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## Belgium

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### A. Legislation and rules

#### A.1 Legislation

Some minor legislative adjustments to Belgian arbitration law were implemented in early 2017, by the Law of 25 December 2016 introducing changes to the Judicial Code. Some key amendments include (i) the applicability of Belgian arbitration law, which is now based on the seat of the arbitration tribunal or on the will of the parties, (ii) the starting point of the arbitration proceedings, which is the moment when the claimant communicates the arbitration request to the respondent and (iii) the requirement for an opposing third party to file its third-party opposition to a decision declaring the award enforceable and its motion to set aside the award within the same proceedings, provided that the deadline to do so has not expired.

Domestic and international arbitration in Belgium continues to be governed by part VI of the Judicial Code (articles 1676-1722), which is largely based on the UNCITRAL Model Law.

While the legislation on arbitration has remained stable in 2018, Belgian mediation law has undergone various significant amendments. The Law of 18 June 2018, which contains various provisions on civil law and provisions aimed at promoting alternative forms of dispute resolution, introduces the following main changes to the legal mediation framework: (i) The introduction of “collaborative negotiation.” This is a new form of mediation where each party is assisted by a specialized “collaborative lawyer” who has received

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specific training for such proceedings (i). If the negotiations are not successful, the lawyers must withdraw from further proceedings and are not allowed to represent the parties involved; (ii) A court may order mediation if it considers a reconciliation between the parties to be possible, after hearing their arguments. This decision can only be overturned by a refusal of all the parties involved. This is an important derogation of the voluntary nature of mediation; (iii) The access to the facilitation of mediation regarding certain matters will be restricted to accredited mediators.

## A.2 Brussels International Business Court

The Belgian government first announced its initiative of creating a Brussels International Business Court (“BIBC”) in a draft bill of 27 October 2017 (“Bill”). A revised version of the Bill has been submitted to the parliament in May 2018. The implementation is scheduled for early 2020.

The BIBC will be a court with jurisdiction to deal with international business and commercial disputes between corporations. It will be composed of both professional judges and legal experts (i.e., non-professional judges) from domestic and foreign jurisdictions, and its jurisdiction will be based on consent between the parties. The judgments of the BIBC will not be subject to appeal, with the exception of an appeal on points of law before the Belgian Court of Cassation. The rules of procedure will be based on the UNCITRAL Model Law, and the working language of the BIBC will be English, a novelty.

The introduction of the BIBC is, strictly speaking, not related to arbitration. Contrary to arbitration tribunals, it has the status of a state court. As a consequence, two fundamental arbitration principles, i.e. the confidentiality of the hearing and the autonomy of the parties to nominate a judge, do not apply. Moreover, the recognition and enforcement regime of the New York Convention of 1958 will not apply either. The BIBC, however, also shares common features with arbitration, such as specialized judges, procedural flexibility and the



absence of an option to appeal on the merits. Combined with its cost-effective character, it may therefore compete with traditional arbitration in the future.

### A.3 Institutions, rules and infrastructure

Most Belgian institutional arbitrations are governed by the CEPANI Arbitration Rules or the ICC Rules. CEPANI (Belgian Centre for Arbitration and Mediation) is the largest and most well-known arbitration and mediation institution in Belgium. There are also regional or industry-focused arbitration centers, and there is still a reasonable share of *ad hoc* arbitration.

## B. Cases

### B.1 Arbitration clause held invalid due to absence of ‘defined legal relationship’

On 4 September 2018, the Brussels Court of Appeal handed down an important judgment regarding international sports arbitration. It ruled that ‘enforced’ arbitration clauses in football agreements may be challenged if the clause is worded in an overly broad manner. Under Belgian law, arbitration clauses must concern a “defined legal relationship,” determining the scope of any potential dispute arising between the parties. The Court essentially held that the absence of such delimitation will cause the arbitration clause to be inapplicable.

The case involved a Belgian football club and an investment fund in support of third-party ownership (“claimants”) and international football organizations FIFA and UEFA. The claimants contested the validity of sanctions imposed on the club by FIFA and UEFA for violating the rules prohibiting third-party ownership (“TPO”). TPO is a practice whereby a third party invests in the economic rights of a player so that the third party, rather than a football club, benefits from transfer fees every time the player is sold.

The agreement at hand contained an arbitration clause that referred all disputes between the parties to arbitration. The claimants instead

brought proceedings before the Brussels Court of Appeal (“Court”) and challenged the validity of the arbitration clause. They argued that the arbitration clause did not meet the requirement of relating to a “defined legal relationship” since it would apply to any kind of dispute, irrespective of the object. FIFA and UEFA counter-argued that their bylaws delimited the scope of application of the arbitration clause by defining their activities and corporate purposes, so that only disputes relating to those activities would be subject to the clause.

