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Litigation 2022

Belgium: Law & Practice

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BELGIUM

Law and Practice

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1. GENERAL

1.1 General Characteristics of the Legal System

Belgium has a continental legal system based on civil law.

For civil matters, legal proceedings follow an adversarial model.

Generally, the legal process is conducted through both written submissions and oral arguments: parties file written submissions and then present oral arguments before a court. Written submissions often play a crucial role in litigation, especially in complex litigation. A purely written procedure is organised under Belgian law but rarely applied in practice.

1.2 Court System

Belgian courts are divided into two categories: (i) the judicial and (ii) the administrative systems. In addition to these two systems, there is also (iii) a constitutional court.

The Judicial Legal System

The Belgian judicial legal system is hierarchical and in charge of both the civil and criminal law matters.

It is divided into three levels:

- courts of first instance;
- courts of appeal; and
- the Supreme Court (*Cour de Cassation/Hof van Cassatie*)

Courts of first instance

There are five different courts of first instance:

- courts of first instance, which contain four divisions: (i) civil courts, (ii) criminal courts, (iii) family and youth courts and (iv) enforcement courts;
- commercial courts;
- labour courts;
- police courts; and
- justices of peace (*justice de paix/vredegerecht*).

Jurisdiction of these courts depends on the subject matter and/or the financial value of the claim.

Courts of appeal

There are two different courts of appeal:

- courts of appeal; and
- labour courts of appeals.

Courts of appeal are in charge of reviewing the case without deference to the previous decision (de novo) and on the merits cases which have been dealt at first instance.

The Supreme Court is on top of this hierarchy. It only hears applications as a last resort. It does not deal with matters of fact but only with matters of law.

Language and the law

The Kingdom of Belgium is made up of four linguistic regions:

- the French-speaking region (the vast majority of the Walloon region);
- the Dutch-speaking region (the Flemish region);
- the French/Dutch bilingual region (the region of Brussels); and
- the German-speaking region (part of the Walloon region).

The use of languages before the courts of the judicial system is regulated by law:

- French is the language of proceedings before the courts in the French-speaking region;

- Dutch is the language of proceedings before the courts in the Dutch-speaking region;
- French is the language of proceedings before the French-speaking courts of the bilingual region of Brussels, Dutch is the language of proceedings before the Dutch-speaking courts of the bilingual region of Brussels; and
- German is the language of proceedings before the courts in the German-speaking region.

The Administrative Legal System

There are many administrative courts in Belgium with special jurisdiction in specific areas (eg, social security, environment, rights of aliens, etc). The highest administrative court in Belgium is the Council of State (*Conseil d'État/Raad van State*).

The particularity of the Belgian system is that the courts of the judicial legal system are also competent to decide certain administrative matters. The two systems are therefore not strictly compartmentalised, especially as the Supreme Court remains above the Council of State.

The Constitutional Court

The Constitutional Court ensures that the fundamental rights enshrined in the Belgian Constitution and the rules governing the distribution of powers within the country are duly respected by the various legislators in Belgium. Any court may refer to the Constitutional Court for a preliminary ruling on these matters.

1.3 Court Filings and Proceedings

Hearings are in principle open to the public. However, there are several exceptions to the publicity of hearings. The main exceptions are the following.

- The courts may decide to hold closed-door hearings when publicity would be dangerous to public order and morals; in cases of political or press offences, the court may only declare the proceedings closed by unanimous decision;
- Some hearings are in principle held in chambers; eg, hearings related to filiation or hearings relating to experts appointed by the court.

Where proceedings or documents relating to such proceedings concern trade secrets, the judge may ex officio or at the request of one of the parties, classify the proceedings and/or the documents as confidential; persons who have had access to such trade secrets are then obliged to maintain secrecy, subject to penalties.

Judgments are public and their texts can be obtained by a third party under certain conditions.

1.4 Legal Representation in Court

Parties generally appear in courts through lawyers admitted to a Bar.

Lawyers admitted to a Belgian Bar are entitled to represent their clients before any Belgian court, except before the Supreme Court.

EU lawyers are allowed represent clients before Belgian courts if they act in co-operation with a lawyer admitted to a Belgian bar.

Non-EU lawyers cannot represent their client in front of Belgian courts.

In principle, only lawyers admitted to the Supreme Court bar can appear before the Supreme Court (they are 20 in Belgium). However, lawyers holding the ad hoc certificate can appear before the Supreme Court for criminal matters and every lawyer can appear before the Supreme Court for tax matters (strictly interpreted by the Supreme Court).

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2. LITIGATION FUNDING

2.1 Third-Party Litigation Funding

Third-party funding is not subject to any specific regulation under Belgian law and is generally considered as permitted, subject to general rules of ethics and civil law principles. Specific rules may apply in the context of (international) arbitration.

Notably, the third-party funder does not have to be accredited as a credit institution by the National Bank of Belgium.

Third-party funding may occur through class action in Belgium (see **3.7 Representative or Collective Actions**) where the representative association may finance the proceedings with a third-party funder. The representative should declare the third-party funding in the proceedings, pursuant to the EU recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the member states concerning violations of rights granted under Union Law and Directive 2020/1828 of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (yet to be implemented in Belgian law).

2.2 Third-Party Funding: Lawsuits

Because no specific regulation applies to third-party funding in Belgium (see **2.1 Third-Party Litigation Funding**), virtually all types of lawsuits are available for third-party funding.

2.3 Third-Party Funding for Plaintiff and Defendant

Because no specific regulation applies to third-party funding in Belgium (see **2.1 Third-Party Litigation Funding**), both the plaintiff and the defendant can use third-party funding.

