In fact, respect for party autonomy is so entrenched that the Singapore High Court observed in *Bovis Lend Lease Pte Ltd v Jay-Tech Marine & Projects Pte Ltd and another Application* [2005] SGHC 91 that arbitral rules that sought to take precedence over any and all provisions in a party's underlying contract relating to dispute resolution by arbitration may be an unwarranted limitation on party autonomy.

The reasoning in *Bovis v Jay-Tech* was approved by the Singapore Court of Appeal in *Insigma Technology Co Ltd v Alstom Technology Ltd* [2009] 3 SLR(R) 936, where the court upheld the parties' agreement to have an arbitration conducted under the International Chamber of Commerce Rules of Arbitration but administered by the Singapore International Arbitration Centre instead of the International Court of Arbitration.

Thus, parties are free to construct their own dispute resolution scheme, subject to any public policy reasons against upholding the parties' choice.

4. Conclusion

Dispute resolution activity in Singapore is on the rise overall, driven in part by the growth of arbitration and its incorporation into all local standard forms of construction contracts. From 99 new cases in 2008, the Singapore International Arbitration Centre handled 235 new cases in 2012. The value of the disputes arbitrated in 2012 was S$3.61 billion, more than the combined value of disputes arbitrated in 2011 and 2010 of S$1.32 billion.[3]

This growth is underpinned by the key features of Singapore's legal system: the strong rule of law, an independent judiciary, a robust arbitration framework, party autonomy to fashion their own dispute resolution scheme and to be represented by counsel of their choice. The last feature is an important consideration for multinational construction entities – there is no restriction on foreign law firms advising on or engaging in arbitration proceedings in Singapore.

As Asia's top arbitration venue in 2010,[4] Singapore is constantly looking to enhance its legislative framework for arbitration. On June 1 2012, Singapore became one of the first countries to expressly legislate support for the emergency arbitrator, instead of the court, to provide urgent interim relief prior to the constitution of a tribunal, by making it clear that such orders made would be enforceable.

Singapore's legal system looks to continue its growth and innovation in the years ahead, in tandem with that of one of its major users, the construction industry.

3 Ministry of Law, Singapore, press release, February 13 2013.
4 "2010 International Arbitration Survey: Choices in International Arbitration", Queen Mary University of London.

Belgium

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1. Introduction

The construction sector in Belgium accounts on average for 5% of the country's total GDP each year. When all the other activities directly linked to this sector are taken into account, this figure is almost 11%. The sector employs 200,000 workers from a working population of approximately 5 million people. The construction sector thus constitutes an important part of the Belgian economy.

Statistics show that the construction sector is mostly active in the residential market. In 2010, Belgian authorities delivered 27,054 building permits for the construction of new residential buildings. These permits authorised the construction of 49,701 new housing units, of which 25,599 were apartments and 24,102 were single family homes. Likewise, in the same year the authorities delivered 4,747 permits for industrial and commercial (non-residential) buildings.

The 2010 figures confirm the two main trends witnessed by the Belgian construction sector during the past 15 years:

- a steady decrease in the construction of industrial buildings (with the number of industrial building permits decreased by approximately 35% between 1996 and 2010 – that is, from 7,238 permits in 1996 to 4,747 in 2010); and
- a steady increase in the construction of new apartments as opposed to new, single family homes (with the number of permits for new apartments having increased by 51% and the permits for single family homes having decreased by 24% between 1996 and 2010).

Despite the slowing down of the non-residential market, the construction industry remains solid.

The Belgian economy is open to foreign lenders, investors and contractors. There are no specific restrictions on foreign investments and ownership. On the contrary, Belgian legislation contains certain advantages that should attract foreign investment, such as the 'deduction for risk capital' (also known as the 'notional interest deduction'), which is a tax incentive to reinforce Belgium as an attractive location for investors.

As to licensing, contractors should be registered with the Belgian authorities as builders because under certain circumstances this could lead to a reduced VAT rate (6% instead of 21%).

