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1 Litigation – Preliminaries

1.1 What type of legal system does your jurisdiction have? Are there any rules that govern civil procedure in your jurisdiction?

Belgium is a civil law country. Civil procedure is for the most part governed by the codified rules of civil procedure set forth in the Belgian Judicial Code. Additional rules governing civil procedure are set out in separate statutes and European regulations (e.g. Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters).

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

The Belgian civil court system is organised at three levels.

Civil legal actions are first settled by District Courts, meaning the Court of First Instance for general civil matters, the Labour Law Court for employment matters and the Commercial Court for disputes between companies.

Small claims with a value of less than EUR 5,000 and certain specific legal matters (e.g. civil and commercial leases) are handled by the Justice of the Peace.

First instance judgments by the District Courts or the Justice of the Peace may, in most instances, be appealed.

Appeals against judgments rendered by the Justice of the Peace are handled by the District Courts. Appeals against judgments of the District Courts are handled by the Belgian Courts of Appeal.

Finally, decisions of the Courts of Appeal can be overturned by the Belgian Supreme Court, yet the Supreme Court is not to be seen as a court of third instance: the Supreme Court shall limit itself to purely legal issues (e.g. respect of procedural rules), thereby avoiding any interpretation of the facts of the case.

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

Proceedings start either by the service of a writ of summons or, in limited circumstances, by a unilateral request filed with the court. An introductory hearing is then scheduled after at least eight days, on which parties usually agree on the course of proceedings.

Normally, the parties will agree on a calendar for the filing of written pleadings. Following the filing of such written pleadings, each party has the opportunity to present their arguments orally before the judge during a hearing.

Exceptionally, cases that are not complex and not disputed can be handled at the introductory hearing or shortly thereafter.

A judgment is issued thereafter (formally within one month of the hearing, although in practice this period can be longer).

Normal proceedings in first instance take approximately one to two years. Appeal proceedings take approximately three years.

Due to a significant backlog, legal actions are significantly delayed before the courts of Brussels.

Legal actions that are initiated before the Brussels Commercial Courts are not expected to be handled before September 2023. Appeals before the Court of Appeal of Brussels will not be handled before 2024 (Dutch-speaking courts) or 2025 (French-speaking courts, for matters requiring three judges).

1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

Provided that such clauses comply with the applicable national and international rules, these clauses are deemed valid and are applicable before Belgian courts.

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

Costs for civil proceedings in Belgium are split into administrative costs (for filing and administrative steps) and (limited) compensation for legal costs.

Attorneys' fees are paid as a flat-rate judicial indemnity. The amount of the indemnity depends on the type and importance of the claim. The court can deviate from the standard indemnity on a party's reasoned request, but must comply with the minimum and maximum amounts set in a royal decree.

Administrative costs and expert fees are not covered by the flat-rate indemnity and can be recovered in full.

The Judicial Code expressly recognises the "loser pays" principle, under which the unsuccessful party must cover the costs of the proceedings. Therefore, court costs are usually borne by the unsuccessful party, but within the limits as set out above.

There are no rules on cost budgeting (mainly as costs are only partially recoverable in Belgium).

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are claimants and defendants permitted to enter into contingency fee arrangements and conditional fee arrangements?

Fees are regulated by Article 446*ter*, Judicial Code, which sets out the two following principles:

- Fees cannot exceed the boundaries of fair moderation.
- Fees exclusively linked to the outcome of a case (such as contingency fees) are not allowed.
- Conditional fee arrangements according to which specific modalities, such as an increase, are determined by the outcome (*i.e.* success fees) are, however, allowed.

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

Assigning claims to a third-party funder is possible under Belgian law (Article 5.178, (new) Civil Code). Third-party funding of litigation costs is not regulated under Belgian law, but is generally considered admissible by legal scholars and practitioners. The admissibility of third-party funding has never been reviewed by Belgian courts to date. In any case, this practice is not very popular in Belgium.

