

Belgium - Code Judiciaire 19 May 1998

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Belgium - Code Judiciaire 19 May 1998

Free Translation of the Law of 19 May 1998 Amending the Belgian Legislation Relating to Arbitration

As amended or introduced for the first time, the relevant provisions of the Code judiciaire henceforth read as follows:

Article 1676.2

Whosoever has capacity or power to contract may conclude an arbitration agreement.

Subject to the exceptions provided for in the law, public law legal persons may only conclude an arbitration agreement when the arbitration agreement relates to the settlement of disputes regarding the formation or the performance of an agreement. Such an arbitration agreement is subject to the same conditions regarding its formation as the agreement whose performance is the subject matter of the arbitration. Furthermore, public law legal persons may conclude an arbitration agreement in respect of any matters determined by law or by royal decree deliberated by the Council of Ministers. This royal decree may also determine the conditions and the rules to be complied with in relation to the formation of the agreement.

Article 1690.

1. Arbitrators may be challenged if circumstances exist that give rise to justifiable doubts as to their impartiality or independence.

2. A party may challenge an arbitrator only for reasons of which he becomes aware after the appointment has been made.

Article 1693.

1. Without prejudice to the provisions of Article 1694, the parties may agree on the rules of the arbitral procedure and on the place of arbitration.

Failing such agreement within the time limit fixed by the tribunal, the decision shall be a matter for the arbitrators. If the place of arbitration has not been fixed by the parties or the arbitrators, the place where the award is made as stated in the award shall be deemed to be the place of arbitration.

2. Unless the parties have agreed otherwise, the arbitral tribunal may, after consultation of the parties, hold hearings and meetings at any other place which it deems appropriate.

3. The chairman of the arbitral tribunal shall regulate the hearings and conduct the proceedings.

Article 1696.

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(1) the two following paragraphs are inserted before the first paragraph:

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1. Without prejudice to Article 1679.2, the arbitral tribunal may, at the request of a party, order provisional or protective measures, with the exception of an attachment order.

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2. Unless the parties have agreed otherwise, the arbitral tribunal is free to determine the admissibility of evidence and its evidentiary weight.

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(2) the first to fourth paragraphs become paragraphs 3 to 6.

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Article 1696 bis

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1. Any affected third party may request the arbitral tribunal to intervene in the proceedings. Such request shall be addressed in writing to the arbitral tribunal which shall communicate it to the parties.

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2. A party may serve a notice of joinder on a third party.

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3. In any event, in order to be admitted, the intervention of a third party requires an arbitration agreement between the third party and the parties in dispute. Furthermore, it is subject to the unanimous consent of the arbitral tribunal.

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Article 1699.

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The arbitral tribunal may render a partial or a final decision by means of one or more awards.

23

Article 1700.

24

Unless the parties have agreed otherwise, the arbitrators shall decide the dispute in accordance with rules of law.

25

When a public law legal person is a party to an arbitration agreement, the arbitrators shall decide in accordance with rules of law, without prejudice to specific legal provisions.

26

Article 1702 bis

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1. Within thirty days of notification of the award, unless another period of time has been agreed upon by the parties:

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(a) party, with notice to the other party, may request the arbitral tribunal to correct in the award any clerical errors, any errors in computation, any typographical errors or any errors of similar nature;

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(b) if so agreed by the parties, a party, with notice to the other party, may request the
arbitral tribunal to give an interpretation of a specific point or part of the award. If the
arbitral tribunal considers the request to be justified, it shall make the correction or give
the interpretation within thirty days of receipt of the request. The interpretation shall
form an integral part of the award. 30

2. The arbitral tribunal may correct any error of the type referred to it in paragraph (1)
(a) of this Article on its own initiative within thirty days of the date of the award. 31

3. The arbitral tribunal may extend, if necessary, the period of time within which it
shall make a correction or an interpretation of the award under paragraph (1) of this
article. 32

4. The provisions of Article 1701 shall apply to a correction or interpretation of the
award. 33

5. When the arbitral tribunal can no longer be convened, the request for interpretation
or correction of the award must be made before the Court of First Instance whose
President is competent to grant exequatur in accordance with the rules of jurisdiction
provided for in Articles 1717 and 1719.2. 34

Article 1703.2 35

An appeal against an arbitral award may only be made if the parties have expressly
provided for such a possibility in the arbitration agreement. Unless the parties have
agreed otherwise, such an appeal must be lodged within one month of the date of
notification of the award. 36

