

France

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LAWS AND INSTITUTIONS

Multilateral conventions relating to arbitration

1 | Is your jurisdiction a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

The New York Convention entered into force on 24 September 1959. France originally made a reciprocity reservation (article I(3)), according to which it would only recognise and enforce awards made in the territory of other contracting states, which was not codified. Instead, French law offers more favourable provisions that, under article VII(2), interested parties may use to avail themselves of an award. A second reservation, withdrawn in the 1980s, limited the application of the Convention to cases considered 'commercial' under French law.

France is also a contracting party to:

- the Convention on the Settlement of Investment Disputes between States and Nationals of Other States;
- the Energy Charter Treaty; and
- the European Convention on International Commercial Arbitration.

Bilateral investment treaties

2 | Do bilateral investment treaties exist with other countries?

France has signed 115 bilateral investment treaties, with 96 in force.

Domestic arbitration law

3 | What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The Code of Civil Procedure (CCP) codifies Decree No. 2011-48 of 13 January 2011, the primary legal source relating to arbitration.

Articles 1442–1527 regulate, respectively, domestic and international arbitration. Unless otherwise agreed by the parties, certain provisions applying to domestic cases also apply to international ones (article 1506 CCP). Further provisions may be found in the Civil Code (CC) (articles 2059–2061) and the Commercial Code (article L-721-3).

Arbitrations involving international commercial interests are of an international nature (article 1504 CCP). French courts have extensively interpreted what falls under the category of 'international trade interests'. Traditionally, the interpretation was not dependent upon the parties' will (Cass, 1st Civ, 13 March 2007, No. 04-10.970), their nationalities, the arbitral seat or the applicable law (Paris, 20 June 1996). Rather, courts focused on the nature of the economic operation that gave rise to

the dispute (Cass, 1st Civ, 20 November 2013, No. 12-25.266). Arbitration is deemed international if the given economic operation involves a transnational flow of capital, services or assets (Cass, 1st Civ, 30 March 2004, No. 02-12.259).

The Court of Cassation recently adopted a more restrictive approach, holding that a case was domestic because the claim did not represent any cross-border flow of capital, since the performance of a sale mandate occurred exclusively in France when the arbitration agreement was executed (Cass, 1st Civ, 30 June 2016, Nos. 15-13.755 ; 15-13.904 ; 15-14.145).

Domestic arbitration and UNCITRAL

4 | Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

No, French law is more user-friendly and less interventionist than the UNCITRAL Model Law, notably concerning international arbitration. One difference concerns the determination of what constitutes an international arbitration. Article 1(3) of the UNCITRAL Model Law has both a seat-focused approach and an approach based on parties' will. In contrast, French law has an economic approach centred on the cross-border flow of capital, services or assets.

Mandatory provisions

5 | What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

Parties may not deviate from certain mandatory rules, including the equal treatment of the parties in international arbitration (article 1510 CCP) or the confidentiality of deliberations (articles 1479 and 1506 CCP). They may not appeal international awards or waive their right to appeal the decision granting exequatur thereof (articles 1489 and 1522 CCP).

Substantive law

6 | Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

In domestic arbitration, arbitrators shall decide the merits of the case based on the rule of law unless required to rule as *amiable compositeurs* by the parties (article 1478 CCP). In contrast, in international cases, parties may freely choose the substantive law. Absent such choice, arbitrators shall determine the applicable law. They need not use any conflict of law rules and may choose any 'appropriate' law, considering trade usages (article 1511 CCP). Parties may also invite arbitrators to act as *amiables compositeurs* (article 1512 CCP).

Arbitral institutions

7 | What are the most prominent arbitral institutions situated in your jurisdiction?

The most prominent arbitral institution is the International Chamber of Commerce (ICC). Its Arbitration Rules (the ICC Rules) were last amended in 2017 and entered into force on 1 March 2017. This version incorporates new features, including an expedited procedure for smaller claims. Its headquarters are located at 33-43 avenue du Président Wilson, 75116 Paris (www.iccwbo.org/court).

The French Arbitration Association (8 avenue Bertie Albrecht, 75008 Paris, www.afa-arbitrage.com) and the Paris Centre for Mediation and Arbitration (39 avenue Franklin D Roosevelt, 75008 Paris, www.cmap.fr) also offer arbitration and mediation services.

The International Arbitration Chamber of Paris (6 avenue Pierre 1er de Serbie, 75116 Paris, www.arbitrage.org/en) administers a broad variety of cases (investments, IT, etc).

Paris also hosts specialised institutions, such as the Paris Maritime Arbitration Chamber (www.arbitrage-maritime.org) and the French Insurance and Reinsurance Arbitration Centre (www.cefare.com). The World Bank facilities in Paris often host ICSID hearings.

ARBITRATION AGREEMENT

Arbitrability

8 | Are there any types of disputes that are not arbitrable?