2.4 Minimum and Maximum Amounts of Third-Party Funding

Because no specific regulation applies to third-party funding in Belgium (see **2.1 Third-Party Litigation Funding**), the amount that can be subject to a third-party funding is not limited to a minimum or maximum.

2.5 Types of Costs Considered under Third-Party Funding

Because no specific regulation applies to third-party funding in Belgium (see **2.1 Third-Party Litigation Funding**), virtually all costs incurred by a party in judicial or arbitral proceedings can be subject to third-party funding.

2.6 Contingency Fees

On the one hand, because no specific regulation applies to third-party funding in Belgium (see **2.1 Third-Party Litigation Funding**), contingency fees for third-party funders are permitted and are not subject to any rule.

On the other hand, contingency fees for lawyers are not specifically regulated for third-party funding but are subject to general principles. Contingency fees for lawyers are permitted under Belgian law in addition to ordinary fees. However, “no win no fee” agreements whereby the lawyer only undertakes to receive fees if the case is won are prohibited under Belgian law. If parties decided to fix the fees on the basis of the outcome of the case, the lawyer and their client(s) must determine in advance and clearly inform the client on:

- how the outcome of the case is to be determined;
- how the fees in relation to the result will be calculated;
- when to calculate those fees.

2.7 Time Limit for Obtaining Third-Party Funding

Because no specific regulation applies to third-party funding in Belgium (see **2.1 Third-Party Litigation Funding**), no time limit for obtaining third-party funding applies under Belgian law.

3. INITIATING A LAWSUIT

3.1 Rules on Pre-action Conduct

Pre-action conduct may be warranted in three main situations.

First, the judge must encourage parties to resort to alternative dispute resolution methods, especially in family matters, and may impose a one-month stay of the proceedings if they consider that the parties could resolve their dispute amicably or through mediation.

Second, in some cases, the parties are legally obliged to attempt conciliation before the start of the proceedings, mainly in residential lease, farm lease and employment matters. When an attempt at conciliation is mandatory, failure to comply with this may lead to various sanctions, ranging from a stay of the proceedings until a conciliation attempt has been made, to the inadmissibility of the claim or the nullity of the judgment.

Third, the sending of a formal notice may be required by the applicable contract law before relying on some remedies (such as the termination of contract). Depending on the case, the lack of such formal notice can be sanctioned by denying the right to legal interest on damages or even by rejecting the claim.

3.2 Statutes of Limitations

In principle, the limitation period for claims related to a personal right is ten years after the right accrues.

As an exception, claims for damages based on non-contractual civil liability lapse five years after the victim becomes aware of the damage and of the identity of the liable person, and in any case, 20 years after the fact that caused the damage occurred.

Certain specific claims are subject to special limitation periods; eg, claims related to rent arrears lapse after five years.

The limitation periods are suspended in various instances, including when they run between spouses, against minor children or against those who lack capacity.

The limitation periods may be interrupted for various causes. The most common cause is the filing of a claim before the courts. The interruption lasts until a final decision.

3.3 Jurisdictional Requirements for a Defendant

The international jurisdiction of Belgian courts is assessed by the courts themselves. They mainly apply three instruments: the Belgian Code of Private International Law (for non-EU and non-EFTA states), the Recast Brussels EU Regulation No 1215/2012 (for EU member states) and the Lugano Convention of 30 October 2007 (for EFTA member states).

The general principle of those three instruments is that Belgian courts have international jurisdiction if the defendant is domiciled or has its registered seat in Belgium when the claim is lodged.

Other factors may apply when determining the international jurisdiction of Belgian courts; eg, appearance of the defendant without challenging the jurisdiction of the court, agreement of the parties, the place of performance of the obligation underpinning the claim, the situation of real

estate property or the place where the harmful event occurred.

The national jurisdiction of Belgian courts is mainly covered by the Belgian Judicial Code. An agreement of the parties on the choice of place of jurisdiction in Belgium is generally accepted. In the absence of an agreement, the Belgian Judicial Code determines the competent court in a given territory.

3.4 Initial Complaint

In principle, a lawsuit is initiated by means of a summons to appear in court. A summons to appear in court must include certain things: the names of the parties, a statement of the claim and the reasons therefor, the court before which to appear and the time and place of the first hearing.

If the law so provides, the lawsuit may also be initiated by means of an application. Applications may be (i) unilateral, (ii) contradictory or (iii) joint. Unilateral applications begin ex parte proceedings. Contradictory applications begin adversarial proceedings where the defendant will be invited to appear in court. Joint applications begin adversarial proceedings where the defendant agreed to file the case with the court together with the claimant.

Under restrictive conditions, other means are admitted to initiate a claim: written pleadings, a registered letter, submission of the file to the clerk's office, etc.

The last written submissions of a party during the proceedings replace all the previous submissions and the initial complaint of the party. Therefore, the initial claim can be amended in subsequent submissions, new claims can be added and new parties can join. A new claim must be based on a fact or an act invoked in the initial complaint and may be lodged for the first time at the appellate level. An additional claim may also be made to supplement the principal claim by increasing or decreasing the claim to take account of facts which have arisen in the course of the proceedings and which are the consequences of those invoked in the initial complaint.

The initial complaint must be filed with the competent court in accordance with the rules on the allocation of jurisdiction between courts according to the language of the proceedings (see **1.2 Court System**).

3.5 Rules of Service

Summons to Appear in Court

A bailiff (sworn officer) delivers a copy of the summons to the sued party in person or, failing that, at their domicile or residence.

Application

An application is filed with the court by the claimant and then the clerk invites the parties to appear at the first hearing.

Party Sued outside Belgium

When the sued party has no domicile, residence or known address in Belgium, the summons can be served in the following ways.

