CIVIL SUMMONS IN BELGIUM

(A) What is the applicable law in domestic claims?

The Belgian Judicial Code.

(B) What is the applicable law in international claims?

1. From the EU.
Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) is applicable when summoning a defendant from Belgium before a court in another EU member state.

In principal, Belgian law will apply to the service of the writ of summons (article 7 of the aforementioned Regulation). Belgian law does not have any special requirements apart from the ones mentioned in this Regulation (model forms etc.).

Language is one of the most important things when summoning in Belgium in my opinion, as we have some difficult language rules (especially around Brussels). When the writ of summons has not been drafted in a language the defendant understands, or in the official language of his place of residence, he can decline to receive the writ of summons and the service will be deemed not to have happened (article 8).

2. From a third country.
The same principles apply for a writ of summons from a third country, the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters will be applicable.

When the writ of summons originates from a country which is not a party to the Convention, legalisation of the writ will be required. The legalisation will be carried out by the National Chamber of Bailiffs (instead of by the Federal Government Services).

(C) How can the defendant be summoned?

1. Writ of summons.

This is the most common way to bring a case to court. For this, the plaintiff calls upon a bailiff who hands the writ of summons to the other party (the defendant). The writ of summons is an official summons to appear in court that is handed to the summoned person by the bailiff.

The writ of summons must contain some mandatory information.

2. Voluntary appearance.

A voluntary appearance of the parties before the court is also possible and saves the parties the cost of a writ of summons, which the losing party has to pay in principle. It is filed by a joint petition of all parties. The original thereof must be signed and dated by all parties. The petition may be filed at the registry or sent to the registry by registered mail.

3. *Inter partes* application.

In cases determined by law (for example, disputes between spouses and rent disputes), a case can be initiated by an *inter partes* application. This must be sent by the plaintiff to the registry or filed at the registry.

The application must be filed in as many copies as there are parties involved (and sometimes even more).

(D) Regarding individuals

Documents are preferred to be served to individuals in the following order:
To the person directly; to his place of residence; by abandonment to the domicile; to the prosecutor's office (if unknown); abroad.
As far as possible, the bailiff takes the above-mentioned order into account and tries first to summon the defendant personally.

(E) Regarding a company

Documents are served to a company at its registered seat in principle. If not reachable there (and also if explicitly requested by the court) the writ of summons has to be served to the director(s) at his/her/their own residence (and then the same order mentioned above applies: personally, at their residence…).
In exceptional cases, a writ of summons can also be served to the shareholders.

(F) What happens if the defendant is not found?

1. The writ of summons.

If the defendant himself, or a legal representative in case of a company, is not present at his place of residence, the bailiff can give a copy of the writ of summons to a relative if he or she is present at that time, or to an employee for example in case of a company (article 35 Judicial Code). However, the writ of summons cannot be handed to a child that is not older than 16 years old.
When the bailiff cannot serve the writ of summons in the aforementioned way and he cannot serve it to the defendant himself, the bailiff will leave a copy under closed envelope at the place of residence of the defendant. The bailiff will mention this on the original writ and on the copy which he will leave and has to mention the date, time and place where he left the copy (article 38, §1 Judicial Code).
Subsequently, the bailiff has to address a registered letter at the place of residence of the defendant stating the fact that he left a copy of a writ of summons for him, as well as the date and hour when the bailiff offered the writ at his place of residence, and that he can obtain a copy at the offices of the bailiff during a period of 3 months starting from the date of serving. This registered letter can only be sent onwards from the first working day after the serving (article 38, §1 Judicial Code).
Should a defendant not have legal place of residence, but a known place of stay, the bailiff can point all his actions at this address.
When it is materially impossible to leave a copy of the writ of summons at the looking upon the factual circumstances (e.g. when the property is clearly vacant), the bailiff can leave a copy of the writ of summons at the prosecutor’s office of the district where the impossibility occurred, which counts as

service. The factual circumstances which justify this method of serving have to be mentioned on the original and the copy of the writ. The prosecutor subsequently has to try to find the defendant as soon as possible, but most of the time these efforts will not amount to much (article 38, §2 Judicial Code).
When the defendant does not have a known place of residence, place of stay or chosen place of residence in Belgium, the bailiff will send a copy of the writ to their place of residence abroad by registered letter, notwithstanding any other means of serving which has been agreed upon between Belgium and the country where the defendant has his place of residence (see below). Delivering the copy of the writ to the postal services counts as the serving to the defendant (article 40 Judicial Code).
When the defendant does not have a known place of residence or place of stay in Belgium or abroad, the service of the writ will be done by handing a copy of the writ to the prosecutor's office of the district in which the court where the claim is brought for lies (article 40 Judicial Code).
2. Unilateral application.
In exceptional cases determined by law, a case may be brought before the court by means of a unilateral application filed at the registry.
The opposing party is not notified of the case. That happens only after the judge makes a decision.
That way to initiate a case is used, for example, when the opposing party is not known.

(G) Is it possible to notify by edicts?

No. The 'last resort' is to serve a document to the public prosecutor's office, which has the obligation to search the defendant and when the defendant gets a new address during the procedure, notify him or her of the documents that were served.

Practical issues:

(H) Should the claim be translated or not?

No. It will be either in Dutch, French or German depending on the area/competent court. Any claim/writ of summons shall be in one language only, that of the competent court.
If they want it to be translated, the defendant must translate it themselves.

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