Although freely alienable rights may be submitted to arbitration (article 2059 CC), matters such as the civil status and capacity of individuals, divorce or judicial separation of spouses, disputes concerning public entities, public establishments and public policy are not arbitrable (article 2060 CC).

With respect to public entities and public policy, courts have narrowed restrictions. International contracts concluded by the State in accordance with the usage of international trade are no longer not subject to such restrictions (*Galakis*, Cass, 1st Civ, 2 May 1966). Some public establishments of an industrial and commercial nature (SNCF or France Telecom) can now enter into arbitration agreements.

Competition law or antitrust disputes (*Labinal*, Paris, 19 May 1993) and intellectual property rights may be arbitrable. Arbitration clauses contained in employment contracts are valid, but employees cannot be compelled to arbitrate (Cass, Soc, 30 November 2011, Nos. 11-12.905 and 11-12.906). Since 2016, article 2061 of the CC has provided that where a party has not entered into an arbitration agreement in the conduct of professional activities, it may not be forced to arbitration unless it explicitly agrees.

Requirements

9 | What formal and other requirements exist for an arbitration agreement?

Domestic arbitration agreements must be in writing and may result from an exchange of documents or a reference to another document containing an applicable arbitration clause (article 1443 CCP). In contrast, international arbitration agreements need not be in writing to be valid or in a particular form (article 1507 CCP). However, French law requires evidence of the arbitration agreement for the recognition and enforcement of awards (articles 1515 and 1516 CCP).

Enforceability

10 | In what circumstances is an arbitration agreement no longer enforceable?

Arbitration agreements providing for arbitration over a non-arbitrable matter or that are manifestly null and void, or inapplicable cannot be enforced.

Arbitration agreements are autonomous and separable from the contract in which they are contained. Their validity shall not be affected by invalidity of the main contract (article 1447 CCP; *Gosset* Cass, 1st Civ, 7 May 1963).

The existence and validity of international arbitration agreements are disconnected from any domestic legal system and shall only be determined in accordance with the parties' intentions (*Dalico*, Cass, 1st Civ, 20 December 1993, No. 91-16.828).

If court proceedings are initiated despite the existence of a valid arbitration agreement and the defendant fails to object jurisdiction and presents its defences, it is deemed to have waived its right to arbitrate the dispute (Cass, 2nd Civ, 22 November 2001, No. 99-21.662).

Separability

11 | Are there any provisions on the separability of arbitration agreements from the main agreement?

Pursuant to article 1447 CCP, an arbitration agreement is independent of the contract to which it relates. It shall not be affected if such contract is void. In the case that an arbitration clause is void, it shall be deemed unwritten, and thus its invalidity does not affect the validity of the underlying contract. By virtue of article 1506 CCP, article 1447 CCP is applicable to international arbitrations.

Though this provision was introduced only by the 2011 reform, it upheld a long-established principle of separability, first formulated by the Court of Cassation in the *Gosset* case (*Gosset*, Cass, 1st Civ, 7 May 1963) and reiterated by subsequent decisions (eg, Cass, 1st Civ, 2 April 2014, No. 11-14.692; CA Paris, 9 June 2017, No. 16-17575). At the same time, French courts appear to recognise parties' right to opt out of the separability presumption and to agree that an arbitration agreement is inseparable from the underlying contract (Cass Com, 25 November 2008, No. 07-21.888).

Third parties - bound by arbitration agreement

12 | In which instances can third parties or non-signatories be bound by an arbitration agreement?

Arbitration agreements are only binding upon the contracting parties. There are, nevertheless, exceptions.

The first exception relates to the transfer of substantive contractual rights and obligations containing an arbitration clause. In a chain of contracts concerning goods, the transfer of the arbitration agreement to the third party extends automatically as an accessory to the right of action that, itself, constitutes an accessory to the substantive rights conveyed (Cass, 1st Civ, 27 March 2007, No. 04-20.842).

The second exception is linked to the theory of the direct claim, that is, a buyer purchasing goods directly from a distributor is entitled to assert a claim not only against the latter but also against the manufacturer. Within this tripartite relationship, if the manufacturer-distributor contract contains an arbitration clause, this clause is considered as an accessory of the buyer's right to assert a claim against the manufacturer (Cass, 1st Civ, 9 July 2014).

The third exception applies to cases where a third party was involved in the negotiation or performance of a contract containing an arbitration clause. This participation can be analysed as an intention to be bound by that contract (Paris, 26 February 2013). In a recent case, the

Paris Court of Appeal held that where the insurer is legally subrogated to the insured's rights, the claim is transferred to it with its accessories, terms, exceptions or limitations and the arbitration clause, which it is entitled to invoke (Paris, 26 November 2019, No. 12/20783).

Third parties – participation

- 13 | Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

French arbitration law does not contain express provisions on this matter. However, in cases where the binding effect of the arbitration agreement cannot be extended to a third party, the latter is barred from the possibility of joining arbitral proceedings, even if it has an interest in the case's outcome (Paris, 19 December 1986).

