parties – and, absent any agreement between them, arbitrators – have full discretion to decide how to deal with electronically stored information.

VIII. Confidentiality

(i) **Are arbitrations confidential? What are the rules regarding confidentiality?**

The BLA does not contain any rules on the confidentiality of arbitration proceedings. The confidentiality of arbitration proceedings is left to party autonomy.

Arbitrations under CEPANI Rules are confidential unless there is a legal obligation to disclose or the parties have agreed otherwise (Art. 25 of the 2013 CEPANI Rules). These Rules further stipulate that arbitration hearings are not open to the public and that arbitral awards will not be published without prior consent of the parties. Finally, arbitrators are bound to confidentiality under the CEPANI Rules of Good Conduct.

Many institutional rules do, however, not contain such a provision. Absent any institutional provision to this effect, parties wishing to ensure the confidentiality of the arbitration proceedings and/or the information disclosed during such proceedings, must include a confidentiality clause in their (arbitration) agreement, or request the arbitral tribunal to include a confidentiality rule in the terms of reference or a procedural order.

(ii) **Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

The BLA does not contain any specific provisions on trade secrets and confidential information. Such issues may, however, be addressed by the parties in their agreement or be the object of statutory provisions in the law applicable to the contract and/or the parties. Absent any specific agreement between the parties and subject to any requirements under other the applicable laws, the arbitral tribunal has the power to decide on issues relating to trade secrets and confidentiality of information as part of its general power to conduct the proceedings in Article 1700, § 2 BJC.

(iii) **Are there any provisions in your arbitration law as to rules of privilege?**

While the BLA itself does not contain any specific provisions on privilege of information, certain information may be privileged under the applicable law pursuant to rules of professional secrecy: for example, under Belgian law, members of certain professions (such as doctors, physicians, pharmacists and attorneys) may not disclose information obtained through their profession. A violation of this principle may give rise to criminal penalties pursuant to Article 458 of the Criminal Code.

IX. Evidence and hearings

- (i) **Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? Is so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

The IBA Rules on the Taking of Evidence are well known amongst arbitration practitioners and arbitrators in Belgium. No prevailing practice exists, however, with regard to their application. These Rules may be adopted as binding, but are more often referred to as a source for guidance. Even when the Rules are not adopted or explicitly referred to, arbitral tribunals sometimes seek guidance in the IBA Rules as a codification of ‘rules of best practice in international arbitration’.

- (ii) **Are there any limits to arbitral tribunals’ discretion to govern the hearings?**

Article 1700, § 2 BJC confers the discretion to the arbitral tribunal to set the procedural rules and place of arbitration when no agreement between the parties exists. Failing such an agreement within the time limits fixed by the tribunal, the arbitration procedure and the place of arbitration are therefore determined by the arbitral tribunal. The parties and the arbitral tribunal are free to organise the arbitral procedure as they see fit, within the limits imposed by the general principles of equality between the parties, the right of defence and the right to a fair trial (Art. 1699 BJC).

- (iii) **How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

The BLA does not contain any rules on witness testimony and, more generally, allows parties and arbitrators maximum flexibility in the organization of the taking of evidence in arbitral proceedings, including the way in which witness testimony is presented (Art. 1700, § 4 BJC).

It is very exceptional to bring witnesses evidence in commercial disputes in Belgian state courts. Furthermore, cross examination does not exist, as witnesses are questioned by the court rather than parties’ counsel.

The use of witnesses is, however, becoming increasingly common in arbitral proceedings. In line with international arbitration practice, the appearance of witnesses will usually consist of a written phase, whereby the party wishing to rely on a witness will submit a written testimony alongside its written submissions first, in order to allow the opposing party but also the arbitral tribunal to assess whether oral testimony would be necessary. On its own motion or at the request

of the other party, the arbitral may subsequently order that the witness will be heard during a witness hearing. Generally, such witness hearings will combine elements of both common and civil law traditions: while parties' counsel will be given the opportunity to direct and cross-examine the witness, the hearing is administered by the arbitral tribunal, which may intervene and ask its own questions.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

The BLA does not restrict who can appear as witnesses and allows parties and arbitrators to organize the taking of evidence – including witness evidence – in arbitral proceedings as they see fit. The arbitral tribunal will thereby decide the weight to give to the evidence brought forward (Art. 1700, §3 and 4 BJC).