In relation to public works licensing, it is essential that both national and foreign

contractors are 'licensed to build' or are able to prove that they have the equivalent experience and skills to entitle them to a licence. These licences are granted in different grades according to the size of the construction works, and in different categories and subcategories.

As Belgium has an open economy, there are no real currency controls that would make it difficult or impossible to change operating funds or profits from one currency into another, nor any controls or laws that restrict the removal of profits and investments.

2. Construction law and related legislation

Belgian legislation has very few rules that apply specifically to construction contracts.

The Belgian legal system is based on civil law traditions. A construction contract is considered a contract for hire of work and is thus governed by the rules of employment law and the general rules of contract. The Civil Code does not contain any specific comprehensive legislation on construction contracts.

Only four articles of the Civil Code deal specifically with construction contracts: Article 1792 (decennial liability), Article 1793 (modifications and additions in the framework of lump sum contracts), and Articles 1798 and 1799 (subcontracting). These four articles were introduced in the Civil Code in 1804 because of public mistrust towards construction professionals, who often took advantage of the ignorance of their co-contracting parties. Since then, the aforementioned shortcomings of the Civil Code have never been remedied. No new comprehensive legislation has been adopted regarding construction contracts, except for the law of July 9 1971 that deals with the specific issue of the promotion and the construction of dwelling houses. Article 1798 of the Civil Code was nonetheless modified by the law of February 19 1990, which aimed to increase the protection of subcontractors in the case of a contractor's bankruptcy (subcontractors are granted a right to direct action against the owner).

Parties to a construction contract enjoy an extended contractual freedom. However, this freedom is somewhat restricted as there are a number of specific public policy rules that restrict the parties from enjoying such freedom. For instance, the profession of 'contractor' is governed by certain rules on the admission to the profession, registration, and accreditation requirements for public works. Architects' contracts are also influenced by mandatory professional rules: for example, the Law of February 20 1939 grants architects a monopoly over the drawing of plans and the control of works for which a building permit is required; and under Article 6 of this Law, an architect's profession is incompatible with that of a constructor. In addition, architects must abide by a code of ethics and professional conduct which has been rendered obligatory by Royal Decree of April 18 1985; in that respect, architects must be and remain independent in the performance of their work.

In addition, public works are subject to specific legislative instruments, including the *Règles générales d'exécution* (RGE; Royal Decree of January 14 2013), which regulates the performance of public works. Derogations from the RGE are possible but must be rendered necessary by the specific characteristics of the tender. Some

derogations must, moreover, be formally motivated. The RGE contains rules on price, terms of payment, guarantees, modifications of the work, liability of the contractors, default, liquidated damages for delay, termination of the contract, etc. The RGE replaced the former *Cahier général des charges* (CGC; annex to the Royal Decree of September 26 1996) as from July 1 2013.

Finally, the European legislation on consumer protection, such as the directive on unfair business-to-consumer commercial practices, generally applies to construction contracts between professional builders and private individuals. The consumer protection legislation restricts the contractual freedom of the professional party by banning certain contractual provisions that are considered abusive.

In other words, Belgian construction law itself has evolved little over the past few years. As to practice, the most important trend is the continued rise of integrated contracting, and in particular the boom of public-private partnership (PPP) and private finance initiative contracts. These days, few large public works contracts are tendered that are not some type of integrated contract.

3. Dispute resolution

3.1 Introduction

Construction contracts are particularly prone to disputes. The main factors that increase the risk of disputes are the long-term nature of the contracts, the large number of intervening parties on a single project, the complexity of the building works and the often high financial value of the contracts. Construction disputes usually relate to the quality of the works, time and cost overruns, payment defaults and contract documentation.

Construction disputes are technically complex and are often multi-party:

- First, these types of disputes are rarely exclusively contractual. Complex technical issues are either at the core of the dispute or underlie the contractual matters. Resolution of construction disputes therefore requires intensive fact and technical investigations. Parties (or alternative dispute resolution (ADR) providers) will usually need to have recourse to one or several technical experts to support their case or resolve the dispute.
- Secondly, the execution of construction contracts always involves many parties. An average construction contract involves at least an owner, contractors and subcontractors, suppliers, insurers and financing institutions. Each party has a direct contractual relationship with one or a few of the other intervening parties. The chains of contracts linked to construction projects mean that disputes are regularly multi-party.

