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INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

ICCA
PROJECTS

Research Group on
Arbitrator Immunity

BELGIUM

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SURVEY RESPONSES ON ARBITRATOR IMMUNITY – BELGIUM

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BELGIUM			
I. Definitions		Yes/No/NA	Comments, if any.
I.1.	<p>“Arbitrator”</p> <p>For the purpose of this survey, an “arbitrator” is a person appointed by the parties, on behalf of the parties, or by an institution to adjudicate a dispute under an arbitration agreement, either alone or as one member of an arbitral tribunal. When answering the questions in this survey, please include all regulations, standards, or duties that apply to or include arbitrators but not those that apply solely to mediators.</p>	N/A	
I.2.	<p>“Legislation”</p> <p>For the purpose of this survey, “legislation” includes laws in force and any draft bills or legislative initiatives that are currently at an advanced stage, including for example if the proposal is before a legislative body for vote or approval. It is helpful to signal the content and status of any such legislative initiatives in this survey, so that readers can also be aware of changes that may be forthcoming.</p>	N/A	References to BJC in this questionnaire refer to the Belgian Judicial Code, which contains the Belgian law on arbitration (“ BLA ”) in its Book 6.

II. General		Yes/No/NA	Comments, if any.
II.1.	<p>What standards or duties (including ethical standards or duties) apply to arbitrators in your jurisdiction? Please briefly describe these standards or duties and cite to their legislative, regulatory, jurisprudential, or other basis.</p> <p>[Examples of such standards or duties may include:</p> <ul style="list-style-type: none"> - Duty to disclose potential conflicts of interest. - Duty of impartiality. - Duty of care/competence. - Duty to respect and maintain the confidentiality of the arbitration. - Duty to conduct the proceeding in an appropriate/fair/judicious manner. 	N/A	<p>The BLA requires arbitrators to:</p> <ul style="list-style-type: none"> - Complete their mission, once accepted, unless released by the parties or the court (Art. 1685, § 7 BJC) - Disclose potential conflicts of interest. This is an ongoing duty (Art.1686, § 1 BJC); - Be independent and impartial and possess any qualifications that the parties agreed on (if any) (Art. 1686, § 2 BJC) - Act without undue delay (Art. 1688, § 1 BJC) - Treat parties equally and fairly (Art. 1699 BJC) <p>Additional obligations may arise from:</p> <ul style="list-style-type: none"> - The general duty of care in contractual relationships - The secrecy of court deliberations, which is criminally sanctioned and considered to apply to arbitrators as well - The duty for arbitrators not to be bribed, which is criminally sanctioned, and applies to arbitrators as well - The parties' agreement, including the reference to institutional arbitration rules (which may e.g. contain rules on confidentiality, provide rules of conduct for arbitrators, etc) - The arbitrator's affiliation to a regulated profession, such as the bar (e.g. reporting duties resting on lawyers in the combat against fraud and money laundering, etc.) - Duties and standards imposed by other laws, such as the EU's GDPR rules in relation to data processing