Witnesses do not take an oath or affirmation (Art. 1700, § 4 BJC). In practice, arbitral tribunals will often nonetheless point out the importance of giving truthful testimony.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative) and the testimony of unrelated witnesses?

The BLA does not draw a distinction between different types of witnesses and leaves it up to the arbitral tribunal to decide the weight to give to the evidence brought forward (Art. 1700, § 3 BJC).

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

The BLA confirms the possibility to hear experts during a hearing (Art. 1707, § 3 BJC), but does further not regulate the intervention by party-appointed experts. Accordingly, it is up to the parties and arbitrators to organize whether and under which conditions expert testimony should be organized (Art. 1700, §1 and 2 BJC). The BLA does therefore not contain any formal requirements regarding a party-appointed expert witness's independence and impartiality. However, as part of its discretion to assess the weight of evidence (Art. 1700, § 3 BJC), arbitral tribunals will typically assess the independence and impartiality of the expert witness before giving weight to his or her testimony.

(vii) Is it common that Arbitral Tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the Arbitral Tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

Absent any contrary agreement between the parties, the arbitral tribunal may appoint its own experts, either at its own motion or at the request of a party (Art. 1707 BJC). The tribunal should consult the parties on the need to appoint an expert and the modalities of the expert's mission. The arbitral tribunal is not under any obligation to select an expert from a particular list.

The arbitral tribunal is further not bound by the findings and opinions of the expert it appointed. As is the case for evidence brought forward by party-appointed experts, the arbitrators have the discretion to assess the weight and importance of the evidence.

Tribunal appointed experts may be challenged based on the same procedure and on the same grounds as arbitrators (i.e. lack of impartiality or independence, lack of qualifications agreed upon by the parties) (Art. 1686, 1687 and 1707, §4 BJC).

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

Witness conferencing is allowed, as parties and arbitrators have the discretion to organize expert testimony as they see fit (Art. 1700, §§ 1 and 2 BJC) and the possibility to hold an expert hearing is expressly confirmed by the BLA (Art. 1707, §§ 2 and 3 BJC).

No typical practice for the hearing of expert witnesses exists in Belgium.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

The arbitral tribunal may appoint an arbitral secretary provided that (i) the parties agree to such appointment and (ii) that no decision making power is delegated to the arbitral secretary.

Specific requirements may be imposed by institutional arbitration rules. Such requirements include *inter alia* the tribunal secretary's disclosure duties, the form of consent, issues of remuneration and acceptable tasks).

The use of arbitral secretaries is not wide-spread in smaller or domestic cases. In international arbitrations, however, their use is becoming increasingly common, especially in complex cases.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

An arbitral award must be rendered with an absolute majority of votes. The award must be made in writing and signed by the arbitrators, or at least by a majority of them. If an arbitrator is unable or unwilling to sign, that fact must be recorded in the award. The reasons for the award must be stated, even where arbitrators act as *amiables compositeurs*. The parties may not discharge the arbitrators of this obligation. In addition to the decision, the award must contain the name and address of the arbitrator(s) and the parties as well as a description of the object of the dispute. The award must be dated and mention the seat of the arbitration (Art. 1713 BJC).

Unless the parties have agreed on any limitations, arbitral tribunals may order the same relief as state judges, with some limited exceptions such as on disputes on forgery of authentic instruments (Art. 1700, § 5 BJC). Arbitral tribunals have the power to impose a penalty (“*astreinte*” / “*dwangsom*”) in accordance with the general provisions of Articles 1385 *bis* to *octies* BJC (Art. 1713, § 7 BJC). This is a predetermined amount which the non-complying party has to pay for each occasion or for the duration of its failure to comply with an order by the arbitral tribunal. *Astreintes* may, however, not be imposed to ensure compliance with decisions ordering payment of sums of money. Difficulties in enforcing the *astreinte* against a party located in Belgium fall within the power of the judge of attachments, which is a special division of the court of first instance.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

Under Belgian law, the question which type of damages and interest can be awarded is considered to be an issue of substantive law. Hence, no specific provisions regarding this issue are included in the BLA.