Groups of companies

- 14 | Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

Arbitration agreements may be extended to non-signatory parent or subsidiary companies of a signatory company. Mere group membership is insufficient since the existence of an intention (explicit or implicit) of the non-signatory is required to be bound by the contract and the arbitration clause. This intention can be found from a significant role played by the non-signatory in negotiations or performance of the contract (*Dow Chemical*, ICC award, 23 September 1982; Cass, 1st Civ, 27 March 2007, No. 04-20.842).

Multiparty arbitration agreements

- 15 | What are the requirements for a valid multiparty arbitration agreement?

There is no provision precluding multiparty arbitration agreements. If parties fail to agree on the procedure to appoint the arbitrators, the entity in charge of administering the arbitration or the judge acting in support of the arbitration shall appoint them (article 1453 CCP). The principle of party equality in appointing arbitrators is a public policy matter (*Dutca*, Cass, 1st Civ, 7 January 1992). It cannot be waived before the dispute has arisen.

Consolidation

- 16 | Can an arbitral tribunal in your jurisdiction consolidate separate arbitral proceedings? In which circumstances?

The French CCP does not address the issue of consolidation of arbitral proceedings. French courts consider that arbitrators are not permitted to consolidate arbitrations in the absence of the parties' agreement, which may be express or implied (*OLAETL v Sofidif*, Paris, 19 December 1986; Versailles, *OLAETL & Sofidif v COGEMA, SERU and others*, 7 March 1990, No. 3233/88). Without such consent, consolidation might lead to annulment of the award (article 1520 CCP).

CONSTITUTION OF ARBITRAL TRIBUNAL

Eligibility of arbitrators

- 17 | Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

The constitution of arbitral tribunals is left to the parties' discretion. Arbitrators do not need to be selected from a list unless it is part of the selection process of the administering arbitral institution.

French law contains few requirements regarding the arbitrators' eligibility besides their required independence and impartiality. Unlike domestic arbitration (articles 1450 and 1451 CCP), international proceedings are not submitted to any restriction. However, active judges may not act as arbitrators. French scholars have highlighted that, despite the lack of specific CCP provisions, French law contains several provisions allowing courts to consider arbitration clauses based on discriminatory intent as contrary to public policy.

Background of arbitrators

- 18 | Who regularly sit as arbitrators in your jurisdiction?

As of December 2019, there are no statistics regarding the composition of arbitral tribunals in France.

Default appointment of arbitrators

- 19 | Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

For proceedings with a sole arbitrator, the administering entity, or the judge acting in support of the arbitration, has appointing authority. For arbitral tribunals composed of three arbitrators, each party appoints a co-arbitrator, and the two co-arbitrators appoint the president. If, within a month, a party has not chosen its co-arbitrator, or if the two co-arbitrators fail to agree on the president, the administering entity, or the judge acting in support of the arbitration, will proceed with the designation (article 1452 CCP).

Challenge and replacement of arbitrators

- 20 | On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

Arbitrators must disclose circumstances affecting their independence and impartiality prior to and after their nomination (article 1456 CCP). Disclosure depends on the notoriety of the situation and its likely consequence on the arbitrator's decision (Cass, 1st Civ, 10 October 2012, No. 11-20.299). The IBA Guidelines on Conflicts of Interest in International Arbitration are frequently used for guidance.

Arbitrators may be challenged before the administering entity or the judge acting in support of the arbitration within a month after the disclosure of contentious facts.

Failure to disclose relevant information may constitute a ground for annulment provided that the contentious facts raise reasonable doubts as to the independence and impartiality of an arbitrator (Cass, 1st Civ, 10 October 2012, No. 11-20.299). It is also a ground for setting aside and refusing the recognition of an award (Cass, 2nd Civ, 6 December 2001, No. 00-10.711).

Where an arbitrator must be replaced, the successor is designated according to the same designation process as its predecessor. The proceedings resume once the new arbitrator accepts his or her mandate (article 1473 CCP).

Relationship between parties and arbitrators

- 21 | What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration and expenses of arbitrators.

The relationship between the arbitrator and the parties is of a contractual and jurisdictional nature. Arbitrators must remain impartial and independent. Parties are also jointly and severally liable for arbitrators' fees and expenses.

Duties of arbitrators

- 22 | What are arbitrators' duties of disclosure regarding impartiality and independence throughout the arbitral proceedings?

The arbitrators' duties of disclosure are listed in article 1456 CCP, introduced by the 2011 reform. Pursuant to that article, 'Before accepting a mandate, an arbitrator shall disclose any circumstance that may affect his or her independence or impartiality. He or she also shall disclose promptly any such circumstance that may arise after accepting the mandate'. Unless otherwise agreed, article 1456 CCP applies to international arbitration by virtue of article 1506 CCP.