<p>II.2.</p>	<p>In cases of potential arbitrator misconduct of a civil (as opposed to criminal) nature, what remedies or disciplinary measures are available in your jurisdiction <i>vis-à-vis</i> the arbitrator?</p> <p>Please provide citations to any relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>	<p>N/A</p>	<p>An arbitrator may be challenged for misconduct casting doubts on his/her impartiality or independence (Art. 1686, § 2 BJC)</p> <p>A party may request the removal of an arbitrator if this misconduct renders him/her de jure or de facto unable to perform his/her functions or for other reasons fails to act without undue delay (Art. 1688, § 1 BJC)</p> <p>Parties may agree to terminate an arbitrator’s mandate (Art. 1688, § 1 BJC)</p> <p>To the extent that the arbitrator’s misconduct affected a party’s rights of defense, the arbitral award may be exposed to setting aside.</p>
<p>II.3.</p>	<p>Is there anything in the <u>legislation</u> of your jurisdiction recognizing a general principle of arbitrator liability and/or a principle that could provide a basis for an arbitrator to be subject to suit or found liable personally for breaches of any of the duties/standards described above?</p>	<p>Yes</p>	<p>Belgian law does not contain statutory provisions specifically addressing the liability of arbitrators.</p> <p>This issue is typically addressed by reference to the general provisions of contract law (to the extent that the arbitrator’s mandate is contractual in nature) and the rules on immunity of state judges in Art. 1140 et seq. BJC (to the extent that arbitrators perform a judicial function).</p> <p>This leads to a distinction in legal doctrine between the possible liability of arbitrators for acts or omissions in the conduct of the procedure (i.e., the arbitrator’s mandate being contractual in nature), and the possible liability for acts or omissions in ruling on the dispute (i.e., the arbitrator performing a judicial function).</p>
<p>II.4.</p>	<p>Is there anything in the <u>jurisprudence/ other secondary sources of law</u> of your jurisdiction recognizing a general principle of arbitrator liability and/or a principle that could provide a basis for an arbitrator to be subject to suit or found liable personally for breaches of any of the duties/standards described above?</p>	<p>Yes</p>	<p>Most of the duties and standards referred to in Section II.1, relate to the conduct of the procedure. It is generally accepted in principle under Belgian law that arbitrators may incur contractual liability for acts or omissions in the conduct of the arbitration proceedings on the basis of general provisions of contract law.</p> <p>The Court of Appeal of Brussels held that the behavior of the arbitrator is to be assessed by reference to the objective standard of <i>a normal and careful arbitrator in the same circumstances</i> (Court of Appeal of Brussels, 28 November 2017, <i>b-Arbitra</i> 2019/1, p. 217 (224))</p>
<p>II.5.</p>	<p>Is there anything in the <u>jurisprudence/ other secondary sources of law</u> of your jurisdiction that could provide a basis for an arbitrator generally to be subject to suit or found liable personally for acts or omissions in relation to an arbitration?</p>	<p>Yes</p>	<p>See the answer under II.4 above.</p>

<p>II.6.</p>	<p>If your answer to question II.3, II.4 or II.5 is yes, is there a corresponding statute of limitations or similar time-limit in your jurisdiction for the initiation of a claim against an arbitrator?</p>	<p>Yes</p>	<p>There are no specific statutory provisions under Belgian law that address arbitrator liability.</p> <p>Claims for the liability of arbitrators are therefore in principle subject to the general 10-year limitation period for contractual claims, starting from the day the claim arises (Art. 2262bis, §1 (Old) Belgian Civil Code). The precise starting point may depend on the type of act or omission, and would in principle either be the date of the arbitral award or the date of the act or omission itself.</p> <p>A majority of Belgian doctrine, however, considers that a claim for liability can only be brought after an arbitral award is set aside, unless (i) there was no arbitral award (e.g. failing to issue an award within an applicable time limit) or (ii) the act or omission is unrelated to the award (e.g. refusal by an arbitrator to return original documents to the parties).</p> <p>Claims for setting aside must generally be brought within three months from notification of the award, subject to limited exceptions, e.g. in case of fraud (Art. 1717, § 4 BJC).</p> <p>A failure to launch setting aside proceedings timely (and successfully), may therefore preclude a party from bringing a claim for liability against an arbitrator.</p>
<p>II.7.</p>	<p>If your answer to question II.3, II.4 or II.5 is yes, is there anything in the <u>legislation or jurisprudence/other secondary sources of law</u> of your jurisdiction that addresses the possibility of joint liability among the members of the tribunal, either <i>vis-à-vis</i> the parties or among themselves?</p>	<p>Yes</p>	<p>Under Belgian law, there is no statutory provision addressing joint liability of arbitrators vis-à-vis the parties and/or internal liability amongst them directly. There are no recent published court decisions on the matter.</p> <p>The question of whether members of an arbitral tribunal can be jointly liable, is to be assessed on a case-by-case basis by reference to the general provisions of contract law, bearing in mind that:</p> <p>On the one hand, arbitral tribunals in principle act in a collegial manner. It is at present not clear whether individual arbitrators may rely on the division of tasks between them to avoid liability vis-à-vis the parties, bearing in mind also the secrecy of deliberations.</p> <p>On the other hand, some standards and obligations rest on arbitrators individually. In such cases, it seems difficult to automatically extend the liability for an act or omission of one arbitrator to the entire tribunal. This being said, the other members of the arbitral tribunal may risk being exposed themselves to liability if they fail to (re)act appropriately once they become aware of the arbitrator's misconduct or fault.</p> <p>In light of the above, the answer to the question on joint liability will thus depend on the nature of the alleged fault committed, and the facts and specific circumstances of a given case.</p>

