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Belgium
Litigation

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Belgium.

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Belgium: Litigation

1. What are the main methods of resolving disputes in your jurisdiction?

The main method of resolving disputes remains **court litigation**.

However, alternative dispute resolution has seen significant growth in recent years, following a change in the Belgian Judicial Code which led Belgian courts to increasingly promote **mediation**. In cases where the judge believes that a settlement between the parties is possible, the judge may, either on their own initiative or at a request of a party, appoint a mediator. However, if all parties object, the judge may not impose mediation. Mediation is strictly confidential, even if a judicial mediator is appointed by the court. If mediation leads to a successful settlement, any party may request the court to homologate the settlement agreement. Upon homologation, the parties will have an enforceable title and will thus be able to enforce the settlement agreement against the opposing party.

Furthermore, certain courts have dedicated chambers specifically tasked with conducting **conciliation** proceedings. Unlike mediation, conciliation is conducted by a judge and is therefore not subject to confidentiality. This procedure, however, is less frequently used and is generally limited to disputes involving small financial amounts.

Another alternative method of dispute resolution is **arbitration**. The main arbitration institution in Belgium is CEPANI. Arbitration is governed by rules laid down in articles 1676 to 1723 of the Belgian Judicial Code. Arbitration is based on the consent of the parties, either initially through a clause provided for this purpose in the contract binding them, or following a voluntary choice made by the parties after a dispute has arisen between them. A key principle of arbitration is the significant freedom given to the parties to organise how their dispute is to be dealt with, in terms of arbitrator(s) and rules of procedure. The only restriction imposed by the Belgian Judicial Code is that each arbitrator must be independent and impartial. In addition, the rules of procedure must be based on a core set of principles, including equal treatment of the parties, the adversarial principle and the fairness of the proceedings.

2. What are the main procedural rules governing litigation in your jurisdiction?

The main procedural rules governing litigation are contained in the Belgian Judicial Code.

The Belgian judicial system features an adversarial model in the conduct of legal proceedings, in which the parties first exchange their arguments in writing before debating them orally at the hearing. There are no jury trials in Belgium in civil and commercial matters.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

The civil court system is structured in three levels.

At first instance, cases are heard by the competent district court depending on the nature of the dispute and the parties involved:

- The Enterprise Courts hear dispute between enterprises;
- The Courts of First Instance hear general civil matters and enforcement proceedings;
- Labour Courts hear employment-related conflicts;
- In addition, the Justice of the Peace hears disputes involving small claims (amounts of less than EUR 5,000) and certain specific matters (eg, tenancy disputes).

Judgements issued at first instance by the district courts may be appealed before the Courts of Appeal. Decisions rendered by the Justice of Peace are subject to appeal before the Courts of First Instance. In both cases, the appellate courts conduct a full review of the matter, re-examining both the facts and the application and interpretation of the law.

Finally, judgements rendered by the appellate courts may be challenged before the Belgian Supreme Court (*Hof van Cassatie / Cour de Cassation*). The scope of the review conducted by the Supreme Court is limited: it solely examines whether the law was correctly applied and interpreted by the appellate court. The Supreme Court may either uphold or overturn the judgement handed down on appeal. If the judgement is overturned, the case

is referred to another appeal court for re-examination.

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

The average length of proceedings differs from court to court:

- District courts: on average, proceedings before the district courts take around one year from commencement of proceedings to trial.
- Appeal courts : cases before the Courts of Appeal tend to take longer, particularly in Brussels, where trial hearings often take place several years after the appeal has been lodged.
- An appeal to the Supreme Court may take approximately 12 to 18 months.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

Court hearings in civil and commercial matters are generally open to the public. However, there are certain exceptions, particularly when publicity would be dangerous to public order or morality. The Belgian Judicial Code also provides for exceptions in certain specific areas.

Documents filed at court are not accessible to third parties. Upon the request of one of the parties and if justified by special circumstances, courts may impose measures to safeguard the confidentiality of documents produced as evidence.