The arbitrator's obligation of disclosure should be assessed in light of the notoriety of the criticised situation, its connection with the dispute and its impact on the arbitrator's judgment of the case (Paris, 12 April 2016, No. 14/14884). As explained in the *Volkswagen* case, arbitrators have a continual obligation to disclose any information that would impact their independence or impartiality after their acceptance to serve as arbitrators. The parties, on the other hand, do not have a continual obligation to investigate arbitrators' independence or impartiality (Cass, 1st Civ, 3 October 2019, No. 18-15.756; see also Paris, 27 March 2018, No. 16/09386; Paris, 14 October 2014, No. 13/13459).

Immunity of arbitrators from liability

- 23 | To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

Arbitrators benefit from qualified immunity for their conduct in arbitrations. They are not liable for objective legal or factual errors. Exceptions to this rule relate to denial of justice, gross negligence and fraud (Cass, 1st Civ, 15 January 2014, No. 11-17.196). Arbitrators may be responsible in case of breach of their contract with the parties or involvement in criminal matters such as corruption or bribery of persons exercising a judicial function (articles 434-9 and 435-7 Penal Code).

JURISDICTION AND COMPETENCE OF ARBITRAL TRIBUNAL

Court proceedings contrary to arbitration agreements

- 24 | What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

If court proceedings are initiated despite the existence of an arbitration agreement, courts must decline jurisdiction unless the arbitral tribunal has not been seized and the arbitration agreement is manifestly null and void, or manifestly inapplicable (article 1448 CCP). Parties must

raise the objection prior to any further defences on admissibility or the merits (Cass, 2nd Civ, 22 November 2001, No. 99-21.662), otherwise they are deemed to have waived their right to arbitrate the dispute.

Moreover, the application of an arbitration agreement cannot be extended to obligations that do not result from the agreement in which it is included (Paris, 21 March 2018, No. 16/16091). Recently, the Paris Court of Appeal ruled that an arbitration clause is manifestly inapplicable when, without any need of interpretation of the contract, it is plain that the dispute cannot be resolved by arbitration (Paris, 12 June 2019, No. 19/08056).

Jurisdiction of arbitral tribunal

- 25 | What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated, and what time limits exist for jurisdictional objections?

Arbitrators decide on their own jurisdiction (article 1465 CCP). There is no time limit for jurisdictional objections. However, should a party knowingly refrain from raising an objection in a timely manner without good cause, this party is considered to have waived its right to make such objection (article 1466 CCP).

Moreover, it has been ruled that according to article 1466 of the CCP – which is applicable to international arbitration by reference in article 1506 of the CCP – the party who, knowingly and without just cause, refrains from invoking in good time an irregularity before the arbitral tribunal is deemed to have waived its use (Paris, 27 March 2018, No. 16/03596).

However, when a party does not take part in the arbitration proceedings, it cannot be inferred from its failure that it has waived its right to challenge the jurisdiction of the arbitral tribunal (Paris, 11 September 2018, No. 16/19913; Paris, 14 May 2019, No. 17/06397).

ARBITRAL PROCEEDINGS

Place and language of arbitration, and choice of law

- 26 | Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings? How is the substantive law of the dispute determined?

Where parties do not specify and fail to agree on the place of arbitration and the language applicable to the proceedings, these issues shall be decided by the arbitral tribunal with reference to the procedural rules. For instance, article 18 of the ICC Rules provides that the place of the arbitration shall be fixed by the Court. Article 20 states that the arbitral tribunal shall determine the language(s) of the arbitration taking into account all relevant circumstances, including the language of the contract. Regarding the determination of the substantive law, see question 6.

Commencement of arbitration

- 27 | How are arbitral proceedings initiated?

Arbitral proceedings are initiated where one of the parties submits, or the parties jointly submit, a dispute to the arbitral tribunal (article 1462 CCP). Proceedings administered by an arbitral institution may be subject to further requirements. The ICC Rules require requests to include, among others, the parties' names, a description of the circumstances in which the dispute arose and a statement of the relief sought (article 4). Arbitral tribunals are deemed constituted and seized of the dispute once the arbitrators accept their nomination (article 1456 CCP).

Hearing

28 | Is a hearing required and what rules apply?

Unless otherwise agreed by the parties, arbitrators decide on the procedure. French arbitration law does not contain any provisions regarding the conduct of the hearing. However, certain rules must be applied, such as the principle of due process (article 1510 CCP).

Evidence

29 | By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

Arbitrators may 'take all measures necessary' to establish the facts of the case providing that due process is respected. They may call any person to provide oral statements, enjoin a party to produce evidence and appoint their own experts (article 1467 CCP). In international arbitration, arbitrators may seek guidance from the IBA Rules on the Taking of Evidence in International Arbitration.

Court involvement

30 | In what instances can the arbitral tribunal request assistance from a court, and in what instances may courts intervene?