III. Limitations of Liability		Yes/No/NA	Comments, if any.
III.1.	<p>Is there a general principle of arbitrator immunity (<i>i.e.</i>, whereby an arbitrator is immune from civil liability for his or her activities undertaken as arbitrator) in your jurisdiction? If yes, is this immunity less than, equivalent to, or greater than the immunity, if any, afforded to judges or members of the judiciary?</p> <p>Please provide citations to any relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>	Yes	<p>The BLA does not address arbitrator immunity, which is not expressly regulated.</p> <p>In a judgment of 28 November 2017, the Court of Appeal of Brussels held that, to the extent that they conduct a judicial function, arbitrators enjoy immunity similar to that of state judges (cf. Art. 1140 et seq. BJC) in order to guarantee their independence (Court of Appeal of Brussels, 28 November 2017, <i>b-Arbitra</i> 2019/1, p. 217 (224).</p> <p>As is the case for state judges, however, such immunity is not absolute. The majority of legal doctrine therefore considers that arbitrators may not be held liable for substantive errors in performing their judicial function, except in cases of intent, fraud, or serious error that can be equated with fraud.</p>
III.2.	<p>Is there anything in the <u>legislation</u> of your jurisdiction that otherwise limits an arbitrator's personal civil liability?</p>	Yes	<p>See answer III.1 above.</p> <p>There is no statutory provision specifically addressing immunity of arbitrators.</p>
III.3.	<p>Is there anything in the <u>jurisprudence/ other secondary sources of law</u> of your jurisdiction that otherwise limits an arbitrator's personal civil liability?</p>	Yes	<p>See answers III.1 and III.2 above.</p> <p>While there is no statutory provision specifically addressing immunity of arbitrators, Courts have taken inspiration from Art. 1140 et seq. BJC (<i>i.e.</i> the provisions on the immunity of state judges)</p>

<p>III.4.</p>	<p>If your answer to question III.1, III.2, or III.3 is yes, are there any exceptions to that immunity or limitation of liability?</p> <p>For example, is there any exception to an arbitrator’s immunity from suit or limitation of liability where the arbitrator’s alleged misconduct involves fraud, bad faith, negligence, or intentional wrongdoing (to the extent these concepts are recognized in your jurisdiction’s legal framework)?</p> <p>Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>	<p>Yes</p>	<p>In its judgment of 28 November 2017, the Court of Appeal of Brussels considered that arbitrators, like judges, enjoy immunity, but specified that, as is the case for judges, such immunity is not absolute (Court of Appeal of Brussels, 28 November 2017, <i>b-Arbitra</i> 2019/1, p. 217 (224).</p> <p>The majority of legal doctrine therefore considers that arbitrators may not be held liable for substantive errors in performing their judicial function, except in cases of intent, fraud, or serious error that can be equated with fraud.</p>
<p>III.5.</p>	<p>Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers the effectiveness of limitation of liability clauses found in arbitral institution rules?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> – The type of misconduct alleged. 	<p>Yes</p>	<p>Legal doctrine considers that the validity of limitation of liability clauses is to be assessed by reference to the general provisions on exoneration clauses.</p> <p>Pursuant to Art. 5.89 of the Belgian Civil Code, a contract party cannot validly exonerate itself for intentional faults, or faults that affect the life or physical integrity of a person. Furthermore, an exoneration clause that voids the contract of its substance is deemed not written. Finally, in application of the general <i>fraus omnia corrumpit</i> rule (Art. 1.10 Belgian Civil Code), one cannot validly exclude liability for fraud.</p> <p>As indicated in the answer to question II.3, Belgian legal doctrine distinguishes between liability for acts or omissions in the conduct of the procedure, and liability for acts or omissions in ruling on the dispute (where arbitrators are considered to enjoy a degree of immunity similar to that of state court judges).</p>