6. What, if any, are the relevant limitation periods in your jurisdiction?

The limitation periods vary according to the nature of the claim. The main limitation periods are :

- 5 years for claims in tort, starting from the day following the date on which the injured party became aware of the damage or its aggravation and of the identity of the person responsible. In any event, this period may not exceed 20 years from the day following the date on which the event causing the damage occurred;
- 5 years for claims relating to interests on sums loaned, and generally any debt payable annually or at shorter periodic intervals;
- 10 years for contractual claims, starting from the day following the due date of the relevant contractual obligation;
- 10 years for claims relating to the recovery of real property ; however, this period is extended to 30 years if the possessor acquired the property in bad faith;
- 10 years for the enforcement of judgments.

Certain statutes provide for specific limitation periods.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

Pre-action conduct requirements can be imposed either by law or by contract.

For example, in the event of a breach of a contractual obligation, pre-action conduct may take the form of a formal notice of default. However, this is not mandatory law. Parties can therefore agree to derogate from this default rule.

In addition, contracts may provide for a dispute resolution clause that requires the parties to engage in good faith negotiations or mediation before filing suit.

Contractual provisions regarding pre-action conduct requirements are enforceable. The courts may therefore verify if the parties have actually complied with the pre-action conduct provisions before initiating proceedings.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Legal proceedings are typically commenced by serving a writ of summons on the defendant. In this case, a bailiff is responsible for serving the summons on the defendant, upon instructions of the claimant.

In certain cases (eg, tenancy disputes), proceedings may instead be commenced by submitting a petition to the court. The court will then be responsible for notifying the defendant of the claim.

Both the writ of summons and the petition must include the following elements :

- The identification of the parties ;
- Identification of the competent court ;
- A summary of the relevant facts ;

- The legal grounds supporting the claim ;
- The relief or remedy sought.

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

The rules on subject matter and territorial jurisdiction are governed by the Belgian Judicial Code.

– Subject matter jurisdiction:

Depending on the nature of the claim and the parties involved, the claimant may or may not have the choice between different district courts. Proceedings between companies and businesses are generally conducted before the enterprise courts; claims involving private individuals (either as a defendant or claimant) are typically conducted before the courts of first instance. However, there are many exceptions and nuances to these general rules.

The court of first instance has “residual jurisdiction”. This implies that it is competent to hear claims that are not subject to exclusive jurisdiction of another type of district court. For example, the labour courts have exclusive jurisdiction for employment matters; the enterprise courts have exclusive jurisdiction for insolvency matters and corporate disputes.

Challenges to the jurisdiction of the court must be raised by the defendant *in limine litis*, *ie*, before any other argument of defence.

– Territorial jurisdiction:

Contracts may provide for a forum clause exclusively designating the competent court.

In the absence thereof, the claimant generally has several options. Most commonly, the claimant will file proceedings before the court of the defendant's domicile. Alternative options include the court of the place of performance of a contract.

In certain matters, specific jurisdiction rules are mandatory. For instance, in corporate disputes (eg, shareholder conflicts), proceedings must be brought before the court of the place of the company's registered seat. For tenancy disputes, the court of the place where the leased property is located will have exclusive jurisdiction.

– International jurisdiction:

Cross-border jurisdiction is primarily governed by the Brussels I Recast Regulation and the Belgian Code of Private International Law. Belgium is also bound by the 2005 Hague Convention on Choice of Courts Agreements.

10. How does the court determine which law governs the claims in your jurisdiction?

In the absence of any foreign element, Belgian law will apply to the claim.

In the event of a foreign element, the applicable law will be determined in accordance with the conflict of law rules provided in international regulations and national statutes. The main relevant instruments are:

- the Rome I Regulation (EU) on the law applicable to contractual obligations;
- the Rome II Regulation (EU) on the law applicable to non-contractual obligations;
- the Belgian Code of Private International Law.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

In certain circumstances it is possible to request that the case is heard in summary debates (*korte debatten / débats succincts*), immediately at the introductory hearing or a hearing shortly thereafter. This will mainly be the case if the claim relates to payment of undisputed invoices.