- In accordance with Regulation (EC) No 1393/2007 for the service of documents to and from EU member states – the Regulation provides for service via a centralised entity or through a direct service of process to the addressee.
- In accordance with the Hague Convention for the service of documents to and from non-EU contracting states – the Convention provides for service via a central authority or through a direct service of process to the addressee.
- When the Regulation (EC) No 1393/2007 and the Hague Convention do not apply, in accordance with the Belgian Judicial Code –

the Code provides for service by registered mail at the domicile or residence of the sued party abroad.

3.6 Failure to Respond

Where a party is not present or represented by a lawyer at the first hearing or at a subsequent hearing, the judge renders a judgment by default.

The judge shall grant the reliefs claimed by the claimant unless they are contrary to the public order or must obviously be dismissed.

The party sentenced by default may appeal or, if the judgment is not subject to appeal, file an opposition to it.

3.7 Representative or Collective Actions

Class actions are allowed under Belgian law but only on behalf of consumers or SMEs.

Conditions for class actions are laid down in the Belgian Economic Code. In substance:

- there must be a potential violation by the defendant of its contractual obligations or of specifically legally listed laws or regulations, most notably Belgian consumer protection rules of the Economic Code, Regulation 2016/679 on General Data Protection or Regulation 261/2004 on air passengers rights;
- the action is brought by a "representative" who fulfils the conditions laid down by law; and
- a class action seems more effective than an ordinary action.

For consumers who are Belgian residents, both opt-in and opt-out systems may apply depending on the circumstances of the case, which will be assessed by the court. For consumers who are not Belgian residents, only the opt-in system applies.

The proceedings for collective actions include two distinctive phases: one phase relates to the (in)admissibility of the collective claim and the other relates to the merits thereof. If the court declares the action admissible, the judgment must grant a period of a minimum of three and a maximum of six months to the parties to enter into negotiations to find an amicable solution. The settlement reached between the parties must then be approved by the judge (see **8.1 Court Approval**).

The class action to which consumers may opt in, or from which they may opt out, is described by the judgment deciding the admissibility of the collective action.

3.8 Requirements for Cost Estimate

Under Belgian law and the Belgian Codes of Conduct for lawyers, lawyers admitted to Belgian Bars are required to inform their client of the fees, costs and disbursements.

The Codes of Conduct also provide that lawyers must inform their clients of the elements that could influence the amount of their fees, such as the urgency, the complexity and nature of the case, the reputation of the lawyer, the chance of recovery of the amount claimed, etc.

In complex litigation, an engagement letter is often signed to address these questions.

4. PRE-TRIAL PROCEEDINGS

4.1 Interim Applications/Motions

Belgian law does not recognise a difference between pre-trial and trial procedures.

Under Belgian law, at any time during the proceedings before a final judgment is rendered on

the merits, a party may move for interim measures and reliefs.

The goal of such measures or reliefs can be twofold:

- to investigate the case (eg, a visit to relevant premises or appointment of an expert to give an opinion to the court on matters of fact); or
- to organise the situation of the parties on an interim basis until the situation changes or a final judgment is rendered (eg, injunction not to hold a general meeting of shareholders).

Any measure or relief may be requested, provided that it is of reasonable interest to the party requesting it and is appropriate. In addition, the measures must be reversible in the event of a contrary decision by the judge on the merits of the case.

4.2 Early Judgment Applications

Because Belgian law does not make a distinction between pre-trial and trial procedures, it does not have a procedure to adjudicate the case without a trial or a substantive hearing.

However, for non-complex claims that can be argued briefly, a party may move during the first hearing, at the onset of the proceedings, for early judgment (expedited procedure) on some or all of the disputed issues.

The judge is free to grant or refuse this motion. If it is granted, the judge will either hold the case over at the introductory hearing or adjourn it to an earlier date.

The claimant must move for early judgment in the document initiating the proceedings.

4.3 Dispositive Motions

Because Belgian law does not make a distinction between pre-trial and trial procedures, no dispositive motions can be made before trial or a substantive hearing.

However, an early judgment application can be made in the document with which the proceedings are initiated and, if the court grants this application, it may dispose of the case in a manner similar to a summary judgment.

4.4 Requirements for Interested Parties to Join a Lawsuit

Joinder may be (i) voluntary or (ii) forced.

Voluntary joinder is made by the joining party by an application.

Forced joinder is made by the claimant or the defendant by summoning the joining party to appear in court or by filing submissions against another party already present in the proceedings.

Joinder may also be (i) protective or (ii) aggressive.

A protective joinder aims at safeguarding the interests of the joining party or of one of the other parties to the case.

An aggressive joinder aims at obtaining a judgment or a guarantee against the joining party.

The joinder can be lodged at any time until the closing of the proceedings but cannot delay the judgment of the main case. However, an aggressive joinder cannot be lodged for the first time at the appellate level and a forced joinder must be lodged at a time when the joining party can still defend itself.

4.5 Applications for Security for Defendant's Costs

If the Belgian defendant so requests, the foreign plaintiff/claimant must pay a sum of money as

a security for the defendant's costs (cautio judicatum solvi). The judge sets the amount of this security.

This regime cannot be applied to a plaintiff/claimant who is a national of an EU member state or of other states with which Belgium has concluded an international treaty in this respect.

The Belgian Constitutional Court decided that this difference of treatment is discriminatory and the Belgian law in this respect should have been amended by 31 August 2019. However, such an amendment has not yet taken place.

4.6 Costs of Interim Applications/Motions

There are no specific rules regarding the costs of interim applications/motions in Belgian law.

When the provisional measure concerns an expert opinion, the judge orders one or more parties to pay in advance for the expert.