1.8 Can a party obtain security for/a guarantee over its legal costs?

When the claimant is a foreign company or an individual, it is possible for a Belgian defendant to ask the court to make an order for security for costs (Articles 851 and 852, Judicial Code). This must be requested *in limine litis* (that is, before any other defence is put forward against the claimant). The defendant can also ask for an order for security in appeal proceedings. However, the constitutional court ruled that the possibility for a "*cautio*" is contrary to equality principles. Therefore, courts can no longer apply this legislation.

Further, in any event, EU claimants are exempt from the obligation to provide security as well as claimants from countries with which Belgium has entered into a bilateral treaty providing for an exemption.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

Pre-action conduct requirements may be imposed by law or agreed by the parties. For example, in large commercial disputes, the parties can agree to attempt to settle disputes first through negotiation, conciliation or mediation, before initiating court litigation. Under the Judicial Code, judges can question the parties on their pre-action efforts to settle the matter.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

The most common limitation periods are the following:

- 30 years (in some cases 10 years) for claims regarding the recovery or protection of real property.
- Five years for tort claims, from the day following that which the claimant becomes aware of the damage or aggravation of the damage, and of the identity of the person liable for the damage, subject to a long-stop period of 20 years and one day after the date on which the fact, action or negligence that caused the damage occurred.
- One year for claims against consumers relating to commercial goods, but five years for claims regarding essential goods such as gas, electricity and water.
- 10 years for most other claims, such as contractual claims.

A writ of summons suspends the limitation period until a final decision has been rendered. This is also the case with a formal notice letter, but only if the letter complies with a list of formal requirements.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

Proceedings are initiated by serving a writ of summons on the defendant, which is then served by a bailiff on the defendant at its headquarters, residence or elected domicile.

Service is deemed to have occurred on the date listed by the bailiff on the writ (the date on which the document was served in person, or the letter issued).

Service of a writ commencing Belgian proceedings over foreign entities is also carried out through the office of the (official) court bailiff, usually following the rules set out in The Hague Convention of 15 November 1965 or, for service between EU Member States, by the EU Service Regulation (No 1393/2007).

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

Interim or conservatory measures can be claimed in Belgium either by separate summary proceedings, or pursuant to Article 19 §3, Judicial Code as part of the proceedings on the merits.

Article 19 §3, Judicial Code provides that, at any stage in the proceedings on the merits, the judge can order an interim measure to investigate the claim, to settle an interim dispute or to regulate the situation of the parties temporarily. The applicant can file a request for interim measures at any stage of the proceedings.

The main advantage of these interim measures in comparison to separate summary proceedings is that urgency is not required. The applicant need not show that there is an urgent need to obtain the interim measures, while this is strictly required in separate summary proceedings.

3.3 What are the main elements of the claimant's pleadings?

The claimant's pleadings will normally contain an overview of the facts underlying the claim, followed by a legal analysis of these facts, in support of the claim filed. Finally, the pleadings will set out the relief requested from the competent court.

3.4 Can the pleadings be amended? If so, are there any restrictions?

In normal civil proceedings, several sets of pleadings are filed, in accordance with a filing calendar. The pleadings can be amended within the framework of the set filing dates.

However, some limitations do apply; most importantly that no new claims can be filed, to the extent these are not based on elements that were set out in the initial writ of summons.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

Pleadings cannot be withdrawn. However, only the last pleadings filed by each party shall effectively be reviewed by the court. Parties can, therefore, remove arguments or amend them in their last pleadings and thereby avoid the court reviewing the first version of their pleadings.

Moreover, claimants are free to waive their legal action against the defendant at any moment before the case is handled. The waiving party shall, however, support the costs of the proceedings under the terms of the Judicial Code, unless the parties expressly agree otherwise.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

A statement of defence will usually set out the defendant's factual and legal defence against the main claim. The structure of the statement of defence will usually mirror the structure of the claimant's pleadings.

Counterclaims can be filed, to the extent that such counterclaims are not frivolous or filed with the sole intent to delay the main claim.