Under Belgian (substantive) law, damages are aimed at the reparation of harm incurred by a party. Punitive or exemplary damages are unlawful and not enforceable under Belgian law.

In order to ensure full compensation, courts or arbitral tribunals may award interest. Compound interest is possible under certain conditions (cf Art. 1154 BCC).

(iii) Are interim or partial awards enforceable?

Awards may be enforced when they have the authority of *res judicata*. Pursuant to Article 1719, § 2 BJC, this is the case when the award can no longer be contested before the arbitrators and has duly been notified. Interim awards or partial awards that meet the abovementioned criteria are enforceable.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

The BLA is silent on the issue of dissenting opinions. Article 1713, § 3 BJC only provides that the award must mention when one of the arbitrators would disagree and refuse to sign. Moreover, the award may mention whether it was rendered with a majority or unanimously.

While no case law relating to the possibility of a dissenting opinion exists that confirms this view, it is considered that dissenting opinions are allowed under Belgian law, provided that the secrecy of the arbitral tribunal's deliberation is strictly observed.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

The parties may settle their dispute at any time during the arbitral proceedings and request the arbitral tribunal to record such a settlement in a consent award, provided it does not violate public policy (Art. 1712, § 1 BJC). A consent award is subject to the same formalities as any other award (Art. 1712, § 2 and 1713 BJC).

Where the parties do not request for their settlement to be recorded in an award, the proceedings may be terminated by means of a termination order (Art. 1714, § 2 BJC).

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Within one month following receipt of the award a party may request the arbitral tribunal to correct any clerical error, error in computation, typographical error or any error of a similar nature in the award. Within the same time limit, a party may equally request the arbitral tribunal to give an interpretation of a specific point or part of the award. In both cases, the request must be notified to the other party.

If the tribunal considers the request to be justified, it shall make the correction or give the interpretation within one month of receipt of the request. The tribunal's decision shall take the form of an award (Art. 1715, § 1 BJC).

The tribunal may also, within one month of making the award, correct the award on its own initiative (Art. 1715, § 2 BJC).

When it is no longer possible to bring together the arbitrators, the request for correction or interpretation of the award shall be made to the court of first instance. The arbitral tribunal must make such an additional award within two months following the request (Art. 1715, § 6 BJC).

Finally, where the arbitral tribunal has omitted to decide on an issue in dispute (*infra petita*), a party may request the arbitral tribunal to make an additional award within one month following receipt of the award (Art. 1715, § 3 BJC).

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

The BLA does not contain any specific provision or standard for the allocation of arbitration costs.

The final decision on which party is to bear the costs of arbitration lies with the arbitral tribunal, taking into account any agreements by the parties in this connection (Art 1713, § 6 BJC). Unless the parties have agreed otherwise, the arbitral tribunal has the discretion to apply the allocation rule it considers most appropriate. In practice, the arbitral tribunal will often apply the ‘costs follow the event’ rule in some form, taking into account the (relative) success of the parties in the proceedings and such other elements it considers relevant for the allocation of costs (eg, the behavior of the parties during the proceedings).

(ii) What are the elements of costs that are typically awarded?

Unless the parties agree otherwise, two types of costs may be awarded (Art. 1713, § 6 BJC).

The first type of costs is ‘arbitration costs’ in the strict sense, consisting of the fees and expenses of the arbitrators and the administrative charges of the arbitration institution.

The second type are ‘party costs’, which include costs incurred by the parties in the course of the arbitration, such as defence costs (eg, attorney fees, party expert fees and more recently also management and in-house costs of the parties themselves) as well as costs relating to the proceedings itself (eg, translators, court reporters, and costs of the hearing venue). Defence costs will generally have to be demonstrated. It is generally considered that only reasonable costs are recoverable. This limitation is imposed by certain institutional arbitration rules.