When interim measures are granted, courts do not deal with the costs at this stage of the proceedings since the dispute is not yet exhausted. The court settles this point when it gives its final judgment on the merits of the case.

4.7 Application/Motion Timeframe

Interim measures and reliefs are legally dealt with under an expedited procedure.

The timeframe for such interim measures and reliefs can vary from a few days to a couple of months depending on the appreciation and organisation of the courts.

In case of genuine emergency, specific proceedings can be filed before the president of the court. In contradictory emergency proceedings, a judgment can be obtained within a few weeks or a few days. If the circumstances objectively justify it, emergency ex parte proceedings can be filed and a judgment can be rendered within a couple of days or a few hours, subject as the case may be to a further contradictory debate at a later stage.

5. DISCOVERY

5.1 Discovery and Civil Cases

There is no discovery as such available in civil cases in Belgium. However, the Belgian Judicial Code lists six procedures for taking evidence. This list is not exhaustive and contains the production of documents, the hearing of witnesses and questioning of parties.

The court conducts the procedure but the parties may be required to co-operate. For instance, the judge may order a party to produce a document when such a document may be useful for the solution of the dispute. The judge specifies the document(s) to be produced in its judgment and determines whether it should be filed as an original or a copy.

The forced production of a document concerns a document in the broad sense: it may concern a written document, photographs, records, computer data, password, etc. However, the document needs to be specifically identified. "Fishing expeditions" (where a party tries to obtain documents described in general terms without being able to explain why such documents would be relevant for the outcome of the case) are prohibited.

There is no mechanism by which the scope and/or costs of the process described above can be curbed. There are, however, some exception to the possibility for the judge to order the production of a document in case of legitimate reason for refusing production, such as trade secrecy or legal privilege.

5.2 Discovery and Third Parties

In the same way that the judge may order the production of documents to one of the parties to the case (see **5.1 Discovery and Civil Cases**), the judge may order the production of document(s) to a third party if the document(s) requested is/are held by a third party.

The judge must invite the third party to file the original or a copy of the document(s) in the case file, in accordance with the terms of the judgment. The third party may make observations (eg, regarding a possible legitimate reason for refusing production, such as client-attorney privilege) and the parties may respond to them.

The judge then issues a judgment ordering or not the production of the document(s). The decision ordering the production of a document cannot be appealed or opposed.

5.3 Discovery in this Jurisdiction

See **5.1 Discovery and Civil Cases**.

5.4 Alternatives to Discovery Mechanisms

See **5.1 Discovery and Civil Cases**.

Generally, the parties in civil procedures produce evidence via exhibits filed with their written submissions. This evidence is automatically admitted in the record.

5.5 Legal Privilege

Belgium law recognises attorney-client privilege. Lawyers cannot disclose information learned from their clients and their work product is confidential.

In-house counsel have a duty of confidentiality in respect of legal advice they give to their employer in the course of their legal advice activities.

5.6 Rules Disallowing Disclosure of a Document

A party is allowed to refuse to disclose a document if they have a legitimate reason for doing so, such as legal privilege or trade secrets (see **5.1 Discovery and Civil Cases**). In the case of trade secrets, the court may allow the production of the document subject to additional measures aiming at ensuring their confidentiality (see **1.3 Court Filings and Proceedings**).

6. INJUNCTIVE RELIEF

6.1 Circumstances of Injunctive Relief

Injunctive relief may be awarded as interim measures or reliefs (see **4.1 Interim Applications/Motions**) or in emergency proceedings (see **4.7 Application/Motion Timeframe**).

Under Belgian law, anti-suit injunctions are not allowed. In the case of parallel proceedings (claims made on the same subject matter and with the same cause of action between the same parties acting in the same capacity), the judge or a party may raise a lis pendens objection.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

Injunctive relief awarded as interim measures or reliefs follow the same timeframe as other motions (see **4.7 Application/Motion Timeframe**).

Injunctive relief awarded in emergency proceedings follow the same timeframe as other motions (see **4.7 Application/Motion Timeframe**).

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Injunctive relief may be obtained on an ex parte basis in cases of absolute necessity, this includes situations:

- of exceptional or absolute urgency;
- where the nature of the measure requires surprise effect; and/or
- of the absence of an adversary or where it is impossible to identify the person(s) against whom the measure is sought.

In such a case, the addressee of the injunction may file an opposition against the injunction, which is then re-examined by the court in a contradictory debate.

6.4 Liability for Damages for the Applicant

As in ordinary proceedings, the respondent may claim damages where the applicant has not acted as a reasonably prudent and diligent applicant. The duty of good faith of the applicant is higher when they are acting on an ex parte basis. Moreover, if the claimant enforces an injunction while an appeal is pending and the Court of Appeal reverses the injunction, the claimant incurs a strict liability for the damage suffered by the defendant.

In addition, the respondent may claim an increase in the procedural allowance if the situation was manifestly unreasonable; eg, when the applicant acted in an abusive manner and made the case unnecessarily complex (see **11.1 Responsibility for Paying the Costs of Litigation**).

Finally, the judge may also decide to impose a civil fine on the applicant in the event of abuse of process by the applicant.

6.5 Respondent's Worldwide Assets and Injunctive Relief

When Belgian courts have international jurisdiction to rule on the merits, their jurisdiction also theoretically encompasses the jurisdiction to issue injunctive relief against worldwide assets of the respondent (see **3.3 Jurisdictional Requirements for a Defendant**). However, such a worldwide injunction may prove difficult to enforce abroad.

The judgment on these injunctive reliefs is enforced in a foreign country either pursuant to the Recast Brussels Regulation for EU member states or pursuant to the laws of the foreign country when this country is not an EU member state. The Recast Brussels Regulation imposes additional requirements for the enforcement abroad of an injunctive relief where it has been obtained ex parte or where the issuing court had no jurisdiction to rule on the merits of the case.