Arbitral tribunals have limited power to order the joinder of third parties to proceedings and consolidation of multiple arbitral proceedings. In most instances, joinder or consolidation will require the consent of the parties (unless the contracts and arbitration rules contain appropriate provisions or unless joinder and consolidation can be ordered by state courts). Where joinder or consolidation cannot be achieved, it will almost invariably multiply the number of procedures and

increase the risk of inflated costs and inconsistent decisions. Moreover, Belgian courts have not yet accepted that a company can be bound by an arbitration agreement entered into by another company of the same corporate group.

As a consequence, even if the use of ADR in the Belgian market is increasingly popular, its market share is still limited, and disputes regarding projects (including infrastructure and PPP projects) or construction are usually dealt with by the courts, quite often combined with expert advice to the courts.

In a commercial context, the use of arbitration precedes mediation or any (other) ADR method. The governing legislation as to both (international and domestic) arbitration and mediation can be found in the Judicial Code. The general rules on arbitration can be found in Part 6 of the Judicial Code (Articles 1676 to 1723), whereas the rules on mediation constitute Part 7 (Articles 1724 to 1737).

Expert determination in construction contracts is quite common, in particular regarding large or long-term projects, requiring an efficient settlement of certain categories of disputes. In general, the use of expert determination is limited to technical issues. Dispute resolution or adjudication boards are still rare.

In particular regarding public contracts or strictly national transactions, ADR is only applied occasionally.

As PPP projects in Belgium are structured as public contracts, one can conclude that the same reluctance towards introducing ADR methods also applies to PPP projects. Indeed, until approximately three years ago, a standard PPP project in Belgium only provided for standard proceedings before the civil courts. For more information on proceedings before the Belgium civil courts, see below.

Occasionally, certain of those PPP projects also provided for a consultative structure. Such a structure is still provided for in most PPPs today, mainly as a first step. In practice, such a structure involves a cool-down period, combined with a forced/organised consultation between (high-level) representatives of the parties to the contract. Such a structure does not imply the intervention of external parties.

In recent PPP projects, however, ADR methods have started to appear although, in practice, only in the form of dispute boards, expert determination or a mix of the two. For more information on dispute boards and expert determination in Belgium, see below.

The international influence on the structures used for these PPPs, the influence of international funders and the standardisation in this field explains why such ADR methods have appeared. The contracts underlying the PPP projects in Belgium were mainly inspired by precedents from the Netherlands and the United Kingdom. Hence, as those international reference contracts often provide ADR methods, and lenders and equity providers are familiar with those documents, the need for bankable projects stimulated the Belgian tendering authorities and their advisors also to provide ADR methods in Belgian design-build-finance-maintain contracts, in order to remain market standard.

However, the actual use and structuring of the ADR methods (dispute boards, expert determination or a mix of those) is not yet standardised in Belgium. In fact the method differs according to the relevant tendering authority or its advisors.

In addition, the ADR procedures are not always 'final'. Some contracts provide

that decisions made by the dispute board or the expert(s) are final, whereas in other contracts the ADR procedures only act as an intermediate procedure, prior to falling back on (mainly) the courts or (in rare cases) arbitration.

Yet in the meantime only a few Belgian PPP projects have been faced with problems requiring the use of dispute resolution methods. Hence, so far there is not much experience in the market as to the actual use and functioning of the methods provided for in the contracts. Nevertheless, as more and more projects come into the market, the next few years might provide more opportunities to test these dispute resolution methods in practice.

3.2 Proceedings before the civil or commercial courts

(a) Civil or commercial courts versus administrative courts

In Belgium, there are no separate courts or tribunals dealing exclusively with project finance transactions or construction contracts. Depending on the specific circumstances, disputes fall under the jurisdiction of the civil or commercial courts.