Article 1709 bis 37

The arbitrators may impose a fine on a party for non-compliance. Articles 1385 bis to
octies are applicable mutatis mutandis . 38

Article 1717. 39

(1) Paragraph 3 is deleted. 40

(2) New paragraph 4 reads as follows: 41

The parties may, by an express statement in the arbitration agreement or by a subse-
quent agreement, exclude any application to set aside the arbitral award where none
of the parties is either an individual of Belgian nationality or residing in Belgium, or a
legal person having its head office or a branch there. 42

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Article 1676 44

1. Any dispute which has arisen or may arise out of a specific legal relationship and in respect of which it is permissible to compromise may be the subject of an arbitration agreement. 45

2. With the exception of legal persons of public law, whosoever has the capacity or is empowered to compromise, may conclude an arbitration agreement. The state may conclude such an agreement when a treaty authorizes it to have recourse to arbitration. 46

3. The preceding provisions are applicable without prejudice to the exceptions provided for in the law. 47

Article 1677 48

An arbitration agreement shall be constituted by an instrument in writing signed by the parties or by other documents binding on the parties and showing their intention to have recourse to arbitration. 49

Article 1678 50

1. An arbitration agreement shall not be valid if it gives one of the parties thereto a privileged position with regard to the appointment of the arbitrator or arbitrators. 51

2. Without prejudice to the exceptions provided for in the law, an arbitration agreement concluded before a dispute has arisen, which dispute falls within the competence of the Labour Tribunal as determined in Articles 578 to 583 (tribunal du travail) is ipso jure null. 52

Article 1679 53

1. The judge seized of a dispute which is the subject of an arbitration agreement shall, at the request of either party, declare that he has no jurisdiction, unless, insofar as concerns the dispute, the agreement is not valid or has terminated: this exception must be proposed in limine litis . 54

2. An application to the judicial authority for preservation or interim measures shall not be incompatible with an arbitration agreement and shall not imply a renunciation of the agreement. 55

Article 1680

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An arbitrator may be any person who has the capacity to contract, except minors even when no longer under parental supervision, persons under guardianship and those who are either permanently or temporarily excluded from the right to vote.

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Article 1681

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1. The arbitral tribunal shall be composed of an uneven number of arbitrators. There may be a sole arbitrator.

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2. If the arbitration agreement provides for an even number of arbitrators, an additional arbitrator shall be appointed.

60

3. If the parties have not settled the number of arbitrators in the arbitration agreement and do not agree on the number, the arbitral tribunal shall be composed of three arbitrators.

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Article 1682

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The parties may, either in the arbitration agreement or subsequently thereto, appoint the sole arbitrator or the arbitrators or entrust the appointment to a third person. If the parties have not appointed the arbitrators and have not agreed on a method of appointment, each party shall, when the dispute arises, appoint an arbitrator or an equal number of arbitrators, as the case may be.

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Article 1683

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1. The party who intends bringing a dispute before an arbitral tribunal shall give notice to the other party. The notice shall refer to the arbitration agreement and specify the subject-matter of the dispute, unless the arbitration agreement already does so.

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2. If there is more than one arbitrator, and if the parties are entitled to appoint them, the notice shall specify the arbitrator or arbitrators appointed by the party invoking the arbitration agreement; the other party shall be invited, in the notice, to appoint the arbitrator or arbitrators whom he is entitled to appoint.

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3. If a third person has been entrusted with the appointment of a sole arbitrator or of arbitrators and has not done so, he also shall be given notice in accordance with paragraph 1 and invited to make the appointment.

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4. The appointment of an arbitrator may not be withdrawn after notification of the appointment.

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Article 1684

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1. If the party or third person to whom notice has been given in accordance with Article 1683 has not, within a period of one month from the notice, appointed the arbitrator or arbitrators whom the party or third person is entitled to appoint, the President of the Court of First Instance shall make the nomination at the request of either party.

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If the parties have agreed that there shall be a sole arbitrator and they have not appointed him by mutual consent within a period of one month from the notice under Article 1683, the appointment shall be made as determined in paragraph 1.