6.6 Third Parties and Injunctive Relief

A third party may be required by the judge to produce documents (see **5.2 Discovery and Third Parties**).

6.7 Consequences of a Respondent's Non-compliance

A respondent who does not comply with an injunctive relief faces the same consequences as a party who does not comply with a regular judgment.

The judgment on the injunctive relief may provide for periodic penalty payments if the party seeking the injunctive relief has so requested. The respondent who fails to comply with the terms of the injunction will then be required to pay the amount of the penalty payments set by the judge until it complies with the decision. Damages can also be claimed if the damage has been caused by the violation of the terms of the injunction.

No criminal sanction is foreseen in cases of non-compliance with a court order.

7. TRIALS AND HEARINGS

7.1 Trial Proceedings

In civil courts, the first hearing is usually used to determine how the case will be handled; ie, (i) by default (see **3.6 Failure to Respond**), (ii) with the expedited procedure (see **4.2 Early Judgment Applications**), or (iii) with the long circuit.

In this last case, a timetable to exchange written submissions is agreed between the parties or, failing this, imposed by the court. The number of written submissions per party varies depending on several factors, including the complexity of the case.

After the parties have exchanged their written arguments, a hearing is scheduled for oral arguments. The duration of the hearing is determined by the court, based on several factors including the estimations of the parties, the complexity of the case and the length of written submissions. Usually, the plaintiff delivers oral arguments first, then the defendant replies and finally, if necessary, the claimant delivers a short response to which the defendant can shortly respond. The judge(s) may also ask questions.

If the parties have jointly decided to do this – which they rarely do – the procedure can be solely in writing, without a hearing being set (see **1.1 General Characteristics of the Legal System**).

If an expert was appointed by the court to deliver a report (as an interim measure, see **4.1 Interim Applications/Motions**), the expert is generally not heard because they delivered the report in writing and will not be directly nor cross-examined at the hearing. However, the court may decide to summon the expert and ask them questions to clarify their findings.

In general, there are no witnesses heard at the hearings in civil cases.

Moreover, there is no jury in civil cases. The case is heard either in a one-judge court or in a three-judge court. At the end of the hearing, the judge closes the arguments. The judgment is not delivered immediately after the hearing. Legally, judgments must be delivered in the month after the closing of the arguments but circumstances may warrant a longer timeframe.

7.2 Case Management Hearings

Case management differs from court to court and there is no specific rule in this respect.

As explained in **7.1 Trial Proceedings**, the first hearing is usually a case management hearing. Some courts convene a hearing after the exchange of written submissions to verify if an oral-argument hearing can take place or if new written submissions are required. Some other courts schedule oral-argument hearings ex officio after written arguments have been filed, or schedule oral-argument hearings at the same time they determine the dates to exchange written arguments.

7.3 Jury Trials in Civil Cases

There are no jury trials available in civil cases under Belgian procedural law.

7.4 Rules that Govern Admission of Evidence

Under Belgian law, there is no specific trial relating to the admission of evidence, nor is there a systematic procedure for the collection of evidence prior to the commencement of the trial.

The basic principle is that whoever wants to assert a claim in court must prove the legal acts or facts on which it is based.

The admission of evidence is broad. However, a distinction must be made between the probative value and the probative force of evidence:

- the probative value of evidence is its ability to convince the judge; and
- the probative force of evidence is the intensity with which a mode of proof binds the judge and the parties.

When a mode of evidence has a high probative force, the judge is bound by the evidence offered (eg, oaths, confessions and literal evidence). On the other hand, when the probative force is low, the judge assesses the probative value of the evidence (eg, testimonies, copies and presumptions).

According to a judgment of the Supreme Court of 14 June 2021, evidence obtained by illegal means (eg, recording a conversation between contractual partners without their consent) cannot automatically be struck from the record. The court must instead consider it, unless (i) the law provides otherwise, (ii) the illegal means used to obtain the evidence compromise the faithfulness of the evidence, or (iii) due process rights are compromised.

7.5 Expert Testimony

Under Belgian procedural law, expert testimony is permitted at trial. In practice, they are generally not presented orally but in written form.

Parties can file expert testimonies as exhibits, and courts may appoint experts to receive guidance on matters of fact (see **4.1 Interim Applications/Motions**).

Courts discretionarily assess the opinions of the experts they appoint and are not bound by them.

7.6 Extent to Which Hearings Are Open to the Public

In principle, hearings and transcripts of hearings are open to the public (constitutional obligation). Hearings may be held in chambers (not public) if there is a danger to public order and morals or in specific cases such as hearings related to filiation or hearings relating to experts appointed by the court (see **1.3 Court Filings and Proceedings**).

7.7 Level of Intervention by a Judge

The level of intervention of the judge during a hearing or a trial depends mainly on the judge. Traditionally, the judge listens to the parties and may ask some questions.

However, more and more judges are opting for an “interactive hearing”, during which judges ask questions or where parties reply to each other’s arguments without delivering their arguments all at once. In this context, the judge asks more questions and invites the parties to stress certain issues.

In civil cases, judgments are never given at the oral-argument hearing but are in principle delivered within one month (see **7.1 Trial Proceedings**).

7.8 General Timeframes for Proceedings

Usually, a judgment in civil matters can be obtained within about a year after the first hearing. An appeal is usually judged within three to five years. These figures may vary widely depending on the court and the complexity of the case.

The duration of interim, expedited or emergency proceedings can be dramatically shorter, as explained in **4.7 Application/Motion Timeframe**.