Nevertheless, two administrative courts are important to note in a project finance context: the Council of State at the federal level and the Board of Permit Appeals in the Flemish region. The latter is competent to rule on appeals against building permits in the Flemish region, and the former is competent to rule on administrative decisions taken by any public authority.

The Council of State plays an important role in the disputes concerning public procurement for construction works: the suspension or annulment of the tender decisions taken by contracting authorities are brought before the Council of State except in cases where the contracting authority is not a public authority in the sense of the legislation. In this case, the suspension or annulment actions are brought before the civil courts. Applications for review do not have an automatic suspensive effect.

The civil courts have the exclusive competence for damage claims and for all disputes concerning the execution of private and public construction contracts.

(b) Highlights of the judicial procedure before civil or commercial courts

Interlocutory proceedings: In cases of urgency, a party may apply to the president of the Tribunal of First Instance or of the Commercial Court to obtain interim measures and/or injunctive relief. The requesting party must establish that an order is required due to the risk of major harm or serious inconvenience.

Summary proceedings: A matter may be settled by summary proceedings if this is requested jointly by the parties or if it concerns collection of uncontested debts, interim measures or preliminary measures such as the designation of a judicial expert.[1] 'Summary proceedings' means that the exchange of written submissions will be limited in the strictest possible way and the matter will be pleaded at and decided after an introductory hearing only.

1 Article 735 of the Judicial Code.

Intervention: Third-party intervention is largely accepted under Belgian Law.[2] A third party may be forced to intervene in order either to assert a claim against the plaintiff or the defendant, or to safeguard the intervener's or one of the party's rights. There are thus four kinds of permissible intervention: voluntary or compulsory offensive intervention, and voluntary or compulsory conservatory intervention.

Compulsory offensive intervention aims at obtaining a judgment ordering a party to do or refrain from doing something, and is allowed only if introduced in the first instance. Conservatory intervention aims only at obtaining that a judgment that will be rendered between two parties can be opposed by a third party; such conservatory intervention can be formed either in the first instance or in appeal. The admissibility of compulsory intervention depends on the timing of the request: the third party must still be able to exercise its rights of defence. A voluntary intervention, be it offensive or conservatory, is admissible up to the closing of the proceedings, provided that the intervener accepts all the acts already taken, that it does not delay the proceedings and that the other parties can still fully exercise their rights of defence.

Evidentiary measures: The court or tribunal may order a wide range of evidentiary measures, such as document production, the examination of witnesses or of the parties, a site visit, etc. In construction matters, the most common evidentiary measure is the designation of an expert. The duration and the scope of the expert's assignment are determined by the judge. The expert first renders a preliminary report, on which the parties have the right to comment, and then submits its final report.[3] The expert report is not binding on the judge, but he or she must give a reason for not following the expert's conclusions.[4]

Penalty: Under Articles 1385*bis* to 1385*nonies* of the Judicial Code, the court may, upon the plaintiff's request, impose a penalty against the defendant in case the latter does not comply with the judgement. The court determines the amount of the penalty and the condition of application: fixed or periodic sum, capped amount, etc. A penalty cannot be granted by the court when the defendant has been condemned to the payment of a monetary sum.

Legal fees and costs of the proceedings: The losing party must bear the costs of the proceedings and the legal costs of the counterparty.[5] The amount of the legal fees is fixed at a flat rate and varies according to the amount of the claim. It ranges between €82.50 and €33,000.[6]

2 Article 812 of the Judicial Code.
3 Article 976 of the Judicial Code.
4 Article 962 of the Judicial Code.
5 Article 1017 of the Judicial Code.
6 Royal Decree, October 26 2007.

3.3 Arbitration and ADR

(a) Arbitration

The Judicial Code incorporates into Belgian Law the Model Law annexed to the European Convention on Arbitration signed in Strasbourg on January 20 1966. Any arbitration seated in Belgium is governed by Articles 1676 to 1723 of the Judicial Code.

According to Article 1677 of the Judicial Code, an arbitration agreement needs to be contained in a written document, signed by the parties, or in other documents binding on them and showing their intention to refer their dispute to arbitration. For the arbitration agreement to be valid and enforceable, no elements are required other than those the parties wish to refer to arbitration. Nevertheless, it is advisable to define the arbitration agreement in further detail.