(iii) Does the Arbitral Tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

In principle, it is accepted that the arbitral tribunal decides on its own fees and expenses following consultation of the parties on the method of calculation. In institutional arbitrations, however, this power is restricted as the arbitrators' fees are generally fixed by the institution by application of cost scales or schedules whereby fees are calculated on the basis of either the amount in dispute or on the basis of time spent.

(iv) Does the Arbitral Tribunal have discretion to apportion the costs between the parties? If so, on what basis?

Absent any agreement between the parties, the tribunal has the discretion to apportion the costs of the arbitration between the parties, with application of the method it considers most appropriate (Art. 1713, § 6 BJC).

(v) Do Courts have the power to review the tribunal's decision on costs? If so, under what conditions?

When the fees of the arbitrators have not been set in accordance with an agreement between the parties or by reference to an institutional schedule, the part of the arbitral award determining the costs may be exposed to annulment.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

Arbitral awards may be challenged before the competent court of first instance on the basis of the limited grounds and under the conditions set out in Article 1717 BJC. Such challenge may target the award as a whole or in part and requires that the issues in dispute can no longer be contested before the arbitrators.

Article 1717, § 3(a) BJC lists the grounds that must be raised by the challenging party. Pursuant to this provision, an arbitral award may be set aside if the challenging party demonstrates:

- i) The incapacity of a party to the arbitration agreement or invalidity of the agreement;
- ii) A violation of the rights of defence of the applicant;

- iii) That the dispute did not fall under the scope of the arbitration agreement;
- iv) That the arbitral award was not reasoned;
- v) An irregularity in the composition of the arbitral tribunal or in the arbitral procedure;
- vi) That the arbitral tribunal exceeded its powers;

Article 1717, §3(b) further lists grounds that may also be raised *ex officio* by the court of first instance. This is the case where:

- i) The subject matter of the dispute is not capable of settlement by arbitration;
- ii) The award is contrary to public policy;
- iii) The award was obtained by fraud.

An application to set aside must list all grounds for annulment and be brought within three months of receipt of the award (Art. 1717, § 4 BJC). As an exception to this rule, a partial award confirming jurisdiction may only be challenged together with an award on the merits (Art. 1690, § 5 BJC).

Under the BLA, the setting aside of an arbitral award is the option of last resort. Article 1717 BJC contains various mechanisms to preserve the award if possible: certain grounds can only lead to annulment if they have had an impact on the award (Art. 1717, § 3(a)(ii) and (v) BJC); parties are estopped from relying on certain grounds where they have failed to raise such grounds during the arbitration proceedings (Art. 1717, § 5 BJC); the court of first instance may remit the award to the arbitral tribunal if possible (Art. 1717, § 6 BJC – see above); and where the part of the award affected by the ground for annulment can be separated from the rest of the award, only that part shall be annulled.

Setting aside proceedings are commenced by way of writ of summons or voluntary appearance by all parties before the court of first instance with territorial competence over the seat of the arbitration. The decision of the court of first instance is final, subject to limited recourse before the Supreme Court only (Art. 1680, § 5 BJC). Proceedings before the court of first instance generally last between 12 and 18 months.

An action to set aside does not suspend the arbitration proceedings (in case the challenged award does not terminate the arbitrators' mission), nor does it prevent the enforcement of the award, although the enforcement proceedings may be suspended pending the outcome of the annulment proceedings.

- (ii) **May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

Parties may exclude any right to apply for an arbitral award to be set aside when none of the parties is either a Belgian national or resident, or a legal person with seat or branch in Belgium (Article 1718 BJC).

The waiver must be included in an 'express statement' in the arbitration clause or an express later agreement. This requirement is interpreted strictly: a reference by the parties in the arbitration agreement or in the terms of reference to institutional arbitration rules providing for a general waiver of any right of recourse is not sufficient.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

An arbitral award cannot be appealed before state courts, which may only hear applications to set aside an award.