8. SETTLEMENT

8.1 Court Approval

Under Belgian law, court approval is generally not required to settle a lawsuit. Out-of-court settlement is therefore common. However, the parties may seek an approval of the settlement by the court in order to enforce the settlement more easily.

In some cases, the approval of the settlement by the court is required; ie, in class actions.

8.2 Settlement of Lawsuits and Confidentiality

Generally, no specific rules apply to the confidentiality of settlements. However, in practice, settlement agreements often contain a confidentiality clause.

However, in class actions where the settlement is approved by judgment, the judgment is in principle made public (see **1.3 Court Filings and Proceedings**).

8.3 Enforcement of Settlement Agreements

Once the settlement agreement is signed, it puts an end to the dispute and is res judicata between the parties.

The rules laid down in the settlement agreement are enforceable between the parties like any other agreement. In Belgium, enforcement includes specific performance.

8.4 Setting Aside Settlement Agreements

Settlement agreements can be set aside for the same causes as any other agreement (eg, lack of consent or illegal subject matter). As an exception, a mistake of law cannot be used to set the settlement aside.

9. DAMAGES AND JUDGMENT

9.1 Awards Available to the Successful Litigant

In Belgian law, the scope of possible remedies available to a successful litigant covers specific performance and damages and is thus extremely wide: the courts can make an order to do, to not do, to give (possibly under periodic penalty payment if necessary) and to pay.

9.2 Rules Regarding Damages

Damages under Belgian law are remedial only: they repair the damage suffered by the victim. As a result, the maximum damages are limited to the compensation of the damage suffered by the victim. There are no punitive damages under Belgian law.

In contractual disputes, the liable person must repair the foreseeable damage, whereas in extra-contractual disputes, even the unforeseeable damage must be repaired.

However, in contractual disputes, the liable person must compensate unforeseeable damages if they were caused by wilful and wanton tort.

Rules fixing maximum damages may exist in certain matters; eg, in the context of directors' liability.

9.3 Pre- and Post-Judgment Interest

A successful party may collect interest based on the period before and after the judgment is entered.

There are two main kinds of interest.

- Interest on arrears: the purpose of this interest is to compensate the damage caused by the delay in paying a sum of money that is not damages.

- Compensatory interest: the purpose of this interest is to compensate the damage caused by the delay in paying damages (see **9.2 Rules Regarding Damages**).

Interest on Arrears

The rate of interest on arrears is in principle the legal rate. There are two rates: a "basic" rate and a higher rate for late payment in commercial transactions.

The parties can deviate from these statutory rates and determine conventional rates. If these rates are clearly too high or too low, the judge can derogate from the agreed rate.

The judge may also reduce the interest due, in particular, in the event of manifestly abusive behaviour by the creditor.

In general, interest on arrears starts to accrue:

- in the case of commercial transactions – in principle, from the due date of the invoice; and
- for the rest – from the date of the formal notice of default.

Compensatory Interest

Compensatory interest is set by the judge to compensate for the damage suffered in full.

Courts often use the statutory interest rates.

Courts also set the starting point of the time limit.

For both type of interest, interest runs until the payment or the fulfilment of the obligation which gave rise to the interest. They can therefore accrue after the judgment has been entered.

9.4 Enforcement Mechanisms of a Domestic Judgment

As soon as the domestic judgment is pronounced, it is in principle enforceable. However, enforcement is only possible once it has been served by a bailiff on the party against whom enforcement is sought.

Once it has been served, the judgment can be enforced by any means of law enforcement authority. Enforcement measures include seizures of assets, seizures of bank accounts and, in certain rare instances, personal coercion (eg, eviction from premises). Judgments of first instance ordering the payment of the money sum can only be enforced one month after the judgment has been served on the defendant.

If the court has granted penalty payment for non-performance of the obligation of the judgment, the penalty payment starts to run – at the soonest – when the judgment is served and is intended to induce the defaulting party to comply with the judgment.

9.5 Enforcement of a Judgment from a Foreign Country

The procedure for enforcing a judgment from a foreign country depends on whether the judgment was rendered by (i) a court of an EU member state or (ii) a court of a non-EU member state.

Judgment from an EU Member State

Under the Recast Brussels Regulation, a judgment rendered in an EU member state is automatically enforceable in the other EU member states without a specific procedure and without a declaration of enforceability. The defendant can, however, initiate proceedings to object to the enforcement in exceptional circumstances, such as a violation of public policy or of due process rights.

The judgment will be enforced under the same conditions as a judgment rendered in Belgium.

Judgment from a non-EU Member State

A foreign judgment must be subject to an enforcement procedure to be enforceable in Belgium. This procedure is held before the Court of First Instance and is brought by unilateral (ex parte) application.

The party wishing to obtain enforcement must file:

- a copy of the foreign judgment;
- if the foreign judgment was rendered by default, the original or a certified copy of the document establishing that the document initiating the proceedings abroad was served to the person against whom enforcement is sought; and
- any document establishing that the judgment is enforceable in the country where it was rendered.

The court may refuse to recognise the foreign judgment for a limited number of reasons, including:

- recognition or enforcement would obviously be inconsistent with the public order;
- due process rights were violated;
- the decision was obtained in a matter where people cannot freely dispose of their rights to avoid the application of the national law that would normally be applicable according to the Belgian rules of conflict of laws;
- the decision can still be subject to recourse in the state where it was rendered;
- the decision is incompatible with a decision rendered in Belgium or a decision rendered abroad that can possibly be recognised in Belgium;
- the claim was filed abroad after it had been filed in Belgium, where the proceedings are still ongoing between the same parties and on the same subject matter;
- Belgian courts had exclusive jurisdiction on the claim; and
- the jurisdiction of the foreign court was based only on the presence of the defendant in the state of this court or of property without relationship to the dispute.