A request for summary debates must be made in the document that initiates the proceedings (*ie*, the writ of summons or the petition). The court has some margin of discretion to either grant or refuse such request.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

Before ruling on the merits of the case, courts have the power to issue different interim measures, which can be largely divided into two categories:

- Investigative measures (*eg*, appointment of an expert, production of evidence, a site visit, etc.
- Measures addressing or organising specific aspects of the case on an interim basis (*eg*, imposing a standstill, ordering a party to make an advance payment)

Interim measures and relief can be requested during the proceedings and at any time before a final judgement is

rendered on the merits.

In addition, creditors can apply for freezing measures on assets of their debtor to avoid assets being absconded.

Anti-suit injunctions are not available in Belgium.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

At the introductory hearing , the parties generally agree on a schedule or procedural calendar for exchanging their written submissions and documents, which will also be submitted to the court. If parties fail to reach an agreement regarding the calendar, they can ask the court to determine the schedule.

In general, the parties agree to exchange these procedural documents at regular intervals of one to two months until the date of the trial hearing. However, parties are free to agree on longer or shorter deadlines, *eg*, depending on the complexity of the matter, the urgency, or timeline until the first possible hearing date.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

Belgian civil procedure does not provide a formal discovery process. Nevertheless, parties may request specific measures to gather evidence, such as the production of documents, where there are serious and specific indications that a document containing evidence of a relevant fact is in the possession of a party or a third party. The party making the request for document production must identify the relevant documents with sufficient detail.

Documents covered by legal privilege or protected as trade secrets may be withheld from disclosure.

Articles XVII.74-XVII.81 of the Belgian Code of Economic Law provide for specific rules regarding production of documents in litigation where damages are claimed due to breach of antitrust laws.

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

The use of witness evidence is possible yet not very common in civil and commercial litigation in Belgium.

The Belgian Judicial Code provides that if a party offers to prove a specific and relevant fact by one or more witnesses, the judge may decide to hear these witnesses and allow their statements as evidence. In this case, the witnesses may give oral evidence at the hearing. The witness statement is then recorded in writing.

Furthermore, the judge may receive written statements from third parties, in the form of affidavits, that may shed light on the facts in dispute of which they have personal knowledge. Affidavits can be submitted either by the parties themselves or at the judge's request. The individuals providing such statements must meet specific legal requirements.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

Expert evidence is permitted under Belgian law.

On the one hand, a party may unilaterally call upon an expert to provide an expert opinion. The evidentiary value of such expert opinion will be assessed by the court.

On the other hand, the court may appoint one or more experts to make findings or give a technical opinion. The court may do so both at the request of one of the parties in the proceedings and by his own initiative.

Although the report of a court appointed expert may play a determining role in the outcome of the proceedings, courts are not bound by the findings or opinions of the appointed experts.

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

Practically all final judgements handed down at first instance may be appealed. However, there are certain exceptions, particularly in cases involving small claims. As a general rule, an appeal must be filed within one month of the service of the first instance judgement.

Interim decisions (*beslissing alvorens recht te doen / décision avant dire droit*) and decisions regarding jurisdiction can only be appealed together with the final judgment. Again, certain exception apply.

Depending on the court that issued the first instance judgment, the court competent for the appeal proceedings will differ. Please refer to **question 3** in this regard.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

Foreign judgments can be enforced in Belgium after an exequatur has been granted. However, judgements issued by courts of other EU member states are directly enforceable in Belgium, in accordance with the Brussels I Regulation (on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters).

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

The costs of litigation, including attorney fees, are borne by the losing party. The indemnity for attorney fees is determined by a Royal Decree on a flat-rate basis depending on the value of the dispute.