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Article 1685

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1. Where the arbitrators appointed or nominated in accordance with the foregoing provisions are even in number, they shall nominate another arbitrator to be president of the arbitral tribunal. If they do not agree and if the parties have not provided otherwise, the President of the Court of First Instance shall make the necessary nomination at the request of either party. The President may be seized after the expiration of a period of one month from the acceptance of his office by the last arbitrator or as soon as the failure to agree is established.

73

2. Where the arbitrators appointed are uneven in number they shall nominate one of themselves to be president of the arbitral tribunal unless the parties have agreed on another method of appointment. If the arbitrators do not agree, the nomination shall be made according to paragraph 1.

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Article 1686

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1. In the case dealt with under Articles 1684 and 1685, the decision taken by the President of the Court of First Instance is not subject to any other means of recourse.

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2. The President's decision does not prejudice either the arbitrator's power to rule in respect of their own jurisdiction, or a party's right to invoke the arbitral tribunal's lack of jurisdiction.

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Article 1687

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1. If an arbitrator dies or cannot for a reason of law or fact perform his office, or if he refuses to accept it or does not carry it out, or if his office is terminated by mutual agreement of the parties, he shall be replaced in accordance with the rules governing his appointment or nomination. However, if the arbitrator or arbitrators are named in the arbitration agreement, the agreement shall terminate ipso jure .

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2. A disagreement arising out of any case envisaged in paragraph 1 shall be brought before the Court of First Instance on the application of one of the parties. If the Court

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decides that there are grounds for replacing the arbitrator, it shall nominate his successor, taking into account the intention of the parties, as appearing from the arbitration agreement.

3. The parties may derogate from the provisions of this Article.

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Article 1688

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Unless the parties have agreed otherwise, neither the arbitration agreement nor the office of arbitrator shall be terminated by death of one of the parties.

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Article 1689

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The arbitrator who has accepted his office may not resign, unless so authorized by the Court of First Instance at his request. The Court decides after parties have been heard or summoned under judiciary notice (*sous pli judiciaire*) by the clerk of the court (*greffier*). The Court's decision is not subject to any other means of recourse.

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Article 1690

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1. Arbitrators may be challenged on the same grounds as judges.

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2. A party may not challenge an arbitrator appointed by him except on a ground of which the party becomes aware after the appointment.

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Article 1691

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1. The challenge shall, as soon as the challenger becomes aware of the ground of challenge, be notified to the arbitrators and, where applicable, to the third person who has, in pursuance of the arbitration agreement, appointed the arbitrator challenged. The arbitrators shall thereupon suspend further proceedings.

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2. If, within a period of ten days of the notice of the challenge being given to him, the arbitrator challenged has not resigned, the arbitral tribunal shall so notify the challenger. The challenger shall, on pain of being barred, summon the arbitrator and the other parties to the Court of First Instance, within a period of ten days after receiving such notification, otherwise the proceedings before the arbitrators shall be *ipso jure* resumed. The appeal against the decision taken by the Court of First Instance will be judged according to Articles 843 to 847 of this Code.

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3. If the arbitrator resigns or if the challenge is upheld by the judge, the arbitrator shall be replaced in accordance with the rules governing his appointment or nomination. However, if he has been named in the arbitration agreement, the agreement shall terminate *ipso jure*. The parties may derogate from the provisions of this paragraph.

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Article 1692 93

1. The parties may in the arbitration agreement exclude certain categories of persons from being arbitrators. 94
2. If such an exclusion has been disregarded with respect to the composition of the arbitral tribunal, the irregularity shall be invoked in accordance with the provisions of Article 1691. 95

Article 1693 96

1. Without prejudice to the provisions of Article 1694, the parties may decide on the rules of the arbitral procedure and on the place of arbitration. If the parties do not indicate their intention before the first arbitrator has accepted his office, the decision shall be a matter for the arbitrators. 97
2. The president of the arbitral tribunal shall regulate the hearings and conduct the proceedings. 98

Article 1694 99

1. The arbitral tribunal shall give each party an opportunity of substantiating his claims and of presenting his case. 100
 2. The arbitral tribunal shall make an award after oral proceedings. The parties may validly be summoned by registered letter, unless they have agreed upon any other method of summons. The parties may appear in person. 101
 3. The procedure shall be in writing where the parties have so provided or insofar as they have waived oral proceedings. 102
 4. Each party shall have the right to be represented by a lawyer or by a representative, in possession of a special power of attorney in writing, approved by the arbitral tribunal. Each party may be assisted by a lawyer or any person of his choice, approved by the arbitral tribunal. Parties may not be represented or assisted by an agent d'affaires . 103
- 1

Article 1695 104

If, without legitimate cause, a party properly summoned does not appear or does not present his case within the period fixed, the arbitral tribunal may, unless the other party requests an adjournment, investigate the matter in dispute and make an award. 105

Article 1696 106

1. The arbitral tribunal may order a hearing of witnesses, an appraisal by experts, a 107

visit to the site, the appearance of parties in person; the arbitral tribunal may accept an oath as being decisive or may request a supplementary oath. It may also order the production of documents held by a party according to the conditions provided in Article 877 of this code.