The foreign judgment cannot be reviewed on the merits.

10. APPEAL

10.1 Levels of Appeal or Review to a Litigation

Appeal and similar mechanisms are classified in two categories in Belgium:

- the ordinary recourses; and
- the extraordinary recourses.

Ordinary Recourses

The main ordinary remedy against a judgment is the appeal.

The appeal is a remedy available in principle against any decision given at first instance, provided that the amount in controversy is EUR2,500 or more.

It allows the parties to challenge the decision of the first instance judge before a higher court in order to obtain the reversal of the first instance judgment. The case is reviewed on any issue of fact or law, without deference to the previous decision (de novo).

It is also possible to lodge an application to set aside judgments that are rendered by default if they are not subject to appeal.

Extraordinary Recourses

Two extraordinary remedies exist: (i) the appeal in cassation and (ii) the third-party opposition.

The appeal in cassation allows the Supreme Court to hear appeals against a judgment that cannot be subject to ordinary recourses. Its review is limited to questions of law only, to the exclusion of questions of fact.

The third-party opposition allows a person who was not a party or not represented in the first instance to challenge a decision that prejudices their rights.

10.2 Rules Concerning Appeals of Judgments

Appeal

Almost all judgments can be appealed under Belgian law.

However, certain conditions must be met, mainly that the amount in controversy exceeds EUR2,500 (see **10.1 Levels of Appeal or Review to a Litigation**).

The appeal is lodged by the party who has complaints against the judgment. Under Belgian law, the parties are entitled to an appeal as a matter of right and do not need to obtain the court's authorisation to appeal (certiorari).

The appeal constitutes a review: the Court of Appeal judges the case a second time, both in law and in fact, without deference to the previous decision (de novo).

Appeal in Cassation

An appeal in cassation may only be lodged against decisions that cannot be subject to ordinary recourses. It is possible to lodge an appeal in cassation without having first lodged an appeal before the Court of Appeal if an appeal was not possible.

Appeals in cassation before the Supreme Court can only be lodged by one of the 20 specialised lawyers authorised by the Minister of Justice to bring and conduct proceedings before the Supreme Court (except in criminal and tax matters, see **1.2 Court System**).

The Supreme Court can only rule on questions of law: any plea of fact, or of law containing factual elements, is rejected. The procedure before the Supreme Court is not a third instance procedure: the Court does not judge the dispute a third time. If the Supreme Court considers that the judgment it assesses is illegal, it will annul it accordingly and remand it to a court of the same level as the court that rendered the annulled judgment.

10.3 Procedure for Taking an Appeal

Appeal

Usually, the appeal must be lodged within one month after the judgment has been served or, if applicable, from the date of the notification of the judgment.

An appeal is usually lodged by application to the Court of Appeal's registry (and in certain circumstances, by registered letter or by pleadings). The appellant must prove an interest in appealing and set out in the notice of appeal the complaints against the decision taken.

Appeal in Cassation

Usually, appeal in cassation must be lodged within three months after the judgment has been served or, if applicable, from the date of notification of the judgment.

The appeal in cassation is introduced by lodging an application at the Supreme Court's registry. The application must be signed by a lawyer admitted to the Supreme Court and served by a bailiff to the opposite party.

10.4 Issues Considered by the Appeal Court at an Appeal

Issues considered on appeal were addressed in **10.2 Rules Concerning Appeals of Judgments**.

Before the Court of Appeal, a new point that was not explored at first instance can be taken up. However, the appeal has a relative effect: if the main appeal is limited to attacking only certain aspects of the judgment given in the first instance and there is no cross-appeal, the Court of Appeal will only be able to rule within the limits of the appeal filed by the parties.

Before the Supreme Court, no new issue of fact can be considered. No new question of law can be raised, except if it pertains to public policy or if the Court of Appeal would have been bound to raise such an issue.

10.5 Court-Imposed Conditions on Granting an Appeal

Under Belgian law, the Court of Appeal cannot impose conditions on granting an appeal.

10.6 Powers of the Appellate Court after an Appeal Hearing

Appeal

The Court of Appeal decides the case and may confirm the original judgment or modify the ruling, in whole or in part.

When the Court of Appeal confirms, even partially, an investigative measure ordered by the first instance judgment, the Court of Appeal must remand the case to the first judge.

Appeal in Cassation

The Supreme Court can confirm the judgment or annul it and remand the case, as explained in **10.2 Rules Concerning Appeals of Judgments**.

11. COSTS

11.1 Responsibility for Paying the Costs of Litigation

The unsuccessful party pays the costs, including the procedural allowance, the costs of entering the case on the docket and the costs of summons. The procedural allowance is set by the law and only partially covers attorneys' fees as a lump sum.

11.2 Factors Considered when Awarding Costs

The Court awards the cost to the successful party. The costs may however be shared if the respondent has made a counterclaim.

Regarding the procedural allowance, it is a lump-sum contribution to the other party's legal costs, the amount of which is determined according to the amount in controversy and may be increased or decreased within the limits set by the law in terms of:

- the unreasonableness of the situation;
- the complexity of the dispute;
- the financial capacity of the losing party; and
- the contractual indemnities agreed upon for the winning party.

The parties may, in their pleading, request the court to increase or decrease the procedural allowance. This request must be reasoned.

11.3 Interest Awarded on Costs

Interest can theoretically be awarded on costs but is rarely requested in practice. It is calculated as any other interest on arrears (see **9.3 Pre- and Post-Judgment Interest**).

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12. ALTERNATIVE DISPUTE RESOLUTION (ADR)

12.1 Views of ADR within the Country

Alternative dispute resolution (ADR) is increasingly used in Belgium.