The Belgian courts adopt a rather neutral approach towards arbitration, neither favouring arbitration nor showing a particular bias against it. Provided they are valid, the Belgian courts enforce arbitration agreements (and if relevant decline jurisdiction accordingly).

Tax disputes or criminal matters are excluded from arbitration. When an individual is concerned, caution is required because use of arbitration in consumer, insurance and labour matters is restricted. Automatic domestic arbitration does not exist in Belgium.

Arbitration law in Belgium is quite standard compared with those in other European countries; it does not contain any particularly notable features. The parties are free to determine the rules of the arbitral proceedings as long as the fundamental principle of fair and equitable treatment is respected (Articles 1693 and 1694 of the Judicial Code). According to Article 1696-2, the arbitral tribunal has a discretionary authority to assess the admissibility and weight of the evidence submitted by the parties. Unless the parties agreed differently, the arbitral tribunal is not bound by the rules of evidence applicable in court proceedings. Arbitration proceedings should respect the fundamental principle of non-discrimination between the parties, which must be granted the same possibility to assert their rights and put forth their arguments (Article 1694-1). Beyond this basic principle, which cannot be waived by any of the parties, it is up to the parties to determine the rules of the arbitral proceedings, including the seat of the arbitration (Article 1693). Failing agreement between parties, the arbitral tribunal is entitled to determine the rules of procedure. Article 1695 allows an arbitral tribunal to conduct proceedings by default if a party fails to appear or present its arguments.

The Judicial Code does not distinguish between the rules that apply to domestic or international arbitration. However, Article 1717-4 allows the parties to exclude the right to apply for the setting-aside of an arbitral award if none of the parties is a Belgian citizen or resident, or a corporation with its registered office or a branch office in Belgium.

Arbitral awards may only be appealed if the parties have expressly provided for it in the arbitration agreement – which is rarely the case. Setting-aside proceedings can be commenced before the Belgian Court of First Instance in a limited number of specific circumstances, enumerated in Article 1704 of the Judicial Code. In addition,

the courts must examine whether an award is contrary to public policy and whether the dispute is arbitrable. Setting-aside proceedings must be brought within three months after the award has been notified to parties.

The New York Convention entered into force in Belgium in 1975. Upon ratification Belgium declared that it will only apply the Convention to recognition and enforcement of awards made in the territory of another contracting state. If an award is contrary to public policy or the dispute was not arbitrable, enforcement will be refused. Enforcement of a foreign award will also be refused if one of the grounds for setting aside the award exists.

Belgium ratified the ICSID Convention in 1970 and has signed a large number of bilateral investment treaties, providing for either *ad hoc* or ICSID arbitration. Until now, no proceedings have been brought under the ICSID Convention against Belgium; however, Belgian investors have initiated proceedings against foreign countries.

(b) Mediation

Mediation was neither recognised nor regulated in Belgium until 2001. The law of February 19 2001 first introduced mediation in the field of family law matters. Eventually, by a law of February 21 2005, mediation was extended to all civil matters. The Judicial Code now contains a chapter dealing exclusively with mediation (Chapter 7, Articles 1724 to 1737).

This does not mean that mediation was not used in Belgium before 2001 or 2005; it was, however, a purely informal process. The law of February 21 2005 intends to develop the practice of mediation by giving guarantees as to the qualification of mediators and the confidentiality of the process, on the one hand, and introducing the possibility of a judicial approbation of the agreements reached in mediation, on the other hand.

Article 1724 of the Judicial Code provides that any dispute regarding negotiable rights can be referred to mediation. However, the code restricts the power of legal persons under public law to have recourse to mediation. Such persons may only take part in mediation if so duly authorised by a law or a Royal Decree. In the field of construction, this restriction is significant given that public works form an important part of the activity.