An appeal before a second arbitral tribunal is possible only if the parties have expressly included this possibility in the arbitration agreement. In practice, this is extremely rare, except in some industry-specific arbitration.

Such an appeal must be brought within one month of the notification of the award (Art. 1716 BJC). The BLA does not restrict the grounds on which such an appeal can be brought.

(iv) May Courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

The BLA contains two mechanisms to ensure that the arbitration proceedings lead to an enforceable award whereby the award is sent back to the original arbitral tribunal: additional awards and remittance of the award.

First, as discussed above, where the arbitral tribunal has omitted to decide on an issue in dispute (*infra petita*), a party may request the arbitral tribunal to make an additional award within one month following receipt of the award (Art. 1715, § 3 BJC).

Second, when hearing an application to set aside an award, the court of first instance may, at its own initiative or at the request of a party, suspend the setting aside proceedings remit the arbitral award to the same arbitral tribunal with the opportunity to resume the arbitral proceedings or take any such actions as to eliminate the grounds for annulment (Art. 1717, § 6 BJC)

By contrast, when upholding a request to set aside an award, the courts of first instance may neither modify the content of the decision rendered by the arbitral tribunal, nor refer the case back to the same or another arbitral tribunal after

annulment. The effect of the setting aside of an award (or part thereof) is therefore that this (part of the) award is annulled and no longer exists. It is then up to the parties to decide on how to proceed. If the annulment does not affect the validity of the arbitration agreement, either party may in principle commence new arbitral proceedings on the issues in respect of which the first award was set aside.

XIII. Recognition and Enforcement of Awards

- (i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent Court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

Notwithstanding a few small differences, the BLA sets out a single system for the enforcement of arbitral awards, regardless of whether the awards were rendered by an arbitral tribunal in Belgium (domestic awards) or by an arbitral tribunal seated abroad (foreign awards).

The process of enforcement depends on whether an international convention applies.

Belgium has ratified the 1958 New York Convention with a reciprocity reservation (New York Convention). Moreover, it has adopted the ICSID Convention and the European Convention, which provide for an independent regime of enforcement. In addition, long standing bilateral conventions with France, the Netherlands, Germany, Switzerland and Austria contain provisions on the enforcement of arbitral awards. The enforcement in Belgium of arbitral awards rendered in these countries may give rise to complex legal questions and should be approached with caution, especially by the respondent party.

The enforcement in Belgium of foreign commercial arbitral awards is governed by the regime put forward by Articles III to V of the New York Convention, unless a party wishes to rely on a more favorable regime on the basis of Article VII(1) of the New York Convention. This allows a party to rely on a more favorable treaty regime (such as the bilateral treaties referred to above) or national law (such as the BLA).

The procedural rules to enforce arbitral awards under the BLA are set out in Articles 1719 and 1720 BJC. The grounds for refusal of enforcement are listed in Article 1721 BJC. They generally mirror the grounds for annulment in Article 1717 BJC (see above).

Enforcement of an arbitral award under the regime of the BLA is only possible where the award is no longer open to appeal, or has been declared provisionally enforceable by the arbitral tribunal (Art. 1720, § 1 BJC).

A party wishing to enforce an arbitral award, must apply *ex parte* to the competent court of first instance for recognition and leave of enforcement (*exequatur*). The applicant must elect domicile in the jurisdiction of the court (Art. 1720, §1/1 BJC). The requesting party must provide an original or certified copy of the arbitral award (Art. 1720, § 4 BJC).

Applications for the enforcement of domestic awards must be brought before the court of first instance with territorial competence over the seat of arbitration. Applications for the enforcement of foreign awards must be brought before the court with territorial competence over the domicile or place of business of the respondent, or alternatively, the place of enforcement (Art. 1720, § 2 BJC).

As the application is made *ex parte*, there are in principle no debates between the parties, unless the court of first instance uses its general power to call the respondent. In practice, the court of first instance will therefore in principle grant an *exequatur* order unless there are obvious signs that an award or its enforcement is contrary to public policy, if the dispute was not capable of settlement by arbitration, or the award was obtained by fraud, which must be raised by the court *ex officio* (cf. Art. 1721, §1(b) BJC).