	<ul style="list-style-type: none"> - The relevant limitation of liability language and its source (<i>i.e.</i>, UNCITRAL Arbitration Rules 2010, American Arbitration Association Commercial Arbitration Rules, etc.). - A summary of the court’s findings as to the effectiveness of the limitation of liability clause in limiting or excluding an arbitrator’s liability. 		<p>In accordance with these principles, Article 40 of the 2020 CEPANI (Belgian Centre for Arbitration and Mediation) Rules, provides for the following limitation of liability clause:</p> <p style="padding-left: 40px;"><i>“1. Except in the case of fraud, the arbitrators shall not incur any liability for any act or omission when carrying out their functions of ruling on a dispute.</i></p> <p style="padding-left: 40px;"><i>2. For any other act or omission in the course of an arbitration proceeding, the arbitrators, CEPANI, its members and its personnel shall not incur any liability except in the case of fraud or gross negligence.”</i></p> <p>There is no published case law on this matter</p>
<p>III.6.</p>	<p>Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers the effectiveness of limitation of liability clauses or indemnity clauses (<i>i.e.</i>, clauses by which the parties to the arbitration agree to cover any losses or damages suffered by the arbitrators in a potential suit, or to otherwise hold the arbitrators harmless) found in an arbitration’s procedural materials – <i>i.e.</i>, Terms of Reference, Terms of Appointment, Procedural Order No. 1, etc.?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> - The type of misconduct alleged. - The limitation of liability or indemnity language found in the relevant procedural material (if available). 	<p>Yes</p>	<p>See Answer III.5.</p> <p>It is generally considered that exoneration clauses meeting the conditions imposed by Belgian contract law, and bearing in mind the distinction between liability for acts of procedure and the performance of the judicial function, are valid under Belgian law.</p> <p>A clause in terms of reference or similar that is in line with these principles (and e.g. matches the wording of Article 40 of the 2020 CEPANI Rules), is therefore in principle valid.</p> <p>Within these restrictions, clauses in which parties commit to hold arbitrators harmless, are in principle equally enforceable under Belgian law.</p> <p>There is no published case law on this matter.</p>

	<ul style="list-style-type: none"> – A summary of the court’s findings as to the effectiveness of the limitation of liability or indemnity clause in limiting or excluding an arbitrator’s liability. 		
<p>III.7.</p>	<p>Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers the effectiveness of a clause limiting the arbitrators’ liability found in the parties’ arbitration agreement?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> – The type of misconduct alleged. – The relevant limitation of liability language in the parties’ arbitration agreement. – A summary of the court’s findings as to the effectiveness of the limitation of liability clause in limiting or excluding an arbitrator’s liability. 	<p>Yes</p>	<p>Specific clauses in the parties’ arbitration agreement addressing arbitrator liability appear to be rare in practice. More frequent is a reference to institutional rules providing for limitations to arbitrator liability.</p> <p>Clauses such as Article 40 of the 2020 CEPANI Rules are in principle considered to be valid under Belgian law. See also the answer to III.5.</p> <p>There is no published case law on the matter of the effectiveness of a clause limiting the arbitrators’ liability found in either the parties’ arbitration agreement or institutional rules.</p>

<p>III.8.</p>	<p>If your answer to question III.5, III.6, or III.7 is yes, does any of this <u>jurisprudence/secondary sources of law</u> comment on whether the <i>source</i> of the limitation of liability or indemnity language (<i>i.e.</i>, institutional rules v. procedural order v. terms of reference v. arbitration agreement) was relevant to the court's finding?</p> <p>If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.</p>	<p>No</p>	<p>There is no published case law on this matter.</p> <p>By way of general remark, in order to be able to rely on an exoneration clause, one has to show consent. As a result, an arbitral tribunal including a limitation of liability clause in a procedural order (which may include decisions on other procedural points where the parties did not agree), may want to ensure that the parties consented to the limitation of liability clause and find a way to record such consent expressly in the procedural order as well.</p>
<p>III.9.</p>	<p>If your answer to question III.5, III.6, or III.7 is yes, does any of this <u>jurisprudence/secondary sources of law</u> comment on whether the particular language used in the relevant limitation of liability or indemnity clause was relevant to the court's finding?</p> <p>If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.</p>	<p>No</p>	<p>There is no published case law on this matter.</p> <p>As explained above and can be seen from Article 40 of the CEPANI Rules, the distinction between liability for acts or omissions in the conduct of the procedure, and liability for acts or omissions in ruling on the dispute (where immunity similar to that of state judges has been upheld) has a bearing on the extent of the limitation of liability.</p> <p>To ensure enforceability of an exoneration clause under Belgian law, it is therefore recommended to reflect this distinction also in the language of the clause.</p>