The Judicial Code foresees three kinds of mediation:

- voluntary mediation, which takes place independently of any judicial procedure and follows the rules of the Judicial Code;
- judicial mediation, which is ordered by a judge upon the parties' request or consent; and
- 'simple mediation', which takes place outside the legal framework set by the Judicial Code.

The procedure is identical for voluntary and judicial mediation. The parties and the mediator must sign a mediation protocol and decide freely upon the organisation and duration of the mediation. Any agreements reached between the parties during mediation must be made in writing. Since 2005, parties opting for judicial mediation must select an accredited mediator (except when no accredited mediator has the

required qualification to help solve the dispute). In voluntary mediation, the parties are free to choose a non-accredited mediator but cannot thereafter submit their agreement to judicial approbation.

The confidentiality of the procedure is guaranteed. All documents and communications made during mediation are confidential. They cannot later be used or produced in judicial or arbitral proceedings and are not admissible as a means of evidence or as acknowledgement of a claim. Both the parties and the mediator are bound by the confidentiality obligation.

An agreement reached between the parties in mediation has the same legal value as a contract. The Judicial Code allows the parties to increase the binding force of their agreements. Whether mediation is voluntary (with an accredited mediator) or judicial, parties can submit their agreements to judicial approbation in order that it be recorded in a consent judgment.

(c) Other ADR methods

In Belgium, as in many countries, other types of ADR methods can also be used for the resolution of disputes. For instance, expert determination and dispute boards are sometimes foreseen in multi-stepped dispute resolution clauses.

These ADR methods are not subject to any specific legislation. Rules of contract law apply to them. Parties may of course refer to the rules of specific ADR institutions such as the International Chamber of Commerce (ICC) or the Belgian Centre for Arbitration and Mediation (CEPANI).

3.4 Belgian arbitration and ADR institutions interested in construction disputes

There are several arbitral and ADR institutions in Belgium. CEPANI is the best known and is widely used; it deals with all kinds of cases. Other smaller institutions specialise in certain kinds of disputes. There are three main institutions that deal exclusively with construction and real estate disputes, namely the Chambre de Conciliation, d'Arbitrage et de Médiation en matière immobilière (CCAI), the Commission de Conciliation Construction (CCC) and the Centre Scientifique et Technique de la Construction (CSTC).

(a) CEPANI

CEPANI (www.cepani.be) is the most prominent arbitration institution in Belgium. It was created in 1969 by the Belgian Business Federation and the Belgian national committee of the International Court of Arbitration.

CEPANI offers arbitration and mediation services as well as mini-trials, technical expertise and contract adaptation services. It is a non-specialised arbitration/mediation institution, which means that its scope of activity is not restricted to any specific type of dispute on the basis of its subject matter or the capacity of the parties.

CEPANI statistics indicate that construction arbitration forms an important part of its activity. The total number of arbitration cases relating to construction matters represented 16.7% of all cases in 2004, 4.3% in 2005, 13.7% in 2009, 9.0% in 2010 and 15.0% in 2011. These statistics are largely similar to those of the International Commercial Court, where construction cases have represented between 14% and

17% of all cases since 2005. CEPANI deals mostly with national cases, but about one-third to one-half of all cases involves a foreign party.

In 2000, CEPANI set up a working group to examine the possibility of promoting arbitration in the construction sector. The working group noted that the use of arbitration could be increased in the Belgian construction sector, as shown by the international and Dutch traditions to refer construction cases to arbitration. Belgium is indeed far away from the quasi-systematic recourse to arbitration that exists in the Netherlands and for international contracts.

(b) CCAI

The CCAI was created in 2005 by various local associations of notaries, lawyers, architects, land surveyors and expert architects. The association of owners and the association of lenders later joined the CCAI as institutional members. It was created in response to the perceived inadequacy of ordinary judicial proceedings for the settlement of real estate disputes due to their high costs and duration. The aim of the CCAI is to offer mediation, conciliation and arbitration services for the resolution of real estate disputes. The CCAI brings together lawyers and technical experts who are supposed to complement and assist each other for the purpose of resolving disputes in a fast and cost-effective manner.