In case the *exequatur* is rejected, the applicant may only file recourse before the Supreme Court (Art. 1720, § 1/1 BJC).

An *exequatur* order is enforceable notwithstanding any recourse. Within one month following the notification of the *exequatur* order, the respondent may, however, file third party opposition (“*derdenverzet*” / “*tierce opposition*”) against the *exequatur* order. This is a recourse before the court of first instance in accordance with Article 1022 e.s. BJC, which is heard *inter partes*.

For domestic awards, it is important to note that a respondent who wishes to seek the setting aside of the award, but has not yet launched setting aside proceedings, must bring its setting aside request simultaneously and in the same procedure as the third party opposition (Art. 1717, § 4 BJC).

As stated above, the grounds for refusal of enforcement generally mirror the grounds for annulment in Article 1717 BJC.

Two points are worth mentioning.

First, while as a matter of Belgian public policy awards rendered by an arbitral tribunal with seat in Belgium must contain the reasons for the decision, awards rendered abroad may nonetheless be enforceable in Belgium if the foreign procedural rules applicable to the arbitration do not contain such obligation (Art. 1720, §1(a)(iv) BJC).

Second, under the BLA regime, an arbitral award may in principle not be enforced if the award has been set aside or suspended at the seat of arbitration (Art. 1720, §1(a)(vi) BJC) (see further below).

(ii) If an *exequatur* is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

The decision of the court of first instance granting *exequatur* to an arbitral award (whether domestic and foreign) must be notified to the other party. As discussed above, the latter party has one month from the date of notification to file third party opposition against this decision before the court of first instance. The court of first instance's decision is final, and subject to limited recourse before the Supreme Court only (Art. 1720, §1/1 BJC). A recourse before the Supreme Court does not have a suspensive effect.

As part of its general powers (Art. 19, 3rd paragraph BJC), the court of first instance may order a stay of enforcement pending the review of the third-party opposition, or order that the enforcement will be conditional upon the constitution of a security.

If such is not the case, the party seeking enforcement may proceed with the attachment of the other party's assets that are located anywhere in Belgium. The attachment will be notified by a bailiff and any attached assets will be sold to the benefit of the attaching creditor. Priority rules exist and recourses are possible against attachment measures.

(iii) Are conservatory measures available pending enforcement of the award?

Arbitral awards that are not yet enforceable provide a valid basis for proceeding with the conservatory attachment of the debtor's assets located in Belgium.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Belgian courts generally have a pro-enforcement attitude and will not reexamine the dispute in detail. The courts will nonetheless ensure *ex officio* that the award can no longer be contested before the arbitrators; that the award was made in accordance with public policy; that the issue in dispute was arbitrable; and that the award was not obtained by fraud.

While no case law has been reported on this matter, foreign awards set aside by the courts at the place of arbitration can in principle not be enforced in Belgium (cf. New York Convention Article V(1)(e) and Art. 1720, §1(a)(vi) BJC). It is,

however, worth noting that pursuant to Article IX of the European Convention, a setting aside in one contracting state would only constitute a ground for the refusal of recognition or enforcement in another contracting state if this setting aside would be based on a number of specific grounds.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

A decision granting the right of enforcement is usually issued within two to four weeks (not including possible recourse). An award must be enforced within ten years from notification (Art. 1722 BJC).

XIV. Sovereign Immunity

(i) Do State parties enjoy immunities in your jurisdiction? Under what conditions?

In principle, assets belonging to the Belgian State and Belgian State entities cannot be attached, except when they feature on a list drawn up by the relevant entity (Art. 1412 *bis* BJC). When no such list exists, or when the value of the assets on such list are insufficient, enforcement is possible against those assets that are manifestly not useful for the performance of the state entity's mission or for the continuity of the public service, regardless of whether such assets are part of the public or private domain.