<p>III.10.</p>	<p>If your answer to question III.5, III.6, or III.7 is yes, does any of this <u>jurisprudence/secondary sources of law</u> comment on whether the moment in the arbitration when the relevant limitation of liability or indemnity clause was agreed to was relevant to the court's finding, <i>i.e.</i>, whether it was agreed to <i>ex ante</i> (in advance of the relevant arbitration proceeding having been initiated) or after the arbitration was commenced?</p> <p>If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.</p>	<p>No</p>	<p>There is no published case law on this matter.</p> <p>In principle, an <i>ex ante</i> exoneration should be valid under Belgian law.</p>
<p>III.11.</p>	<p>To the extent there is any principle of arbitrator immunity or limitation of liability recognized in your jurisdiction (<i>i.e.</i>, if your answer to question III.1, III.2, or III.3 is yes), does that immunity or limitation of liability apply in proceedings in which a party is requesting interim relief (interim injunction, conservatory or similar temporary measures), as distinct from final relief (including damages), from an arbitrator?</p> <p>Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>	<p>No</p>	<p>There is no published case law on this matter.</p> <p>As deciding on interim relief is part of an arbitrator performing a judicial function, there seems no reason to differentiate in terms of immunity under Belgian law.</p>

<p>III.12.</p>	<p>To the extent there is any principle of arbitrator immunity or limitation of liability recognized in your jurisdiction, (<i>i.e.</i>, if your answer to question III.1, III.2, or III.3 is yes), does that immunity or limitation of liability permit an arbitrator to refuse to serve as a witness or provide documents when subpoenaed, or otherwise compelled, by a judicial authority (for example, in enforcement proceedings)?</p> <p>Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>	<p>No</p>	<p>There are no statutory provisions or published case law on this specific matter and the author is not aware of any secondary sources of law addressing this issue.</p> <p>This being said, the secrecy of deliberations is part of Belgian procedural public policy, which is considered to also apply to arbitrations seated in Belgium. Arbitrators should therefore be careful not to provide any evidence in violation of their duty of secrecy, unless ordered by a judicial authority.</p> <p>Moreover, in a related matter where a party included the arbitrators as parties in its application for setting aside the arbitral award, the Belgian Supreme Court held that, because of the judicial nature of their function, arbitrators may not intervene in the debate on the setting aside of their own arbitral award. Arbitrators are equally not permitted to file an action in recourse against the decision setting aside their arbitral award. (<i>Cass</i>, 10 February 2023, <i>b- Arbitra</i> 2023/1, p. 62 et seq.)</p>
<p>III.13.</p>	<p>Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether a limitation of liability clause found in arbitral institution rules, procedural materials, or the parties' arbitration agreement operates to permit an arbitrator to refuse to serve as a witness or provide documents when subpoenaed, or otherwise compelled, by a judicial authority?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source.</p>	<p>No</p>	<p>There is no published case law on this specific matter.</p>

III.14.	To the extent an arbitrator is permitted to be called upon to act as a witness in your jurisdiction but is otherwise bound by confidentiality obligations related to the underlying arbitration, is there any guidance (found in jurisprudence or elsewhere) as to how the arbitrator should proceed?	No	<p>There is no published case law on this specific matter and the author is not aware of any guidance.</p> <p>Considering that the use of witnesses in commercial or civil proceedings is extremely rare, this issue is less likely to arise in such proceedings before the Belgian courts.</p>
IV. Effectiveness of Professional Indemnity Insurance		Yes/No/NA	Comments, if any.
IV.1.	Does the legal framework in your jurisdiction mandate professional indemnity insurance coverage for arbitrators?	No	The author is not aware of any such mandate.
IV.2.	Is there any <u>legislation</u> or <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether acting as an arbitrator counts as an act constituting the practice of law?	No	<p>The author is not aware of such source. For the reasons set out in Answer IV.3, however, the answer to this question is likely negative.</p> <p>To ensure coverage under Belgian law, it is therefore recommended to include activities as arbitrator expressly.</p>
IV.3.	Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether the professional indemnity insurance policy of a law firm or barrister's chambers covers activities undertaken by a member of that firm/chambers as arbitrator where the arbitrator has been appointed in an individual capacity (<i>i.e.</i> , rather than as a representative of the firm/chambers)?	No	<p>There is no published case law on this matter.</p> <p>Members of a Belgian bar have professional insurance as part of their collective bar insurance, which will expressly stipulate whether they include activities as arbitrator and, if so, which exclusions would apply. For example, the collective policy of the Dutch Speaking Brussels Bar provides in its Article 2 (entitled "<i>Extension of the coverage to certain specific functions</i>") that the coverage also extends to "<i>insured lawyers acting as arbitrators</i>".</p> <p>This wording suggests that a Belgian lawyer's activities as arbitrator are not automatically covered, but confirms that such insurance coverage is available.</p> <p>A Belgian lawyer wishing to supplement the collective bar insurance in order to also cover his/her activities as arbitrator should therefore ensure that the wording of the policy expressly includes arbitrator activities.</p>