The CCAI has the broadest jurisdictional scope of all ADR institutions specialising in construction and real estate disputes. Any real estate dispute can be referred to the CCAI. This covers disputes relating to leases, building works, real estate sales, leasing, neighbourhood nuisance, urbanism, environment, etc. Private individuals and professionals can refer their disputes to the CCAI.

One of the distinct features of the CCAI procedure is the collaboration that exists between legal and technical experts for the resolution of disputes. The CCAI Rules provide that mediations and conciliations must be conducted by a panel composed of one technical expert and one lawyer. In the case of arbitration, the CCAI Rules provide that a three-member arbitral tribunal must, as a general rule, include at least one technical expert and one lawyer. Disputes will be resolved by single arbitrators in exceptional cases only or upon the request of both parties.

The collaboration between the legal and the technical ADR experts increases the understanding of the dispute and the chances of an amicable settlement between the parties. However, in purely legal disputes (such as rent issues or financing of leasing, for instance) having two mediators or conciliators seems redundant. Unfortunately, the CCAI Rules do not provide for any exceptions with regard to the number or qualification of mediators and conciliators.

Over the past two years, the CCAI dealt with about 100 cases, 75% of which were resolved amicably. The number of arbitration cases is still limited (about 10 cases every year). This could be explained by the novelty of the institution and also by the fact that the CCAI Rules do not allow the parties to nominate their own arbitrators.

(c) CCC

The CCC was set up in 2001 by four institutions: the Confédération de la construction (an organisation of employers comprising about 15,000 businesses in

the field of construction); the consumers' association Test-Achats; the Bouwunie (formerly known as Nacebo, the Flemish federation of small and medium-sized enterprises in construction); and the Royal Federation of Architects in Belgium. The Flemish architects' organisation (the NAV) joined the CCC in 2005.

Article 7 of the CCC's Procedural Rules sets forth a model clause that the parties can insert into their contracts. It obliges the parties to insert the CCC's model clause into all the contracts they conclude with third parties for the execution of a project's works. Consequently, all the contractors, subcontractors and architects working on that project should in principle be bound by the same conciliation clause. This guarantees that any interested party in the resolution of the dispute will be present at the conciliation proceedings, which at the same time can be a disadvantage where a party would seek to settle its disputes through arbitration, exactly in order to prevent multi-party disputes. It is important to remember that the objective of conciliation is the conclusion of a final and binding settlement agreement.

The jurisdiction of the CCC is limited and well-defined. First, the dispute must relate to defects of a technical nature and any related dispute arising from it. Secondly, a consumer must be a party to the dispute; disputes exclusively between professionals are expressly excluded from the CCC's jurisdiction. Finally, the works must have been ordered or purchased off plan by the consumer for his personal needs.

While the CCC does not deal with purely legal cases, the Procedural Rules allow the expert-conciliator to submit a non-binding opinion on the technical liabilities of the parties, if one party so requests.

The CCC-nominated conciliator has in fact a dual mission. On the one hand, he must try to make the parties come to an agreement during the entire duration of the mission. On the other hand, the conciliator must observe and consider all the necessary elements regarding the technical defects. The combination of conciliation and expertise makes sense in the framework of construction disputes. A conciliator will indeed need to have a good understanding of the dispute in order to present the parties with acceptable proposals. The Procedural Rules also provide that the technical conclusions of the expert-conciliator are considered to be made contradictorily and bind the parties. Thus, even if the conciliation were to fail, the court would be able to rely on the conclusions of the expert-conciliator and would not necessarily have to order a preliminary judicial expertise.

According to the CCC's statistics, an average of 69 cases are handled by it every year. In the great majority of the cases (80%), disputes are submitted by consumers. The CCC has a relatively high success rate: an average of three out of four cases are settled amicably by the parties. In terms of time and costs, the CCC's annual statistics show its time and cost-efficiency. In most cases (80% on average), the procedure does not cost more than the basic fixed rate i.e. €200 for each party (increased by €200 when a specialist is appointed to assist the expert-conciliator with the dispute). The low fees can be explained by the fact that a great majority of disputes are resolved during the first site visit. The duration of procedures is usually less than 12 weeks.