Prior to the constitution of the arbitral tribunal, domestic courts may issue orders to preserve evidence, or order provisional or conservatory measures (article 1449 CCP). The judge acting in support of the arbitration may appoint an arbitrator (articles 1451 and 1454 CCP), declare that no arbitral tribunal shall be constituted (article 1455 CCP) or rule on any challenge of an arbitrator (articles 1456 and 1457 CCP).

Confidentiality

31 | Is confidentiality ensured?

Domestic arbitration is confidential unless parties agree otherwise (article 1464 CCP). French law remains silent on the confidentiality of international arbitration. The existence of a presumption of confidentiality in international arbitration is uncertain. An ICC arbitral tribunal has held that the new arbitration law does not create a presumption of confidentiality (ICC Case No. 16383/VRO). By contrast, deliberations of arbitral tribunals are always confidential (article 1479 CCP).

INTERIM MEASURES AND SANCTIONING POWERS

Interim measures by the courts

32 | What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Prior to the constitution of the arbitral tribunal and unless the parties provided otherwise, courts may order interim measures, including urgent provisional measures justified by the circumstances in the absence of serious controversy, conservatory measures to prevent irreparable harm or to end manifestly illegal situations, and the performance of an obligation (articles 808, 809, 872 and 873 CCP). After constitution, courts may only order conservatory seizures and registration of judicial mortgages and pledges (article 1468 CCP).

Interim measures by an emergency arbitrator

33 | Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

French law does not provide for an emergency arbitrator. However, since 2012 the ICC Rules offer an emergency arbitrator procedure for urgent situations (2017 ICC Rules, article 29 and Appendix V). Emergency arbitrators render decisions in the form of an order within 15 days after receiving the file.

Interim measures by the arbitral tribunal

34 | What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

Arbitrators may order, modify or complete any provisional measure they deem appropriate (article 1468 CCP). Conservatory seizures and registration of judicial mortgages and pledges are reserved for state courts. The compulsory enforcement of provisional measures requires the assistance of the judiciary. Arbitrators may compel parties to execute those measures by including a cumulative daily penalty in the event of non-compliance (article 1468 CCP; Paris, 7 October 2004).

There are no specific provisions on security for costs. The power to order security for costs should fall within the general power of arbitrators to order provisional measures.

Sanctioning powers of the arbitral tribunal

35 | Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration? May counsel be subject to sanctions by the arbitral tribunal or domestic arbitral institutions?

Parties and counsel must respect fundamental procedural principles during the proceedings (article 1464 CCP). Arbitrators may use their general powers to sanction guerrilla tactics. Delaying or contradictory tactics may be sanctioned by state courts in the context of annulment proceedings. Counsels using guerrilla tactics risk disciplinary proceedings before the president of the Bar Association. Under the ICC Rules, guerrilla tactics may be sanctioned through the allocation of costs (article 38).

AWARDS

Decisions by the arbitral tribunal

36 | Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

Domestic awards are rendered by a majority vote (article 1480 CCP). For international awards, the default rule is also majority vote (article 1513 CCP). The president of the tribunal may rule on his or her own if no majority can be met. As for domestic awards, all arbitrators are required to sign the award. If a minority refuses to sign, the award should state it. Awards signed by the president of the tribunal alone will produce the same legal effects as an award signed by the majority of arbitrators (article 1513 CCP).

Dissenting opinions

37 | How does your domestic arbitration law deal with dissenting opinions?

Provided that deliberations remain confidential (article 1479 CCP), arbitrators may express a dissenting opinion. Except where there has been no collegial deliberation whatsoever, the expression of a dissenting opinion is not a ground for challenging an award or a violation of international public policy (Paris, 7 April 2011).

Form and content requirements

38 | What form and content requirements exist for an award?

Article 1481 of the CCP specifies that domestic and international awards must:

- be in writing since they must be produced for the purposes of their enforcement (articles 1487, 1514 and 1515 CCP);
- indicate the identity of the parties, counsel and arbitrators;
- indicate the date and place of the award; and
- summarise the parties' claims and submissions, and the tribunal's reasoning.

Contrary to domestic awards (article 1492 CCP), international awards that do not meet these requirements will not be subject to annulment, since they are not grounds for annulment under article 1520 of the CCP. A failure to state reasons in an international award may constitute a ground to set aside or decline its enforcement for violation of international public policy (Paris, 18 November 2010). However, arbitrators are under no obligation to submit to the parties their award for preliminary appreciation (Paris, 14 May 2019, No. 16/16502; Paris, 25 June 2019, No. 16/04150).

Time limit for award

39 | Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

Unless parties agree otherwise, domestic awards must be rendered within six months (article 1463). Fraud may put this time limit on hold (Cass, 1st Civ, 30 June 2016, Nos. 15-13.755, 15-13.904, 15-14.145). In contrast, international arbitration is not subject to such a restriction. The ICC Rules also set out a six-month time limit for rendering the award, which may be extended (article 31).