	<p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> – The type of misconduct alleged. – The relevant language of the professional indemnity insurance policy of the arbitrator’s law firm or barrister’s chambers (if available). – A summary of the court’s finding as to the scope of that policy’s coverage <i>vis-à-vis</i> the arbitrator’s activities as an arbitrator. 		
<p>IV.4.</p>	<p>If your answer to question IV.3 is no, is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether the professional indemnity insurance policy of a law firm or barrister’s chambers covers activities undertaken by an employee or partner of that firm/chambers as a board member of an external organization (<i>i.e.</i>, a corporation, charity, etc.)?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> – The type of misconduct alleged. 	<p>No</p>	<p>The author is not aware of specific case law published on this issue.</p> <p>By way of example, such coverage is not mentioned by the collective policy of the Dutch Speaking Brussels Bar.</p> <p>To ensure coverage under Belgian law, it is recommended to include activities on the board of an external organization expressly, or to conclude a separate insurance policy for such activities.</p>

	<ul style="list-style-type: none"> – The relevant language of the professional indemnity insurance policy of the member’s law firm or barrister’s chambers (if available). – A summary of the court’s finding as to the scope of that policy’s coverage <i>vis-à-vis</i> the member’s activities as a board member. 		
<p>IV.5.</p>	<p>Assuming that there is coverage of the types envisioned in questions IV.3 and IV.4, is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether that coverage extends to breaches of cybersecurity and data privacy laws?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> – The nature of the alleged cybersecurity/privacy breach. – The relevant language of the professional indemnity insurance policy (if available). – A summary of the court’s finding as to the scope of that policy’s coverage <i>vis-à-vis</i> the alleged cybersecurity/privacy breach. 	<p>No</p>	<p>The author is not aware of specific case law published on this issue.</p>

IV.6.	Assuming that there is coverage of the type envisioned in question IV.3, please provide sample language from commonly used insurance policies that were found by those courts or secondary sources to cover work undertaken independently as an arbitrator.	N/A	
IV.7.	Are there any other issues that, in your view, a prospective arbitrator should be aware of in ensuring that their work as an arbitrator in your jurisdiction is covered by their law firm's or chamber's professional indemnity insurance policy?	No	
V. Involvement of Arbitral Institutions		Yes/No/NA	Comments, if any.
V.1.	Is there any <u>jurisprudence</u> in your jurisdiction where an arbitral institution has been sued alongside an arbitrator?	No	
V.2.	Is there any <u>jurisprudence</u> in your jurisdiction where an arbitrator has been sued and then an arbitral institution subsequently intervened in the proceeding?	No	

V.3.	<p>If your answer to question V.1 or V.2 is yes, in your experience, or to the extent this information is publicly available, did the arbitrator and arbitral institution defend the suit jointly, or did the arbitrator defend the suit on his/her own behalf, separate from any defense mounted by the institution?</p> <p>If the suit(s) was/were defended jointly, in your experience or, to the extent this information is publicly available, did the institution pay for the arbitrator's counsel fees?</p>	N/A	
V.4.	<p>If your answer to question V.1 or V.2 is yes, in your experience, or to the extent this information is publicly available, did the suit result in a settlement?</p>	N/A	
VI. Procedural Issues			
VI.1.	<p>Is there any <u>jurisprudence</u> in your jurisdiction where an arbitrator and/or arbitral institution was sued by a party, and the arbitrator or arbitral institution objected on the grounds of improper forum or venue?</p> <p>If yes, please provide a brief description of case(s), limited to one paragraph per case, including:</p> <ul style="list-style-type: none"> - The parties. - The type of misconduct alleged. 	No	