If a counterclaim is successful, or the claimant's claim is only partially granted, the costs may also be shared between the parties.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

The Belgian Code of Economic Law (hereinafter "BCEL") provides for the possibility of class action (Book XVII, Title 2).

Class actions are available only for harm caused by enterprises to consumers or SMEs and aim to compensate individual members of a group for damages suffered as a result of a common cause. These members can thus obtain collective compensation for collective damage through an action brought by a representative of the group.

In addition to the requirement of collective harm, three other conditions must be met in order to bring such an action :

- the defendant must have potentially breached one of its contractual obligations, one of the European regulations or one of the laws referred to in Article XVII.37 of the BCEL or their implementing decrees;
- the action must be brought by a class representative who meets the requirements set out in Article XVII.39 of the BCEL and whose statutory purpose is directly related to the purpose of the collective redress action;
- recourse to collective redress must be more efficient than an action under ordinary law.

Following the transposition in Belgian law of the EU Directive 2020/1828 on representative actions for the protection of the collective interests of consumers, class action proceedings initiated on or after 10 June 2024 will be brought exclusively on an opt-in basis. Opt-out class action settlements remain possible.

Outside of the framework of a class action, groups of claimants may bundle their individual claims and bring a joint action. The condition for admissibility of such joint action is that the claims must show sufficient nexus, in such a way that it is more expedient to hear them together, so as to avoid the risk of irreconcilable judgments resulting from separate proceedings. The courts have some margin of discretion in this regard.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

There are several mechanisms for joining third parties to ongoing proceedings.

Third-party intervention may be either voluntary (initiated by the third party itself) or compulsory (by means of a writ of summons notified by one of the parties to the proceedings).

Third-party interventions can also be classified based on their purpose :

- A protective intervention aims to make the judgement binding on a third party;
- An aggressive intervention, by contrast, seeks to have the intervening party declared liable in relation to the underlying litigation.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Third-party funding of litigation is not specifically regulated under Belgian law. Article XVII.42 BCEL merely provides that the use of third party funding (including the identity of the funder) must be disclosed petitions initiating a class action. This disclosure obligation applies to class actions only.

Given the lack of a specific statutory framework, there are no formal restrictions on the use of third-party funding. However, lawyers must ensure that the Bar Association's ethical standards are always complied with. This includes the lawyer's obligations to act solely in the client's best interests, to act independently (without undue influence by a funder), and to comply with professional secrecy.

Third-party funders are not a party to the legal proceedings. Therefore, they cannot be made liable for the opposing party's costs.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

The COVID-19 pandemic has accelerated the digitalisation process of litigation in Belgian courts. Several projects were rolled out following the pandemic, including the use of digital court hearings. In this regard, a specific act was enacted, which is yet to come into force.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

The costs of legal proceedings in Belgium are relatively low compared to other jurisdictions. The adverse party cost risk is also relatively low due to the use of statutory lump sums depending on the value of the dispute.

The main disadvantage is the length of the procedure in certain courts, particularly when the dispute is at the appeal stage, which can take several years before a hearing is scheduled. However, improvements have been made in recent years to shorten the timeframe of proceedings.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

Looking ahead, one of the most significant growth areas in commercial litigation is likely to be ESG-related disputes. Large companies are subject to an expanding body of EU regulations and directives on environmental and sustainability compliance. It is increasingly common to see contracts terminated due to non-compliance with ESG requirements.

Furthermore, recent modifications of the Civil code have lead to increased liability risk for auxiliaries (*uitvoeringsagenten / agents d'exécution*), including company directors, in case of non-performance of a contract. Given the current economic conjuncture, with more and more businesses and companies in situation of distress, parties claiming damages for breach of contract may seek to extend their claims to auxiliaries in order to recover their losses.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

Over the next five years, we are likely to see increased use of videoconferencing technology in court litigation (particularly for hearings that do not concern the substance of the proceedings).

We will also have a more comprehensive publicly available database of judgments. This could lead to a more comprehensive understanding of a specific court's case law on a particular issue, allowing for improved litigation strategy.

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