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France

INTERNATIONAL ARBITRATION

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in France.

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FRANCE
INTERNATIONAL ARBITRATION

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

French law distinguishes between international arbitration and domestic arbitration. Under Article 1504 of the French Code of Civil Procedure ("CCP"), "[a]*n arbitration is international when international trade interests are at stake*". According to French case law, "*the internationality of arbitration is based on an economic definition, according to which it is sufficient for the dispute submitted to arbitration to relate to a transaction that does not take place economically in a single State ; the status or nationality of the parties, the applicable law to the substance of the arbitration or the seat of the arbitration are irrelevant*" (Cass., Civ. 1, 30 June 2016, No. 15-13.755).

Today, both types of arbitration are governed by a mix of legislation, international conventions, and case law.

First, the primary sources of French arbitration law are the provisions of the CCP and the Civil Code (*Code civil*) dedicated to arbitration.

Domestic arbitration is governed by Articles 1442 to 1503 CCP and Articles 2059 to 2061 Civil Code.

International arbitration is governed by Articles 1504 to 1527 CCP. In addition, Articles 1446, 1447, 1448 (1 and 2), 1449, 1452 to 1458, 1460, 1462, 1463 (2), 1464 (3), 1465 to 1470, 1472, 1479, 1481, 1482, 1484 (1 and 2), 1485 (1 and 2), 1486, 1502 (1 and 2) and 1503 CCP, which relate to domestic arbitration, are made applicable to international arbitration by way of reference as set forth in Article 1506 CCP. Articles 2059 to 2061 Civil Code are not applicable to international arbitration (see for instance Cass. Civ. 1, 5 January 1999, No. 96-21.430, on Articles 2060 and 2061 Civil Code).

Second, international conventions concluded by France, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), are crucial for French arbitration law (for a more complete list of international conventions related to arbitration concluded by France, see Question Nos. 2).

Third, case law plays a vital role as a source of French arbitration law. Decisions rendered by the French Courts of Appeal (especially the Paris Court of Appeal) and the French Cour de cassation, not only shed light on critical issues but also influence arbitration reforms. This was clearly the case with the Decree No. 2011-48 of 13 January 2011 that introduced an arbitration law reform codifying solution emanating from French case law.

Under this legal regime, French arbitration law emphasizes party autonomy and the ability to conduct arbitration proceedings that meet the parties' shared expectations. Nevertheless, a few mandatory provisions are applicable:

- Certain disputes, such as family matters or bankruptcy matters, for example, are not arbitrable as they entail the exercise of State judicial power.
- Rules have been implemented to ensure fair trials for the parties and compliance with the requirement of due process (article 1510 CCP on the equal treatment of the parties or Articles 1479 and 1506 CCP on the confidentiality of deliberations). For instance, in the Dutco case, the Cour de cassation set forth the rule of strict party equality in the constitution of arbitral tribunals (Cass. Civ. 1, 7 January 1992, No. 89-18.708, Dutco) (see Question No. 16).
- French courts will deny enforcement or set aside awards that do not comply with the French conception of international public policy such as the prohibition of corruption and money laundering (Cass. Civ. 1, 23 March 2022, No. 17-17.981, Belokon), the prohibition of human rights violations (Paris Court of Appeal, 5 October 2021, No. 19/16601, DNO Yémen), the independence and impartiality of the arbitrator (Paris Court of Appeal, 15 June 2021, No. 20/07999, Pharaon).
- The right to appeal the order granting leave to enforce the award cannot be waived, even

though the parties can waive their right to seek annulment of the award (Article 1522 CCP).
- The principle of severability or autonomy of the arbitration agreement applies as a matter of public policy (Articles 1447 and 1506 CCP).
- The same is true of the principle of *compétence-compétence* (Articles 1448, 1465 and 1506 CCP).

It should be noted that these mandatory rules will only apply to the extent that the arbitration agreement is subject to French law (Cass. Civ. 1, 28 September 2022, No. 20-20.260, *Kout Food Group*).

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes.

France is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 ("New York Convention"). It entered into force on 24 September 1959.

France formulated only one reservation when signing the New York Convention. France declared that "*it will apply the Convention on the basis of reciprocity, to the recognition and enforcement of awards made only in the territory of another contracting State*".

It is, however, worth noting that in practice, the New York Convention is rarely applied by French courts. French arbitration rules on recognition and enforcement are generally more favorable to arbitration than the New York Convention:

- Under Article 1507 CCP "[a]*n arbitration agreement shall not be subject to any requirements as to its form*". This is less restrictive than Article II(1) of the New York Convention, which provides that arbitration agreements must be made in writing.
- French case law considers that arbitral awards are not affiliated to any jurisdiction, not even the seat of the arbitration (Cass. Civ. 1, 8 July 2015, No. 13-25.846, *SMAC v. Ryanair*). This means that French law authorizes the recognition and enforcement in France of foreign awards even if they have been annulled at the seat of the arbitration (Cass. Civ. 1, 23 March 1994, No. 92-15.137, *Hilmarton*; Cass. Civ. 1, 29 June 2007, No. 06-13.293, *Putrabali*).