2. When the arbitral tribunal has ordered a hearing, and the witnesses do not appear voluntarily or refuse to take the oath or to testify, the arbitral tribunal will authorize the parties, or one of them, to request the Court of First Instance, within a fixed period, to appoint a juge-commissaire , to preside over the investigation. This hearing will take place according to the formalities for civil cases. The periods for arbitration are ipso jure suspended until the hearing is completed. 108

3. The arbitral tribunal may not order the verification of signatures nor rule on an objection relating to the production of documents or upon the alleged falseness of documents. In this case, it will leave it to the parties to bring the matter to the Court of First Instance within a determined period. 109

4. The periods for arbitration are ipso jure suspended until the day the tribunal receives notification by the most diligent party of the final decision concerning the incident. 110

Article 1697

1. The arbitral tribunal may rule in respect of its own jurisdiction and for this purpose, may examine the validity of the arbitration agreement. 111

2. A ruling that the contract is invalid shall not entail ipso jure the nullity of the arbitration agreement contained in it. 112

3. The arbitral tribunal's ruling that it has jurisdiction may not be contested before the judicial authority except at the same time as the award on the main issue and by the same procedure. The judicial authority may at the request of one of the parties decide whether a ruling that the arbitral tribunal has no jurisdiction is well founded. 113

4. The appointment of an arbitrator by a party shall not deprive that party of his rights to challenge the jurisdiction of the arbitral tribunal. 114

Article 1698

1. The parties may, up to the time of acceptance of office by the first arbitrator, settle the period within which the award is to be made or provide for a method according to which the period is to be settled. 115

2. If the parties have not prescribed a period or a method of prescribing a period, if the arbitral tribunal delays in making the award and if a period of six months has elapsed from the date on which all the arbitrators accepted office in respect of the dispute submitted to arbitration, the Court of First Instance may, at the request of one of the parties, stipulate a period for the arbitral tribunal. The Court's decision is not subject to any means of recourse. 116

3. The office of arbitrator shall terminate if the award is not made within the relevant period unless that period is extended by agreement between the parties. 119

4. Where arbitrators are named in the arbitration agreement and the award is not made within the relevant period, the arbitration agreement shall terminate ipso jure , unless the parties have agreed otherwise. 120

Article 1699 121

Except where otherwise stipulated, an arbitral tribunal may make a final award in the form of one or more awards. 122

Article 1700 123

The arbitrators shall make their awards in accordance with the rules of law unless the contrary has been stipulated. To be valid, such stipulation must be made after the notification provided for in Article 1683. 124

Article 1701 125

1. An award shall be made after a deliberation in which all the arbitrators shall take part. The award shall be made by an absolute majority of votes, unless the parties have agreed on another majority. 126

2. The parties may also agree that, when a majority cannot be obtained, the president of the arbitral tribunal shall have a casting vote. 127

3. Except where otherwise stipulated, if the arbitrators are to award a sum of money, and a majority cannot be obtained for any particular sum, the votes for the highest sum shall be counted as votes for the next highest sum until a majority is obtained. 128

4. An award shall be set down in writing and signed by the arbitrators. If one or more of the arbitrators are unable or unwilling to sign, the fact shall be recorded in the award. However, the award shall bear a number of signatures which is at least equal to a majority of the arbitrators. 129

5. An award shall, in addition to the operative part, contain the following particulars: 130

(a) the names and permanent addresses of the arbitrators; 131

(b) the names and permanent addresses of the parties; 132

(c) the subject-matter of the dispute; 133

(d) the date on which the award was made; 134

(e) the place of arbitration and the place where the award was made. 135

6. The reasons for an award shall be stated. 136

Article 1702

137

1. The president of the arbitral tribunal shall give notice to each party of the award by sending him a copy thereof, signed in accordance with paragraph 4 of Article 1701. 138
2. The president of the arbitral tribunal shall deposit the original of the award with the registry of the court having jurisdiction; he shall notify the parties of the deposit. 139
3. The arbitrators' office ends when the award terminating the litigation has been notified and deposited according to the preceding provisions. 140

