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BELGIUM ADOPTS NEW ARBITRATION LAW BASED ON UNCITRAL MODEL LAW

On June 24, the Belgian legislature enacted a new Arbitration Law that replaces all previous provisions on arbitration in the sixth part of the Belgian Judicial Code. The Law essentially aims at increasing efficiency in arbitration and thereby the attractiveness of Belgium, and especially Brussels, as a place of arbitration. With the adoption of the new Arbitration Law, Belgium joins the more than 60 countries that have already enacted arbitration legislation based on the UNCITRAL Model Law on International Commercial Arbitration. At the same time, however, some (possibly surprising) Belgian peculiarities have been retained.

The new Arbitration Law entered into force on September 1 and applies to arbitrations commenced on or after that date and to all court proceedings initiated in the framework of such arbitrations. Contrary to the UNCITRAL Model Law, the Belgian Arbitration Law applies both to "national" and "international" arbitrations.

Given the global overhaul of the Belgian arbitration legislation, this *Commentary* focuses on the key features of the new Law. An unofficial English translation of the new Belgian Arbitration Law is available at http://www.cepani.be/upload/files/reglement2013sept-en-arbitrage-4.pdf.

KEY FEATURES OF THE NEW BELGIAN ARBITRATION LAW

Double Criterion of Arbitrability. The new Arbitration Law provides for a double criterion of arbitrability of a dispute. First, it clarifies that all disputes of a monetary nature are arbitrable. The parliamentary works to the new Law explain that this new criterion should be construed broadly, meaning that the dispute must merely pertain to interests that have a financial value. For disputes of a nonmonetary nature, the previous (sole) criterion remains applicable, i.e., that it must be legally permitted to settle the dispute at stake by means of a settlement agreement. With this double criterion, the Belgian legislature aimed at removing

all doubts regarding the arbitrability of disputes involving aspects of public policy, such as competition law claims.

No Written Arbitration Agreement Required. The new Law abolishes the statutory requirement that an arbitration agreement must be in writing. This should make access to arbitration less formalistic, even though a party invoking an arbitration agreement will still be required to provide evidence of it. Furthermore, since unanimous Belgian case law and doctrine previously required a written arbitration agreement only for evidentiary purposes as well, it is unlikely that this new provision will significantly impact the Belgian arbitration practice.

Interaction with the National Courts. The most significant improvements pertain to the interaction with the national courts prior to, during, and after arbitration proceedings (as mostly incorporated in new Article 1680 of the Judicial Code). Those changes are most likely to positively affect the duration and efficiency of arbitrations subject to the Belgian Arbitration Law and can be summarized as follows:

Centralization and Specialization. All arbitration-related court proceedings have been centralized with the five Courts of First Instance that have the same seat as the Courts of Appeal (Brussels, Ghent, Antwerp, Liège, and Mons). The Belgian legislature thereby aims at building up specific expertise and specialization in arbitration within those courts. The seat of arbitration is the default criterion for determining the territorially competent court. Territorial competence in proceedings for the recognition and enforcement of arbitral awards is, however, determined by the place of residence or the place of incorporation of the person/entity against which enforcement is requested.

Court Decisions by Default No Longer Subject to Appeal. The new Law abolishes the possibility of appealing court decisions on arbitration-related claims. Only decisions in which the President of the Court of First Instance rules that there is no ground for the appointment of an arbitrator are exempted from this rule. An appeal before the Supreme Court remains possible, but only on limited grounds (i.e., violations of law, no factual review). The abolition of appeal against arbitration-related court decisions is one of the most significant improvements of the Belgian arbitration legislation since it removes a main cause for possible delays in arbitral proceedings.

Fast-Track Proceedings Before the President of the Court of First Instance for Specific Claims. The President of the Court of First Instance decides in fast-track proceedings on claims concerning the appointment, replacement, withdrawal, challenge, and failure or impossibility to act of an arbitrator. The President also rules in fast-track proceedings on any requests for measures for the taking of evidence or to set a time limit for the arbitral tribunal to render an award. All other arbitration-related claims, such as applications for the annulment or recognition and enforcement of arbitral awards, remain governed by the standard procedural rules before the Court of First Instance.

Detailed Rules for Communications. Article 1678 of the Judicial Code for the first time stipulates detailed rules on the way in which, in the absence of any deviating agreement between the parties, communications can take place in the framework of an arbitration. For example, the use of email as a valid form of communication is now explicitly acknowledged. The second paragraph of new Article 1678 deals with the issue of the calculation of deadlines further to such communications.

Challenge of Arbitrators. The new Arbitration Law removes a highly debated limitation of party autonomy in arbitrations subject to Belgian law by stating that parties are allowed to agree upon the procedural rules for challenging an arbitrator, for example by reference to the rules of an arbitration institution. In the absence of any such agreement between the parties, the new Law sets forth a detailed challenge procedure. It is also important to note that the arbitral tribunal can now decide to continue the arbitral proceedings and render an award even if proceedings to challenge an arbitrator have been initiated with the President of the Court of First Instance. This provision again aims at avoiding possible dilatory tactics of an uncooperative party.

Provisional Measures. The new Law confirms the arbitral tribunal's powers to grant provisional relief, to the exception of a conservatory attachment. Articles 1692–1698 of the

Judicial Code for the first time provide for a detailed and sophisticated set of rules for provisional measures by an arbitral tribunal.

Annulment and Possible Remediation of Awards. The grounds for setting aside an arbitral award have been delineated in new Article 1717 of the Judicial Code. The Belgian legislature aims at avoiding a purely formalistic application of the annulment grounds by explicitly stating that for a majority of those grounds, a party will be barred from obtaining the annulment of an award if it became aware of the cause for annulment in the course of the arbitration proceedings but failed to invoke it at that time. For other grounds, the requesting party will have to demonstrate that the invoked ground for annulment effectively had an influence on the arbitral award.

The Court of First Instance seized in annulment proceedings can now also decide to send the award back to the arbitral tribunal to allow it to take any measures to remediate the possible ground for annulment and "save" the arbitral award. This is another example of the pragmatic approach taken by the Belgian legislature: the annulment of an arbitral award should be a last resort only.

Finally, the legislature decided to retain the Belgian peculiarity whereby parties may agree to exclude any application for annulment of an award if none of them is a Belgian national or has a residence/seat in Belgium.

CONCLUSION

Without any doubt, the new Belgian Arbitration Law significantly improves the already favorable arbitration environment in Belgium. Drawing on experience from the UNCITRAL Model Law and other successful arbitration laws, parties will directly benefit from the increased efficiency in both the arbitral and court proceedings and from a judiciary with a specialized expertise in arbitration.

LAWYER CONTACTS

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