4.2 What is the time limit within which the statement of defence has to be served?

As mentioned above, the parties agree on a calendar to submit their respective pleadings. If at the introductory hearing the parties do not agree to such a calendar, or to an adjournment of the case, the court should normally establish a calendar itself.

The defendant shall, therefore, have to file its pleadings within the deadlines set forth in the applicable judicial calendar.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

A defendant can file a claim against third parties compelling them to join the ongoing proceedings, and to hold the defendant (partially) harmless against the main claim. Such security or holding the defendant harmless is permitted, to the extent it is not frivolous or filed with the sole intent to delay the main claim.

4.4 What happens if the defendant does not defend the claim?

In such instance, the court orders a judgment by default. Such judgment can be appealed through opposition proceedings.

4.5 Can the defendant dispute the court's jurisdiction?

Yes, provided that it does so *in limine litis* (that is, before any other defence is put forward against the claimant).

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

Belgian law allows parties (claimants or defendants) to compel any third party to join the proceedings for one of the following purposes:

- To safeguard their rights or interests (conservatory claim or joint declaration proceedings).
- To put forward a claim against the third party, e.g., for penalties or indemnification (contribution/security claim or penalty proceedings).

Such a contribution/security claim can only be initiated in first instance proceedings, and not on appeal.

Involving third parties is generally permitted under Belgian law to the extent that it is not frivolous or filed with the sole intent to delay the main claim.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Individual claims can be joined if they are sufficiently linked. A court can also hear cases jointly when it is in the interest of justice to do so, in order to avoid irreconcilable decisions.

5.3 Do you have split trials/bifurcation of proceedings?

A request can be made to split the trial into a decision on jurisdiction, followed by a decision on the merits. The court will, however, finally decide on whether or not to allow such bifurcation.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

Cases are allocated on a "first come, first served" basis. Hearings are scheduled depending on the availability of the competent court, taking into account the length of the agreed filing calendar. Urgent cases are, however, handled by priority in the context of summary proceedings.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Belgian courts have very limited case management powers. The most notable exception to this is the power of the courts to set a filing calendar, in the absence of an agreement thereon by the parties.

There are various interim applications available to the parties, including a request for interim investigatory measures and (limited) production of documents. There are no specific cost consequences in relation thereto.

6.3 In what circumstances (if any) do the civil courts in your jurisdiction allow hearings or trials to be conducted fully or partially remotely by telephone or video conferencing, and what protocols apply? For example, does the court – and/or may parties – record and/or live-stream the hearings and may transcriptions be taken? May participants attend hearings remotely when they are physically located outside of the jurisdiction? Are electronic or hard-copy bundles used for remote hearings?

As a general rule, hearings before Belgian courts are always held in person and cannot be held (even partially) remotely. There is an exception for criminal proceedings, whereby the use of video conferencing technology is permitted for the hearings of witnesses and experts in criminal matters under certain conditions.

Moreover, a temporary exception to this general rule occurred as a result of the COVID-19 pandemic. During the lockdown period, court hearings were conducted remotely via video conferencing.

Given that these remote hearings were only temporary, they were not subject to formal rules or protocols but rather to the specific practice of each court.

It remains uncertain whether these temporary measures will lead to a reform on the use of remote hearings in Belgian proceedings in the future.

6.4 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

The courts can impose a penalty for non-compliance with its judgment. Moreover, in very limited circumstances, the court can impose a fine on a party that has conducted itself in a particularly vexatious or disloyal manner. This sanction is, however, very rarely applied.

6.5 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

A court may disregard any statement made outside the agreed filing calendar. In addition, a court may dismiss a claim or case in its entirety if it finds that such claim or case does not meet the applicable admissibility requirements, e.g. if a plaintiff lacks interests, if the claim is time-barred, etc.

6.6 Can the civil courts in your jurisdiction enter summary judgment?

Yes, but only in the framework of a specific category of legal action called "*action en référé/kort geding*" (Article 584, Judicial Code). For such action to be admissible, the claimant must demonstrate that its claim is urgent. Such actions are brought before the President of the competent court, who shall only be entitled to render provisional decisions (and shall, therefore, not render a decision on the merits of the case).