Article 1703

141

Unless the award is contrary to ordre public or the dispute was not capable of settlement by arbitration, an arbitral award has the authority of res judicata when it has been notified in accordance with paragraph 1 of Article 1702 and may no longer be contested before the arbitrators. 142

Article 1704

143

1. An arbitral award may be contested before a judicial authority only by way of an application to set aside and may be set aside only in the cases mentioned in this Article. 144
2. An arbitral award may be set aside: 145
 - (a) if it is contrary to ordre public ; 146
 - (b) if the dispute was not capable of settlement by arbitration; 147
 - (c) if there is no valid arbitration agreement; 148
 - (d) if the arbitral tribunal has exceeded its jurisdiction or its powers; 149
 - (e) if the arbitral tribunal has omitted to make an award in respect of one or more points of the dispute and if the points omitted cannot be separated from the points in respect of which an award has been made; 150
 - (f) if the award was made by an arbitral tribunal irregularly constituted; 151
 - (g) if the parties have not been given an opportunity of substantiating their claims and presenting their case, or if there has been disregard of any other obligatory rule of the arbitral procedure, insofar as such disregard has had an influence on the arbitral award; 152
 - (h) if the formalities prescribed in paragraph 4 of Article 1701 have not been fulfilled; 153
 - (i) if the reasons for the award have not been stated; 154
 - (j) if the award contains conflicting provisions. 155

3. An award may also be set aside: 156
- (a) if it was obtained by fraud; 157
 - (b) if it is based on evidence that has been declared false by a judicial decision having the force of *res judicata* or on evidence recognised as false; 158
 - (c) if, after it was made, there has been discovered a document or other piece of evidence which would have had a decisive influence on the award and which was withheld through the act of the other party. 159
4. A case mentioned in sub-paragraph (c), (d) or (f) of paragraph 2 shall be deemed not to constitute a ground for setting aside an award where the party availing himself of it had knowledge of it during the arbitration proceedings and did not invoke it at the time. 160
5. Grounds for the challenge and exclusion of arbitrators provided for under Articles 1690 and 1692 shall not constitute grounds for setting aside within the meaning of paragraph 2 (f) of this Article, even when they become known only after the award is made. 161

Article 1705 162

If there are grounds for setting aside any part of an award, that part shall be set aside only if it can be separated from the other parts of the award. 163

Article 1706 164

1. The grounds for setting aside an arbitral award shall, on pain of being barred, be put forward by the party concerned in one and the same proceedings, except, however, in the case of a ground for setting aside provided for in paragraph 3 of Article 1704 where the ground is not known until later. 165
2. An application to set aside an award shall be admissible only where the award may no longer be contested before arbitrators. 166

Article 1707 167

1. An application to set aside an award, based on one of the grounds provided for in paragraph 2 (c) to (j), of Article 1704 shall, on pain of being barred, be made within a period of three months from the date on which the award was notified. However, that period shall begin to run only from the date on which the award is no longer capable of contestation before arbitrators. 168
2. The defendant in an application to set aside an award may apply, in the same proceedings, for the award to be set aside, even if the period laid down in paragraph 1 has expired. 169

3. An application to set aside an award, based on one of the grounds provided for in paragraph 3 of Article 1704, shall be made within a period of three months from either the date of the discovery of the fraud, document or other piece of evidence, or the date on which the evidence was declared false or recognised as false, provided that a period of five years from the date on which the award was notified in accordance with paragraph 1 of Article 1702 has not expired. 170

4. The judicial authority seized of an application to set aside an award shall examine proprio motu whether the award is contrary to ordre public and whether the dispute was capable of settlement by arbitration. 171

Article 1708 172

1. If the arbitral tribunal has forgotten to decide on one or more points of the dispute that can be separated from the points on which it has ruled, this tribunal may, if so requested by a party, complete its award even if the period provided for in Article 1698 has expired, unless the other party contests that points have been omitted or that the omitted points can be separated from the points on which a decision has been taken. 173