Date of award

40 | For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

Arbitral awards have *res judicata* effect upon issuance (article 1484 CCP). Parties may seek their annulment within a month of their notification (articles 1494 and 1519 CCP). Applications for interpretation, and correction of errors or material omissions may be brought within three months of the notification of the award (article 1486 CCP).

Types of awards

41 | What types of awards are possible and what types of relief may the arbitral tribunal grant?

Arbitrators may render diverse types of award – final, partial, interim or consent orders. However, only decisions ruling definitively on the dispute, in full or in part, whether on the merits, jurisdiction or a procedural issue that put an end to the proceedings, qualify as an award and are subject to annulment (Cass, 1st Civ, 12 October 2011, No. 09-72.439).

Regardless of the characterisation made by the arbitrators, courts will assess whether the decision constitute an 'award' (Cass, 1st Civ, 5 March 2014, No. 12-29.112).

Termination of proceedings

42 | By what other means than an award can proceedings be terminated?

Domestic arbitration may be terminated by arbitral tribunals if the parties fail to take necessary measures to resume the arbitration after a stay or a discontinuation of the proceedings, and upon expiration of the time limit to render the award (articles 1474 and 1477 CCP).

The default of the claimants when no counterclaims are made, or settlement – whether by consent or by withdrawal from the proceedings – will terminate both domestic and international proceedings. However, French law does not mention any formal requirements.

Cost allocation and recovery

43 | How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

Absent agreement of the parties or reference to institutional rules, cost allocation is left to the arbitrators' discretion. Recoverable costs generally comprise arbitrators' fees and expenses, administrative expenses of arbitral institutions where applicable and reasonable attorneys' fees. Cost allocation usually depends on the circumstances of the case, including the success of claims, the reasonableness of the parties' legal fees and the parties' attitude throughout the proceedings.

Interest

44 | May interest be awarded for principal claims and for costs, and at what rate?

Interest may be awarded for principal claims and costs at the discretion of the arbitrators, who may determine the rate and the starting date. If this is not done, the legal interest rate fixed every year by decree will apply. For awards enforced in France, even if the arbitrator does not award any interest, the legal interest rate will apply (article 1231-7 CC).

PROCEEDINGS SUBSEQUENT TO ISSUANCE OF AWARD

Interpretation and correction of awards

45 | Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

Parties may request arbitral tribunals to interpret an award, correct clerical errors or make an additional award where the tribunal failed to decide on a claim (article 1485 CCP). The request shall be presented within three months of the award's notification (article 1486 CCP). The reconstituted arbitral tribunal shall rule exclusively over the rectification request without altering the meaning of the award.

Article 36 of the ICC Rules allows the arbitral tribunal to correct clerical errors either within 30 days of the date of the award 'on its own initiative' or when requested by parties within 30 days of the award's notification.

Challenge of awards

46 | How and on what grounds can awards be challenged and set aside?

Arbitral awards may be subject to challenge before French courts (articles 1491 and 1519 CCP). Parties may waive their right to challenge

international awards issued in France by means of a petition to set aside (article 1522 CCP), although they will always be able to appeal enforcement orders.

The grounds for the annulment of awards are strictly limited (articles 1492 and 1520 CCP):

- the arbitral tribunal wrongly upheld or declined jurisdiction: French courts exercise full control over arbitral tribunals' decisions on jurisdiction (*Abela*, Cass, 1st Civ, 6 October 2010, No. 08-20.563);
- improper constitution of the arbitral tribunal (Paris, 14 October 2014);
- arbitrators failed to comply with their mandate;
- violation of due process (Paris, 2 April 2013, Blow Pack);
- recognition or enforcement of the award would be contrary to international public policy; and
- a failure to state reasons or indicate the date of issuance of the award, the names or signatures of the arbitrators, or the award was not made by majority decision (for domestic awards).

Recently, the Court of Cassation ruled that the plea that one party does not have a right of action is a plea of non-admissibility that does not constitute a ground for the annulment of awards under article 1520 CCP (Cass, 1st Civ, 11 July 2019, No. 17-20.423).

Levels of appeal

- 47 | How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

Unless otherwise agreed by the parties, domestic awards are not subject to appeal. If so, the appeal must be brought before the court of appeal that has territorial jurisdiction within one month of the award's notification (articles 1489–1490 and 1494 CCP).

Parties may request the annulment of domestic and international awards rendered in France before a competent court of appeal within a month of the award notification (articles 1491 and 1519 CCP). The Court of Cassation may review annulment decisions. Proceedings before those courts usually last more than a year.

Costs usually comprise administrative and translation costs, and attorneys' fees.

Recognition and enforcement

- 48 | What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

For the enforcement of international awards, parties must submit copies or originals of the award, and of the arbitration agreement along with their translations if the documents are not in French (articles 1515 and 1516 CCP).

For international awards rendered in France, requests must be brought before the *tribunal de grande instance* (TGI) having territorial jurisdiction, and before the TGI of Paris for foreign awards (article 1516 CCP).