6.7 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

As mentioned above, courts can dismiss a case (thereby discontinuing the proceedings) when they find that such claim or case does not meet the applicable admissibility requirements. Moreover, courts may also, at the request of one of the parties, stay the proceedings at any moment thereto for reasons of procedural efficiency or to avoid a judgment that would run counter to a future decision or a criminal judgment ("*le criminel tient le civil en état*"). Finally, if proceedings remain inactive for a long period of time, a court can discontinue such proceedings (following reminders sent to the parties involved requesting the reactivation of the proceedings).

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

The Belgian Judicial Code does not provide for discovery or pre-trial disclosure proceedings.

However, upon request of one of the parties (at any stage of the proceedings), Belgian courts can allow certain preliminary measures, such as the production of documents (Articles 877–882, Judicial Code). Moreover, parties must spontaneously exchange their exhibits before presenting them to the court.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

Belgian procedural law does not provide for a general principle of protection of confidential information in civil proceedings. Documents (including settlement discussions) exchanged directly between parties are not confidential, unless the parties have signed a non-disclosure agreement.

However, there are specific categories of information that are covered by a particular protection, such as legal professional privilege, trade secrets (Article 871*bis*, Judicial Code) or confidentiality in the framework of mediation (Article 1728, Judicial Code).

In particular, correspondence between a lawyer and a client, internal documents prepared exclusively for the purpose of obtaining external legal advice and internal documents disseminating or summarising external legal advice are covered by legal privilege.

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

If a party can persuade the court that another party to the proceedings or a third party has possession of one or more documents that could demonstrate a fact that is relevant to the dispute, the court can order that (third) party to disclose the document(s).

Generally, courts tend to apply the conditions for such document production in a strict manner. As a general rule, the requesting party must describe the (categories of) documents as narrowly as possible and the court will balance the legitimate interests of the parties (including the relevance of the documentation, the costs of disclosure or the existence of confidential information in the requested documents).

7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

As set forth above, Belgian courts can order another party to

the proceedings or a third party to produce documents under certain conditions (Articles 877–882, Judicial Code).

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

There are no restrictions, in principle, as evidence or documents produced in civil proceedings are not subject to confidentiality rules.

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

Each party advancing claims has the burden to prove any facts it relies upon. If this appears manifestly unreasonable, the court can in exceptional circumstances impose the burden of proof on another party. Failing the provision of sufficient evidence, the court may opt to dismiss the claim. Belgian courts have wide discretion as to how much weight they give to a produced piece of evidence. Parties will mostly rely on written evidence; oral evidence is rather uncommon in Belgian civil proceedings.

8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?

In principle, any lawfully obtained and non-privileged evidence is admissible. In practice, however, parties mostly rely on written evidence.

Expert evidence is also admissible and common practice in private damages cases. Parties can appoint experts without intervention or approval of the court, but the resulting evidence is generally given less weight by Belgian courts.

8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?

Belgian law considers factual witness evidence admissible, though recourse to such evidence is uncommon in practice. Parties usually develop arguments in writing and rarely call on witnesses. When parties call on witnesses, they produce witness statements that are added to the list of exhibits.

Parties can request the court to hear witnesses. The court can also call witnesses *ex officio* and impose a penalty for non-compliance.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

Parties can appoint experts without the intervention or approval of the court. As party-appointed experts have no duty to the court, their evidence may sometimes be given less weight.

The court can also appoint experts, upon request of the parties or *ex officio*. In such instances, the court appoints the expert to decide on factual issues falling within the scope of his/her expertise. The parties have the obligation to co-operate with the judicial expert, who shall set forth its findings in a written report to the court at the end of its mission. The written report is not strictly binding on the court, although its findings are almost always followed by the court in practice.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

Belgian courts are empowered to issue different kinds of judgments and orders providing for various remedies, including provisional measures, cessation orders, interim judgments and final judgments.