The Court sided with the claimants and refused to refer the case to arbitration. It found that the arbitration clause did not comply with Belgian law and was therefore invalid. The Court rejected the arguments of FIFA and UEFA, ruling that the parties’ activities and corporate purposes did not ensure a sufficient delimitation of the legal relationship. The restriction of the jurisdiction of the tribunal to sport-related disputes mentioned in the parties’ bylaws did not meet this requirement either, since the football organizations have the ability to amend their bylaws at any time.

Lastly, the Court confirmed its jurisdiction by reference to the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (“Lugano Convention”). In common with the Brussels I Regulation Recast, this Convention provides that, when the case involves multiple defending parties, all defendants can be sued in the courts of the state where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments.

The Court found that both the football club and the Belgian Football Association (“BFA”) were domiciled in Belgium. BFA is the governing body for football in Belgium and shares regulatory and disciplinary powers with FIFA. Its identical legal situation as FIFA and UEFA led the Court to confirm its position as a defendant. Moreover, its function as a national football authority created a sufficient degree of connection with the claims against the football



organizations. The Court, therefore, accepted jurisdiction to handle the case, regarding the consequences within Belgian territory.

## B.2 Third-party opposition against arbitral awards

Following a ruling from the Belgian Constitutional Court (“CC”) in 2016, the Court of First Instance in Brussels issued a judgment on 12 April 2018 on the admissibility of a third-party opposition to an arbitral award and the requirements thereto.

The CC had decided that third parties should be entitled to lodge third-party opposition against arbitral awards, but should not be able to rely on the limited ground of annulment against arbitral awards in article 1717 of the Judicial Code to challenge arbitral awards directly.

The case revolved around a transfer of shares from a Greek company to a buying company. The transaction agreement included the hiring of a CEO, who was bound by an employment agreement with the Greek company. The transaction was subject to an arbitration clause that appointed the ICC and the courts of Brussels as the competent authorities for disputes between the parties. An additional agreement between all parties involved awarded the CEO a special termination compensation in the event of a termination of the employment agreement.

The CEO brought two separate proceedings before the ICC against the Greek company and the buying company after being dismissed for gross misconduct. In both cases, the ICC awarded the CEO compensation for wrongful termination of the employment relationship. The CEO had, however, simultaneously brought proceedings before the Greek Court of First Instance, which held the termination of the employment agreement to be invalid. The Greek company then decided to seek the annulment of the two arbitral awards before the Brussels Court of First Instance and filed third-party opposition proceedings against the arbitral award directed against the buying company.

The court firstly held, in line with the CC's case law, that as a third party to the arbitration proceedings concerning the CEO and the buying company, the Greek company had the right to lodge a third-party opposition against the arbitral award. In order for such proceedings to be valid, the opposition must relate to a decision "that may harm the third party's rights" which indicates that the third party must have standing to lodge the opposition. To meet this requirement, the court held that it was sufficient that the party's legal position was affected by the arbitral award.

Secondly, the court established that the term during which a third-party opposition must be filed is thirty years, according to Belgian law, except if the decision has been served on the third party, in which case the opposition must be filed within three months from the notification date. Given that the arbitral award had not been served on the Greek company, its opposition was filed within the time limit.

Lastly, the court established that the ICC had ruled on several points that concerned employment law. In Greece, like in Belgium, the legislation regarding employment is of a mandatory nature. This implies that the ICC had no jurisdiction to rule on this matter. The court therefore annulled both arbitral awards.

### **B.3 Arbitration tribunal does not lose its jurisdiction by a mere lapse of time**

Under Belgian law, parties may set a time limit for the pronouncement of an arbitral award or may agree on a method to determine such a time limit. By a decision of 26 October 2017, the Court of Cassation held that, if such a time limit or method has not been established by the parties, the mere lapse of time does not affect the jurisdiction of the arbitration tribunal. However, according to article 1698, 1° and 2° of the Judicial Code, the absence of a set time limit or method to determine one, enables the parties to request a judgment from the Court of First Instance on this issue after a period of six months from the acceptance of the arbitration mandate by the arbitrators.



#### B.4 Validity of arbitration clauses in general terms and conditions

The Justice of the Peace in Aalst recently confirmed that an arbitration clause in the general terms and conditions of a party may be a valid expression of the parties' consent to refer a dispute to arbitration, provided that both parties had actual knowledge of the arbitration clause and intended to accept it, even tacitly.

In the case at hand, which concerned a claim for the payment of a funeral invoice, it was the defendant who contested the jurisdiction of the court, because the general terms and conditions of the plaintiff contained the arbitration clause. In addition, the existence of the said clause was mentioned twice in the funeral invoice.

Consequently, the Justice of the Peace decided that the intention to arbitrate was "clearly" present and the arbitration clause was upheld. The absence of a nominated arbitral tribunal did not affect the validity of the clause. The test of actual knowledge (or at least knowableness) of the arbitration clause in question is however required on a case-by-case basis and may lead to divergent precedents on the subject.