2. In this case the dispute is brought to the Court of First Instance by the most diligent party. The court refers the parties back to the arbitral tribunal in order to complete the award, if it decides that the omitted points can be separated from the points on which the arbitral tribunal has taken a decision. 174

Article 1709 175

The arbitrators may order provisional execution of their awards notwithstanding appeal and without prejudice to the rules of "cantonement". They may also subject the provisional execution to the establishment of a guarantee according to the rules of this Code. 176

Article 1710 177

1. The arbitral award may be enforced only after the enforcement formula has been apposed by the President of the Court of First Instance, on the application of the interested party. The party against whom enforcement is sought, cannot present his views at this stage of the procedure. 178

2. The President may only appose the enforcement formula on the award when the award is no longer capable of being contested before the arbitrators or if arbitrators have granted provisional enforcement notwithstanding appeal. The President's decision is enforceable notwithstanding any recourse without prejudice to the application of Article 1714. 179

3. The President shall refuse the application if the award or its enforcement is contrary to ordre public or if the dispute was not capable of settlement by arbitration. 180

4. Within the five days following the making of the award, the decision is notified, under judiciary cover (sous pli judiciaire) by the clerk of the court (greffier) to the petitioner. 181

Article 1711 182

1. If the application is denied, the petitioner may give notice of appeal to the Court of Appeal within a period of one month from notification. Appeal is notified to the party against whom enforcement is sought by a notification by means of a summons served by a bailiff (par exploit d'huissier). 183

2. If this party seeks to secure the setting aside of the award without having previously made application for this, this party must on pain of being barred, make this application before the Court of First Instance, within a period of one month from the date of the service of the act of appeal. The court of appeal stays proceedings until a final judgment has been rendered concerning the application to set aside the award. 184

Article 1712 185

1. The decision granting exequatur must be served by the party who has applied for it to the other party. This decision is subject to an appeal brought before the Court of First Instance within a period of one month from the date on which the service has been made. 186

2. A party exercising this right of appeal and who seeks to secure the setting aside of the award without having previously made an application for this shall, on pain of being barred, make his application in the same proceedings and within the period prescribed in paragraph 1. A party who, while not exercising the right of appeal provided for in paragraph 1, seeks to secure the setting aside of an award shall, on pain of being barred, make his application for setting aside within the period prescribed in paragraph 1. 187

Article 1713 188

1. In the cases dealt with under Articles 1711 and 1712, the applications for setting aside based on the lack of a valid arbitration agreement are not subject to the period prescribed in paragraph 1 of Article 1707. 189

2. Without prejudice to the provisions of paragraph 3 of Article 1707, if, a party has become aware of one of the grounds for setting aside mentioned in paragraph 3 of Article 1704 only after the decision granting or refusing enforcement has been served upon him, that party may apply for the setting aside of the award on this ground, even if the period prescribed in Article 1711 and 1712 has expired. 190

Article 1714

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1. In the case either of an appeal against the decision apposing an enforcement formula to an award or of an application for an award to be set aside, the judge may, at the request of one of the parties, order the enforcement of the award to be stayed, or that enforcement will depend on the constitution of a guarantee.

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2. A decision apposing an enforcement formula to an award shall be without effect to the extent that the arbitral award has been set aside.

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Article 1715

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1. Where, before an arbitral tribunal, a compromise has been entered into between the parties in order to put an end to a dispute of which the tribunal is seized, that compromise may be recorded in an instrument prepared by the arbitral tribunal and signed by the arbitrators as well as by the parties. The instrument shall be subject to the provisions of paragraph 2 of Article 1702. The instrument may, on the application of the interested party, have an enforcement formula apposed to it by the President of the Court of First Instance.

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2. The President of the Court of First Instance shall refuse the application if the compromise or its enforcement is contrary to ordre public or if the dispute was not capable of settlement by arbitration.

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3. Within the five days following its pronouncement the decision is notified, under judiciary cover (sous pli judiciaire) by the clerk of the court (greffier) to the petitioner.

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Article 1716

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1. The decision apposing an enforcement formula to an instrument recording a compromise must be served by the party who has applied for it to the other party. This decision is open to appeal before the Court of First Instance within a period of one month from the date it was served.

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2. If the application is denied, the petitioner may give notice of appeal according to Article 1711.

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3. The decision apposing an enforcement formula to an instrument recording a compromise is void to the extent the compromise has been annulled.