9.2 Are the civil courts in your jurisdiction empowered to issue binding declarations as to (i) parties' contractual or other civil law rights or obligations, (ii) the proper interpretation of wording in contracts, statutes or other documents, (iii) the existence of facts, or (iv) a principle of law? If so, when may such relief be sought and what factors are relevant to whether such relief is granted? In particular, may such relief be granted where the party seeking the declaration has no subsisting cause of action, and/or no party has suffered loss, and/or there has been no breach of contract/duty?

Courts can issue a declaratory judgment which merely confirms parties' contractual or non-contractual rights and obligations, without condemning any party.

In principle, legal actions can be initiated only if the claimant has an existing interest, *i.e.* when a dispute has arisen or when a loss will inevitably arise (Articles 17–18, Judicial Code). A court may, however, find a preventive action (such as declaratory relief) admissible if said action is meant to safeguard a seriously threatened right (Article 18 §2, Judicial Code).

The claimant of such action must, first of all, prove that its right is under a serious threat which already causes some kind of disturbance. This is a question of fact that is sovereignly assessed by the judge. Second, the claimant must prove that the declaratory judgment will clarify the situation, put an end to the threat and/or have the (non-) existence of its right recognised. The relief will not be granted if it has merely theoretical significance; it must be linked to an imminent dispute.

When parties disagree on the interpretation of a contract, the court will interpret the wording in light of the parties' common intention or, in case of doubt, according to specific interpretation rules laid down by law (Articles 5.64–5.66, (new) Civil Code).

In general, courts are equally competent to interpret binding sources of law such as statutes, customary law or principles of law.

9.3 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Belgian courts are allowed to grant full compensation of the injured party's actual damage, but nothing more. Punitive damages are not permitted. When the exact amount of damages is difficult to determine, courts can grant damages on an *ex aequo et bono* basis (based on equity). Courts can, moreover, increase the damages awarded with interests. Belgian courts can also award compensation for costs, within the framework and the limits set by the Belgian legislator.

9.4 How can a domestic/foreign judgment be recognised and enforced?

The losing party is expected to satisfy or comply with a final and binding judgment voluntarily, but if the losing party refuses to

pay, the winning party may enforce the judgment. If a losing party fails to comply with a judgment, the successful party may have the debtor's movable goods or real estate attached as security for the amount awarded by the court. The attachment is to the benefit of all known creditors.

A foreign judgment will have effect in Belgium only if a Belgian court provides its assistance and enforces the judgment, following the procedure set forth below:

- If there is no bilateral or multilateral treaty between Belgium and the country where the initial decision was rendered, an order must be obtained from a Belgian court to enforce a judgment (except in insolvency proceedings). To decide whether to grant an enforcement order, the court shall assess whether the foreign judgment falls within one of the exhaustive refusal grounds set out in the Belgian Code of Private International Law.
- If there is a bilateral or multilateral treaty, the foreign judgment will be enforced by Belgian courts where the conditions provided by the treaty are fulfilled.
- For EU Member States, recognition and enforcement of such judgments (in commercial or civil matters) will be carried out in accordance with the revised European Regulation (EU) No 1215/2012. The Court of First Instance is the competent authority designated by Belgium to examine applications. In uncontested claims, it is also possible to apply for a "European Enforcement Order" under Regulation (EC) No 805/2004. If such an order has been obtained, no further enforcement proceedings are necessary.

9.5 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

First instance judgments by the District Courts or the Justice of the Peace may, in most instances, be appealed.

Appeals against judgments rendered by the Justice of the Peace are handled by the District Courts. Appeals against judgments of the District Courts are heard by the Belgian Courts of Appeal.

Finally, decisions of the Courts of Appeal can be overturned by the Belgian Supreme Court (yet no third instance; limited to legal issues).

In general, the appeal must be filed within a period of one month from notification of the judgment (by court bailiff) to the opposing party, failing which the appeal becomes time-barred.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

Under the Judicial Code, judges can question parties on their pre-action efforts to settle the matter. Usually, a claimant will mention in the writ of summons that an attempt to settle the dispute was undertaken but has failed.