Administrative courts may be competent for the exequatur of awards issued in France regarding disputes concerning public tenders between a French public entity and a foreign legal person executed in France where commercial interests are at stake, if 'the underlying contract to the dispute on which the arbitrator ruled is subject to imperative rules of French public law related to the occupation of the public domain or those related the public order' (*Fosmax*, Tribunal des Conflits, 24 April 2017, State Council, 9 November 2016).

If the authenticity of an award is demonstrated, and the recognition and enforcement thereof are not manifestly contrary to international

public policy, the execution order is granted (article 1514 CCP). If the order is denied, such a decision shall state reasons for such denial (article 1517 CCP).

Orders denying enforcement and recognition may be appealed within a month of their notification (article 1523 CCP). Enforcement orders of foreign awards may be appealed on the grounds for setting aside international awards issued in France (articles 1520 and 1525 CPC).

Orders granting the recognition and enforcement of an international award issued in France may not be appealed (article 1524 CCP). Parties may nonetheless petition to set aside the award.

Where parties have explicitly waived their right to apply for annulment, they may appeal the enforcement order within a month after signing, on the grounds of setting aside an international award rendered in France (articles 1522 and 1524 CCP). Once the enforcement order is issued, the interested party may seek the forced execution of the award, which may not be suspended by a petition to set aside the award or an appeal against the enforcement order (article 1526 CPC).

Time limits for enforcement of arbitral awards

- 49 | Is there a limitation period for the enforcement of arbitral awards?

The CCP sets no specific statute of limitation for the enforcement of an arbitral award, and case law has not decided this question.

Enforcement of foreign awards

- 50 | What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

International awards are deemed to be disconnected from any domestic legal system. They may be enforced despite their annulment at the seat of arbitration (*Norsolor*, Cass, 1st Civ, 9 October 1984; *Putrabali*, 1st Civ, 29 June 2007). Courts verify whether foreign awards comply with the requirements for their enforcement. The grounds for the denial of enforcement of foreign awards are the same as those provided for the annulment of foreign awards (article 1525 CCP; see question 45).

Regarding the enforcement of arbitral awards against states, the Court of Cassation confirmed its 2013 jurisprudence (Cass, 1st Civ, 28 March 2013, No. 10-25.928) and the new provisions of the French Code of enforcement proceedings issued from the 2016 reform called Law Sapin II stating that, to attach a state's diplomatic assets, not only is an express waiver of its immunity in writing necessary, but it also needs to refer to a list of assets or a category of assets falling within the scope of such waiver. (*Commisimpex*, Cass, 1st Civ, 10 January 2018, No. 16-22.494).

Enforcement of orders by emergency arbitrators

- 51 | Does your domestic arbitration legislation, case law or the rules of domestic arbitration institutions provide for the enforcement of orders by emergency arbitrators?

French law does not contain provisions on emergency arbitrators. When agreeing on the ICC Rules, parties undertake to comply with orders rendered by ICC emergency arbitrators. Their enforcement before domestic courts is uncertain, however. Though arbitrators may not enforce their orders, they may be able to attach daily penalties thereto (article 1468 CCP). The arbitrators subsequently seized of the dispute may also draw inferences from the non-execution of an emergency arbitrator's order.

Cost of enforcement

52 | What costs are incurred in enforcing awards?

Parties may recover some of the costs incurred in enforcing awards, such as administrative costs. Other costs may not be recoverable, such as attorneys' fees and the costs incurred in the tracing of assets.

OTHER

Influence of legal traditions on arbitrators

53 | What dominant features of your judicial system might exert an influence on an arbitrator from your jurisdiction?

In France, judges play an important role in the fact-finding process. Great weight is given to documentary evidence. Judges may order the production of documents by a party or a third party if such a request is made and the document identified. However, there is no discovery provision as exists in the United States. Parties do not have any obligation to disclose relevant documents.

Professional or ethical rules

54 | Are specific professional or ethical rules applicable to counsel and arbitrators in international arbitration in your jurisdiction? Does best practice in your jurisdiction reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

There are no specific professional or ethical rules applicable to arbitrators under French arbitration law (see Club des Juristes, *Rapport sur la Responsabilité de l'Arbitre*, June 2017). For example, lack of independence and impartiality of an arbitrator is mainly addressed through proceedings for annulment of an award, which does not affect the arbitrator directly. Even though many arbitrators are legal professionals, any person can be appointed as an arbitrator. The arbitral function is not a uniform profession. Thus, it is impossible to implement a single system of ethical rules. For instance, arbitrators who are not French lawyers are not bound by the French Code of Ethics for counsels. Similarly, the Judges' Code of Ethics cannot apply to arbitrators, as the latter do not have any public authority under French law.