The most popular ADR method in Belgium is mediation, and then collaborative law and conciliation.

12.2 ADR within the Legal System

ADR is in principle not mandatory (with some exceptions, see **3.1 Rules on Pre-action Conduct**).

However, lawyers are legally obliged to inform their clients of the various ADR options and must at least try to find an amicable solution to the conflict if such an option seems possible.

The judge may ask the parties at the beginning of the proceedings if they have tried to resolve the dispute amicably and inform them of the possibilities of amicable resolution of their dispute. For this purpose, the judge may order the personal appearance of the parties in court.

The judge can even order that mediation be attempted, either ex officio or at the request of one of the parties.

12.3 ADR Institutions

It is only recently that institutions have begun to promote ADR more consistently.

Institutions are organising themselves in this respect, more and more lawyers are being trained in ADR, and trainee lawyers must follow ADR training.

13. ARBITRATION

13.1 Laws Regarding the Conduct of Arbitration

Rules regarding arbitrations seated in Belgium are set in the sixth part of the Belgian Judicial Code. Those rules are based on the UNCITRAL Model Law and only slightly differ from it, to favour arbitration. They cover default rules for the conduct of arbitrations and rules regarding the recognition and enforcement of arbitral awards.

Depending on the will of the parties, arbitrations seated in Belgium are either ad hoc or organised according to the rules of an arbitral institution (eg, the ICC or CEPANI, which is the Belgian Centre for Arbitration and Mediation).

13.2 Subject Matters Not Referred to Arbitration

The general rule is that disputes involving monetary matters as well as non-monetary matters that can be legally settled, may be referred to arbitration. Therefore, disputes involving non-monetary matters that cannot be legally settled may thus not be referred to arbitration (eg, disputes related to personal status such as divorce, filiation or citizenship).

Specific rules also exclude arbitration for some types of disputes, notably:

- disputes between employers and employees arising out of an employment agreement;
- disputes between landlords and tenants in residential leases;
- non-contractual disputes with a public law entity; and
- disputes regarding the validity of certain intellectual property rights.

13.3 Circumstances to Challenge an Arbitral Award

Grounds for setting aside an arbitral award are limited.

The moving party must evidence that:

- a party to the arbitration agreement was incapacitated or that the arbitration agreement is not valid under the law applicable to this agreement;
- it was not informed of the designation of the arbitrator(s) or of the arbitral proceeding or that it could not defend its rights;
- the award decides a dispute that is not in the scope of the arbitration agreement or exceeds the terms of such agreement;
- the award is not reasoned;
- the composition of the arbitral tribunal or the procedure are not in accordance with the arbitration agreement; and
- the arbitral tribunal exceeded its powers.

The court might also set aside an arbitral award if:

- the subject matter of the dispute could not be referred to arbitration;
- the award violates public policy; and
- the award was obtained by fraud.

Some of the instances above lead to setting aside the arbitral award only if they had an influence on the award.

Except when there is fraud, a party must challenge the arbitral award within three months after the award was sent to such party. For fraud, the Belgian Constitutional Court decided in 2021 that the three-month time limit was unconstitutional. This needs to be addressed by the Parliament and, in the meantime, a challenge for fraud must be filed within a "reasonable period given the circumstances, from the discovery of the fraud."

The court to which a challenge application is made cannot modify the award nor review the case without deference to the award (de novo) nor decide on the merits nor replace the assessment of the arbitral tribunal by its own assessment. The court can only set the award aside, dismiss the application or suspend the proceedings and remand the case to the arbitral tribunal for it to take measures to avoid the grounds for challenge.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Awards can be enforced in Belgium after recognition by the Court of First Instance. If the award was rendered in a country with which Belgium has entered into a treaty, such treaty prevails over the rules mentioned below. Belgium is a party to, for example, the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

The recognition proceeding is conducted ex parte.

The grounds for refusing recognition are limited and similar to the grounds for annulment enumerated in **13.3 Circumstances to Challenge an Arbitral Award**.

The judgment recognising and enforcing the award must be served to the party against whom enforcement is sought. Within one month after service, this party can file a third-party opposition against the recognition judgment.

The judgment refusing recognition or deciding the third-party opposition can be appealed

before the Supreme Court, but for matters of law only.

14. OUTLOOK AND COVID-19

14.1 Proposals for Dispute Resolution Reform

No substantial reform for dispute resolution is currently underway in Belgium, except for the adoption of measures to digitalise justice.

14.2 Impact of COVID-19

During the COVID-19 crisis, the statute of limitations for taking action in civil courts was frozen (from 9 April to 3 May 2020) and the time limits for bringing proceedings or appeals were also extended by one month (from 3 May 2020 to 3 June 2020).

Cases scheduled to be heard between 11 April 2020 and 3 June 2020 were sometimes judged on the basis of the written pleadings, without a hearing.

Hearings could then be held by videoconference and exhibits were filed digitally.

In practice, each court and sometimes each judge within a given court had its own practice during these peculiar times.

Simont Braun is a leading independent Belgian law firm. It provides tailored, creative and pragmatic solutions to national and international clients in all areas of business law: corporate, M&A and capital markets; banking and (digital) finance; intellectual property, ICT and data protection; real estate and construction; public and administrative law; tax law; and dispute resolution (litigation, arbitration and mediation). Litigation has been a long-standing area of focus at Simont Braun. The firm also has strong expertise in arbitration (domestic and international) and mediation. Simont Braun's lawyers act before courts at all levels in civil, commercial and administrative matters. Simont Braun also counts one of the 20 lawyers admitted in Belgium to the Bar of the Supreme Court (Cour de cassation/Hof van cassatie).

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