	<ul style="list-style-type: none"> – The nature and basis of the arbitrator’s or arbitral institution’s objection to venue. – The outcome of the objection (<i>i.e.</i>, whether the case proceeded to be heard or was dismissed for improper forum or venue) and the court’s reasoning for the same. 		
VI.2.	<p>Is there any <u>legislation</u> or <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers the potential consequences if a suit against an arbitrator is unsuccessful?</p> <p>For example, if a suit against an arbitrator is unsuccessful, what remedies would be available to the arbitrator? Moreover, would any sanctions be applicable to the unsuccessful party who brought the suit if it is found that the suit was frivolous?</p>	Yes	<p>In proceedings before Belgian state courts, the successful party can obtain compensation for its defense costs (Art. 1022 BJC). This compensation is a flat fee, which is determined by reference to the value of the case. The court may increase such compensation in case the proceedings were “<i>manifestly unreasonable</i>”.</p> <p>It should, however, be noted that this statutory flat fee compensation usually does not cover a party’s actual defense costs incurred.</p> <p>If the arbitrator considers having suffered other damage as a result of a liability suit, he/she can try to bring a counterclaim or file a return suit subsequently.</p> <p>There is no published case law on this matter.</p>
VI.3.	<p>While this survey generally focuses on the civil liability of arbitrators, if there is any relevant information from your jurisdiction related to claims for criminal liability brought against arbitrators, please include such information.</p>	Yes	<p>The secrecy of deliberation is a principle of Belgian procedural public policy, which is considered to apply in arbitrations seated in Belgium. Violation of the secrecy of deliberation (Art. 458 (Old) Belgian Criminal Code/ Art. 352 Belgian Criminal Code) and bribery (Art. 246 <i>iuncto</i> 249 (Old) Belgian Criminal Code/ Art. 638 Belgian Criminal Code) may be criminally sanctioned.</p>
VI.4.	<p>Is there any other information about your jurisdiction not already provided in your responses to the questions in this survey that is relevant to understanding and explaining arbitrator liability in your jurisdiction?</p>	No	

ICCA RESEARCH GROUP ON ARBITRATOR IMMUNITY

Goals

The primary goal of the Arbitrator Immunity Research Group is to study questions of arbitrator liability and immunity, and to raise practitioners' and arbitrators' awareness of the current legal landscape. The project's goals include investigating the limits of arbitrator immunity, evaluating the effectiveness of language limiting arbitrator liability in procedural orders and institutional rules, and examining the impact and limitations of professional indemnity insurance.

Methodology

To understand the current global landscape of arbitrator immunity, the Research Group designed a detailed survey and selected sample jurisdictions for inclusion. The Research Group compiled a list of survey respondents for each jurisdiction by seeking recommendations for responsive, high-quality contributors who had previously participated in ICCA research projects, as well as recommendations from arbitral institutions and colleagues in the international arbitration community. After receiving the completed surveys, the research team collaborated with the respondents in two rounds of edits to improve clarity, understanding, and formatting.

Citations to this Research

Researchers and authors using this data should use the following citations to refer to this research:

- General citation to the project website: 'ICCA Research Group on Arbitrator Immunity' (Kate Brown de Vejar, Victoria Shannon Sahani, and Damien Nyer, eds., 2026), <https://www.arbitration-icca.org/research-group-arbitrator-immunity>
- Citation to the individual survey response: 'Survey Responses on Arbitrator Immunity for Belgium', in ICCA Research Group on Arbitrator Immunity (Kate Brown de Vejar, Victoria Shannon Sahani, and Damien Nyer, eds., 2026), <https://www.arbitration-icca.org/research-group-arbitrator-immunity>

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Disclaimers

- **Viewpoints Disclaimer:** The survey responses do not represent the viewpoints, opinions, or research of ICCA, its Governing Board or members, or the Research Group in general, or its individual members. The Research Group's editing process focused solely on enhancing clarity, comprehension, and formatting.
- **General Legal Disclaimer:** The information on this website and within the survey responses is for informational purposes only, and this information does not constitute legal advice. Because legal landscapes in these jurisdictions constantly evolve, the website might contain incorrect or out-of-date information. Readers must not act or refrain from acting based on this raw data. Readers should always seek independent, local legal advice regarding these topics.