Similarly, French arbitration law does not impose any specific ethical rules in international arbitration. However, lawyers admitted to the French Bar are bound by the Code of Ethics, even if they intervene as counsel in arbitration. The Paris Bar and the French National Council of Bars consider the specificities of international arbitration in adapting French rules. Although French ethical rules prohibit all preparation of witnesses for cross-examination, the National Council of Bars considers that, in the context of arbitration, this practice does not affect the essential principle of the profession (26 February 2008, Bar Bulletin 2008, No. 9).

French lawyers and arbitrators must respect the fundamental principles contained in the CCP (article 1464). Even though the preamble of the IBA Guidelines on Party Representation in International Arbitration reflects those principles, the Guidelines may appear in contradiction with French law, notably regarding disclosure, since under French law each party decides at its discretion which evidence to produce and how to establish its own case.

Finally, parties may choose the Guidelines as rules applicable to the arbitral proceedings (article 1509 CCP).

Third-party funding

55 | Is third-party funding of arbitral claims in your jurisdiction subject to regulatory restrictions?

There are currently no regulatory restrictions concerning the third-party funding of arbitral claims. This issue has only been covered by non-binding guidelines, including the ICC Third-Party Funding Guide (2014) and the report on third-party funding published in June 2014 by the Commission of the *Club des juristes*. The Paris Bar Council released a resolution in favour of third-party funding.

Regulation of activities

56 | What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Depending on their nationality, practitioners may need a temporary Schengen 'business' visa. Attorneys' fees cannot be solely based on a success fee (Law No. 71-1130 of 31 December 1971, article 10). In international arbitrations, such a restriction will not apply if the agreed fees are not manifestly excessive (Paris, 10 July 1992). Parties located overseas are exonerated from VAT (article 259-B of the General Taxes Code).

UPDATE AND TRENDS

Legislative reform and investment treaty arbitration

57 | Are there any emerging trends or hot topics in arbitration in your country? Is the arbitration law of your jurisdiction currently the subject of legislative reform? Are the rules of the domestic arbitration institutions mentioned above currently being revised? Have any bilateral investment treaties recently been terminated? If so, which ones? Is there any intention to terminate any of these bilateral investment treaties? If so, which ones? What are the main recent decisions in the field of international investment arbitration to which your country was a party? Are there any pending investment arbitration cases in which the country you are reporting about is a party?

Over the course of 2018–2019, France intensified its control over foreign investments. Thus, Decree No. 2018-1057 of 29 November 2018 on foreign investments subject to prior authorisation amending the Monetary and Financial Code extended the authorisation requirement to new sectors 'essential to guarantee national interests in matters of public order, public security or national defense', such as space operations, cybersecurity, artificial intelligence and robotics. The authorisation given to a foreign investor by the Minister of Economy may contain certain conditions to guarantee the sustainability of technologies or data protection. The decree also complemented the reasons for refusing access for foreign investments. The amendments apply to investments notified from 1 January 2019. The Law No. 2019-486 on the Plan of Action for growth and transformation of companies of 22 May 2019, further extends the Minister of Economy's control over foreign investments in strategic sectors. It complements the list of remedies and sanctions available in the case of breach of the French foreign investment regulations. Thus, in the case of an investment made without prior authorisation, the Ministry may now require the investor to file an authorisation request, restore the previous situation at its own expense or modify the investment.

Furthermore, following negotiations and consultations, Law 2016-1547 was promulgated on 23 March 2019. The text aims at developing online dispute resolution. Pursuant to article 4-1 of the law, an individual or legal entity offering conciliation, mediation or arbitration services online, whether for free or not, must comply with several

obligations. First, they must comply with French regulations on protection of personal data. Second, they have an obligation of confidentiality and an obligation to provide information on conciliation, mediation and arbitration proceedings towards the parties. Regarding arbitration, article 4-2 states that the arbitral award may be rendered in electronic form unless the parties object.

Pursuing the French government's willingness to 'adapt the French judicial system to contemporary international economic and legal issues' (Report on *Préconisations sur la mise en place à Paris de chambres spécialisées pour le traitement du contentieux international des affaires*, 3 May 2017, p. 4), two international commercial chambers were established on 7 February 2018: one at the Paris Commercial Court and the other at the Court of Appeal. The international Chamber of the Court of Appeal is composed of 10 judges who are fluent in English. The Chamber has jurisdiction to review decisions related to economic and commercial disputes with an international dimension and to examine challenges against awards rendered in international arbitration (*Protocole relatif à la procédure devant la Chambre Internationale de la cour d'appel de Paris*, 7 February 2018).

As to ICC procedure, on 1 January 2019, the ICC's updated 'Note to Parties and Arbitral Tribunals on the Conduct of Arbitration under the ICC Rules of Arbitration' entered into force. It created a presumption that the ICC Court may publish an award issued after 1 January 2019 in its entirety no less than two years after its notification (six months in the case of treaty-based awards). At the same time, a party may object to such publication or request that the award be sanitised or redacted.



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