(d) CSTC

The CSTC (www.cstc.be) is a research institute created in 1960. The CSTC has 70,000

members representing the entire construction sector (eg, contractors, plumbers, glaziers, roofing contractors). CSTC members are mostly small and medium-sized businesses. The CSTC is not *per se* an ADR service provider. It pursues scientific and technical research for the benefit of its members, gives information, assistance and technical advice, and tries to contribute to the innovation and development of the construction sector.

With regard to technical advice, the Technical Advice Division of the CSTC (ATA) answers any technical questions relating to construction works. Technical advice can be requested before, during or after the execution of the works. Preliminary advice aims to limit the risk of errors during the conception stage of the works, while *ex post* advice aims to identify and resolve any defect at any stage of the works. Technical advice from the ATA is always made in consultation with the contractors concerned.

The services of the ATA are exclusively available to professionals and judicial experts. Requests to the ATA, and the resulting technical advice, can be made either orally (by phone) or in writing. Upon the express request of a contractor, the ATA can also visit the construction site and submit a written report containing an analysis of the technical problem and possible remedies. The technical advice of the ATA is generally free – a fee will only be due if a written report is requested by the parties, if the ATA acts upon the request of a judicial expert, or if analyses, measurements, calculations etc are needed. These fees, however, are quite low: €125 for a written report and €625/day for tasks related to judicial expertise.

4. Outlook

Construction law has evolved little since the adoption of the Civil Code in 1804. Nevertheless, some changes can be expected in the coming years. Three issues are of particular note, and these are outlined next.

4.1 The architect's monopoly

As mentioned in briefer form above, according to Article 4 of the 1939 Act on Protection of Title and Profession of Architects, Belgian owners are under a duty to engage an architect registered at the Tableau de l'Ordre whenever building activities that require a building permit start. As a consequence, the architect's function is protected in Belgium. Moreover, the architect's monopoly does not only cover the design of the building works for which a building permit is required, but also the control of the performance of such building works. This makes the monopoly one of the widest in Europe. This monopoly is regularly contested, under the pressure of the European Commission. As a result of past legislative action, several building activities have already been placed outside the scope of the architect's monopoly, such as infrastructure or civil engineering works (in Flanders) or minor renovation works.

4.2 Professional liability insurance

In Belgium, only architects are under a duty to cover their professional liability by insurance. The absence of any such mandatory insurance for the others professionals involved in a construction project (notably the building contractors) has been held contrary to the Belgian constitution by the Constitutional Court. As a consequence, a bill is currently before the Belgian Parliament. It aims at imposing the requirement to have professional insurance on building contractors. This would impose the same duty on building contactors as is currently on architects (which have to prove they are covered by a professional liability insurance in order to be registered with the Architects' Bar).

4.3 Impact on the building industry of the evolution of European contract law

On October 11 2011, the European Commission published its "Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law". This proposal suggests adopting an optional instrument in European sales law. It constitutes a significant step in the process of harmonising contract law in the European Union. Even if this remains largely unknown, the European harmonisation of contract law will have an impact on the building industry – for instance, the sale of building materials is already included in the proposal's field of application. Moreover, this regulation would also apply to a contract of related services so it could be rendered entirely applicable to contracts dealing with the installation of goods into a pre-existing building. Consequently, certain activities in the real estate industry – in particular those related to the renovation, installation or improvement of a pre-existing building, like plumbing, roofing, grouting, and so on – could be included in the scope of the draft instrument since they involve both the sale of materials, the building elements and the installation of these into a pre-existing building.

With regard to dispute resolution, no notable changes are foreseen in the near future. The caseload of Belgian judicial courts will, in all probability, remain high (in certain jurisdictions it takes two to four years to get a final decision). In this context, ADR methods should become progressively more attractive to construction professionals. The growing number of specialised institutions already offers convenient fora for the resolution of construction disputes. Professionals are, however, yet to be convinced of the cost and time efficiency of these alternative procedures. The promotion of ADR by public authorities and private bodies should help to achieve this goal.