There are no pre-determined penalties for failing to attempt to settle a dispute. However, an attempt to settle the dispute, although unsuccessful, can be relevant to avoid a successful counterclaim for damages due to initiating frivolous and vexatious proceedings, or a penalty for abuse of proceedings.

11 Alternative Dispute Resolution

11.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

- **Arbitration**
  Arbitration is the main alternative dispute resolution (ADR) method used to resolve large commercial disputes. Parties are free to choose the arbitration organisation that will administer the arbitration and to agree on the rules governing arbitral proceedings.
- **Mediation**
  Mediation is rarely used in large commercial disputes. Parties make attempts to settle disputes through negotiation, but mediation is usually not expected to provide added value to these negotiations.
- **Other forms of ADR**
  Belgian law also offers other types of ADR which are not often relied upon, such as formal "collaborative" negotiations, expert determination or Ombudsmen, although the latter are often relied upon in disputes brought by consumers. All Ombudsmen possess a specific status under Belgian law and are usually free of charge for the consumer.

11.2 What are the laws or rules governing the different methods of alternative dispute resolution?

- **Arbitration**
  Articles 1676–1722, Judicial Code govern arbitration. The legal framework was significantly amended by the Arbitration Act 2013, which closely reflects the UNCITRAL Model Law with amendments as adopted in 2006. As mentioned above, parties are free to choose the arbitration organisation that will administer the arbitration. However, some essential rules (such as the adversarial nature of the proceedings) are mandatory. The most common rules applied are the Belgian Centre for Arbitration and Mediation (CEPANI) rules and the International Chamber of Commerce (ICC) Rules. Arbitration is based on the parties' consent.
- **Mediation**
  Articles 1723/1–1737, Judicial Code govern mediation. Mediation generally requires the parties' consent. Mediation can be initiated on the parties' initiative or be imposed by the judge. In a commercial context, mediation is rarely imposed. Any party can end the mediation process at any time.
- **Other forms of ADR**
  Other forms of ADR, such as expert determination, are based on the parties' consent. However, sector-specific ADR mechanisms may be imposed by the industry in which the parties operate. Ombudsmen are subject to their own specific rules and status. So-called collaborative negotiations are governed by Articles 1738–1747, Judicial Code.

11.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Arbitration agreements are enforceable only if they relate to a dispute that is arbitrable. There must be no restrictions of

national mandatory law and public policy with respect to the subject-matter of the dispute (objective arbitrability). The parties involved must have the legal capacity to enter into arbitration agreements (subjective arbitrability). Moreover, a company cannot enforce arbitration clauses in agreements with consumers in Belgian courts.

11.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

Applications for the recognition and enforcement of arbitral awards in Belgium are submitted through unilateral request. Parties can, in most cases, request Belgian courts to issue interim or provisional measures. Belgian courts will, however, uphold arbitration agreements, to the extent these agreements are held to be valid and enforceable.

11.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

In Belgium, ADR proceedings are typically final and binding. An appeal against an arbitral award can only be made if provided in the arbitration agreement. In practice, parties rarely provide for the possibility of appeal against arbitral awards. Parties can also challenge the arbitral award before local courts in setting-aside proceedings.

In the context of mediation, there is no obligation for parties to have their settlement agreement sanctioned by the court. However, if parties request the court to do so, the decision of the court to sanction the agreement cannot be appealed (Articles 1043, 1733 and 1736, Judicial Code).

11.6 What are the major alternative dispute resolution institutions in your jurisdiction?

Most ADR in Belgium is initiated under the ICC or CEPANI rules.

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He is one of the few Belgian lawyers with expertise in complex insurance and reinsurance disputes before Belgian courts and arbitration panels. As he often represents international clients, he is well aware of the cultural and legal differences in commercial contracts between Belgian and non-Belgian companies. *Who's Who Legal* has recognised him as one of the only 10 Thought Leaders in Litigation in Belgium, reflecting his unique blend of expertise and experience.

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