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Article 1717

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1. Except in the case provided for in paragraph 2 of Article 1719, the court that is competent to apply part VI of this Code is the court designated by the arbitration agreement or in a later agreement, concluded before the designation of the place of arbitration.

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2. If the parties have reached no agreement, the court of the place of arbitration has

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jurisdiction. If no place of arbitration has been designated, that court has jurisdiction in whose district the court is situated that would have been competent if the dispute had not been submitted to arbitration.

3. All this without prejudice to the provisions of Article 630 of this Code and international conventions. 205

4. The Belgian Court can take cognizance of an application to set aside only if at least one of the parties to the dispute decided in the arbitral award is either a physical person having Belgian nationality or residing in Belgium, or a legal person formed in Belgium or having a branch (une succursale) or some seat of operation (un siège quelconque d'opération) there. * 206

Article 1718 207

1. Where the appeal from a judgment of the Court of First Instance or of the Court of Commerce has been submitted to arbitration the arbitral award can only be enforced after the Court of Appeal has granted the enforcement formula, the party against whom execution is sought having been summoned. 208

2. If this party seeks to secure the setting aside of the award without having previously introduced a petition for this purpose, he must introduce his application to set aside during the same proceedings, on pain of being barred, without prejudice to the provisions of Article 1713. 209

3. The decisions taken by the Court of Appeal are not subject to appeal. 210

Article 1719 211

1. The President of the Court of First Instance decides, upon request, on the petition for exequatur of arbitral awards rendered abroad in pursuance of an arbitration agreement. 212

2. The petition is brought before the President of the Court of First Instance in whose jurisdiction the party against whom enforcement is sought has its domicile, and in default of domicile, its residence. If this party has neither domicile nor residence in Belgium, the petition will be brought to the President of the Court of First Instance of the place where the award must be enforced. 213

3. The petitioner elects domicile in the Court's district. 214

4. He joins to the request the original of the award as well as the arbitration agreement or copies thereof which fulfil the necessary conditions as to their authenticity. 215

5. The President of the Court verifies the petition and may for this purpose, summon the petitioner and the party against whom enforcement is sought to his chambers (en chambre du conseil). The writ of summons is served to the parties under judiciary cover (sous pli judiciaire) by the clerk of the court (greffier). 216

Article 1720

217

Within the five days following its pronouncement, the decision of the President of the Court of First Instance is notified, under judiciary cover (sous pli judiciaire) by the clerk of the court (greffier) to the petitioner.

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Article 1721

219

If the application is denied, the petitioner may give notice of appeal to the Court of Appeal within a period of one month from notification of the decision. This appeal is introduced by service of a bailiff to the party against whom enforcement is sought containing a summons to appear before the court.

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Article 1722

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The decision granting exequatur must be served by the party who has applied for it to the other party. This decision may be appealed to the Court of First Instance within a period of one month from the date on which it has been served.

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Article 1723

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Except when a treaty between Belgium and the country where the award has been rendered is applicable, the President refuses to grant exequatur:

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1. if the arbitral award is still open to appeal before the arbitrators and if the arbitrators have not ordered provisional enforcement notwithstanding appeal;
2. if the award or its enforcement is contrary to ordre public , or if the dispute is not capable of settlement by arbitration;
3. if there exists a ground for setting aside as provided in Article 1704.

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Metadata

SiSU Metadata, document information

Document Manifest @:

<http://www.jus.uio.no/lm/belgium.code.judicature.1998/sisu_manifest.html>

Title: Belgium - Code Judiciaire 19 May 1998

Publisher: SiSU <<http://www.jus.uio.no/sisu>> (this copy)

Date: 1998-05-19

Version Information

Sourcefile: belgium.code.judicature.1998.sst

Filetype: SiSU text 2.0

Source Digest: SHA256(belgium.code.judicature.1998.sst)=98108f1e6bf0c0a4ffbbaca7d03a0007d1b10c1883e97cc4-35bcc29022f99573

Skin Digest: SHA256(skin_lm.rb)=5acda64a9532f9ef6b71693da2b471d4efac2f23a8499e68de066eec8ea9b8e9

Generated

Document (dal) last generated: Tue Sep 21 15:53:06 -0400 2010

Generated by: SiSU 2.6.3 of 2010w30/3 (2010-07-28)

Ruby version: ruby 1.8.7 (2010-08-16 patchlevel 302) [i486-linux]