Enforcement against assets belonging to foreign states is restricted by Articles 1412 *ter* (on enforcement against cultural goods), 1412 *quater* (on financial reserves) and 1412 *quinquies* (on assets belong to foreign states) BJC. Pursuant to Article 1412 *quinquies*, enforcement against assets belonging to foreign states requires the creditor to obtain prior leave from the judge of the attachments. Such leave is only possible in case of (i) express and specific consent to attachment of the goods; (ii) reservation or designation of the assets to satisfy the claim in question; or (iii) where it is established that the asset is located on the Belgian territory and is used or intended for use for "other than non-commercial governmental purposes", with the further condition that such assets must relate to the entity against which the title underlying enforcement is directed.

Finally, Belgium has signed (but not yet ratified) the *United Nations Convention on Jurisdictional Immunities of States and Their Property* of 2 December 2004, which has, moreover, not yet entered into force.

- (ii) **Are there any special rules that apply to the enforcement of an award against a State or State entity?**

The BLA does not contain any specific rules on enforcement against a State or State entities. Enforcement of arbitral awards against a State or State entities is governed by the same rules as enforcement of judgments. A State and State entities do not enjoy immunity from execution, but the assets against which can be enforced are limited (cf. above).

XV. Investment Treaty Arbitration

- (i) **Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Belgium is a party to the ICSID Convention, which entered into force on 26 September 1970. Belgium is also a party to the Energy Charter Treaty, which entered into force on 6 August 1998.

- (ii) **Has your country entered into Bilateral Investment Treaties with other countries?**

As at 1 February 2018, Belgium has (either alone or together with Luxemburg) signed BITs with 106 other countries. Some of these BITs have not, however, yet entered into force. An updated list can be found at <http://investmentpolicyhub.unctad.org/IIA/CountryBits/19#iiaInnerMenu>

These BITs contain different dispute resolution clauses including arbitration under ICSID Rules, ICSID Additional Facility Rules and UNCITRAL Ad hoc Rules.

XVI. Resources

- (i) **What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

The main treatises on arbitration in Belgium since the last revision of the BLA are:

- M. DRAYE & N. BASSIRI (eds.), *Arbitration in Belgium – A Practitioner’s Guide*, Kluwer Law International, 2016.
- G. KEUTGEN, G.-A. DAL, M. DAL & G. MATRAY, *L’arbitrage en droit belge et international. Tome 1: Le droit belge*, 3rd ed., Brussels, Bruylant, 2015.

CEPANI has published case books and maintains a scientific collection, with one to two titles being added every year.

B-Arbitra - Belgian Review of Arbitration is a bi-annual journal on arbitration in Belgium, which contains case law, case notes and doctrinal articles in four languages (French, Dutch, English and German).

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

CEPANI organizes one or two colloquia on specific topics each year plus several lunch-conferences, and furthermore takes various initiatives in conjunction with universities or other interested parties. Also CEPANI40, an organization operating under CEPANI that groups young arbitration practitioners, regularly organizes lunch conferences and colloquia. Information on these events can be found at www.cepani.be.

XVII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Arbitration is becoming increasingly popular as an alternative to court proceedings in Belgium, especially in international commercial contracts. As a result, the number of arbitrations taking place in Belgium or involving Belgian parties is increasing. This evolution also leads to an increase in the use of English as the language of arbitration in Belgium. In domestic commercial disputes, the vast majority of disputes are still brought before the courts, but as arbitration is becoming more known amongst potential users, the interest in the advantages of arbitration is growing. In certain specific sectors (eg, the travel sector, for which an arbitration commission exists), arbitration has become the norm.

With the adoption of the UNCITRAL Model Law in 2013, Belgium now has a modern and arbitration friendly arbitration regime, which will likely also attract more international arbitrations in the future.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

A new law on mediation was enacted on 21 February 2005 and included as part VII into the BJC. Generally, mediation is more popular in family law and social disputes than in commercial matters. It is difficult to assess whether and to what extent this new law has led to an increase in commercial mediation proceedings in Belgium.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

CEPANI has engaged in a review and modernization of its Arbitration Rules, which will be achieved in 2019, on the occasion of the 50th anniversary of its inception.