3. What other arbitration-related treaties and conventions is your country a party to?

Besides the New York Convention, France is a party to many key arbitration conventions including:

- The Hague conventions of 1899 and 1907 for the Pacific Settlement of International Disputes.
- The Convention on the Settlement of Investment Disputes between States Nationals of other States ("ICSID Convention"), since 18 March 1965.
- The European Convention on International Commercial Arbitration which harmonizes the legal framework for international commercial arbitration among European countries signed on 21 April 1961.
- 84 Bilateral Investment Treaties ("BITs"). It is worth mentioning that following the conclusion of the Agreement for Termination of Bilateral Investment Treaties Between the Member States of the EU signed on 5 May 2020, which entered into force on 29 August 2020, 25 BITs to which France was a party were terminated.

Being a member State of the European Union ("EU"), France is presently a party to more than 50 multilateral arbitration-related treaties that were negotiated and agreed upon by the EU. The most recent ones are the Agreement on air transport between the EU and its Member States, of the one part, and the State of Qatar, of the other part (2021), which uses arbitration as the dispute resolution mechanism; and the EU-UK Trade and Cooperation Agreement (2021).

On 17 March 2015, France signed but did not ratify yet the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (the "Mauritius Convention").

Finally, France recently announced its withdrawal from the Energy Charter Treaty ("ECT") to which it has been a party since 1991. The withdrawal will be effective on 1 January 2024. This decision is justified by the alleged incompatibility of the ECT with the Paris Climate Agreement.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant

differences between the two?

No.

Even though the Paris Bar Association is an observer in the UNCITRAL, France has not adopted the UNCITRAL Model Law. French arbitration law varies from the UNCITRAL Model Law in a few aspects but there are no significant differences. French law is, however, considered as more favorable to arbitration than the UNCITRAL Model law.

One key difference lies in the fact that French law makes a clear distinction between domestic and international arbitration, while the UNCITRAL Model Law does not.

Another difference worth mentioning is that French case law considers that the annulment of an arbitral award by a court of the seat of the arbitration does not constitute a valid reason to refuse the enforcement of the arbitral award in France (Cass. Civ. 1, 23 March 1994, No. 92-15.137, *Hilmarton*; Cass. Civ. 1, 29 June 2007, No. 06-13.293, *Putrabali*). This is contrary to Article 36 (1)(a)(v) of the UNCITRAL Model Law, which states that the recognition or enforcement of an award may be refused if it has not yet become binding or has been set aside or suspended by a court of the seat of arbitration.

5. Are there any impending plans to reform the arbitration laws in your country?

No.

In France, the last major reform of French arbitration law was implemented through the Decree No. 2011-48 of 13 January 2011 mentioned above (See Question No. 1).

The previous major reform of French arbitration law had been implemented by the Decree No. 80-354 of 14 May 1980 (on domestic arbitration) and the Decree No. 81-535 of 12 May 1981 (on international arbitration). These decrees pursued the same objectives: promoting arbitration in France and ensuring its efficiency. This reform codified and/or strengthened French case law (especially decisions rendered by the Paris Court of Appeal and the *Cour de cassation*) on arbitration.

The 2011 Decree followed a proposal from the *Comité français de l'arbitrage*. Its main purpose was to clarify French arbitration law for practitioners worldwide and to promote Paris as a seat for international arbitration.

In 2016, France also enacted Law No. 2016-1547 of 18 November 2016, amending Article 2061 Civil Code to provide that if an arbitration agreement has not been concluded in a professional capacity, it cannot be enforced against the non-professional party (i.e., it will not automatically be declared void since the non-professional party can initiate arbitration).

Finally, in 2017, France created an international commercial chamber at the Paris Court of Appeal (called the ICCP-CA) as well as international commercial chambers at the Paris commercial court (called the ICCP-CC). These international chambers were specifically created to handle international business disputes, including disputes related to arbitration (such as annulment proceedings) (See Question No. 7).

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

France is the home of the most preferred arbitral institution worldwide, the International Chamber of Commerce (see *QMUL, 2021 International Arbitration Survey: Adapting Arbitration to a Changing World*). The ICC amended its arbitration rules in 2021 to boast the clarity and efficiency of ICC arbitration as well as reflecting the increased use of technology international arbitration.

Many other arbitral institutions exist in France, including:

• the *Chambre Arbitral International de Paris* (CAIP) created in 1926 (latest arbitration rules in 2021);

• the *Centre de Médiation et d'Arbitrage de la Chambre de Commerce et d'Industrie de Paris* (CMAP) created in 1995 (latest arbitration rules in 2022);

• the *Association Française d'Arbitrage* created in 1957 (latest arbitration rules in 2016);

• the *Chambre Arbitrale Maritime de Paris* created in 1966 (latest arbitration rules in 2022);

• the *Centre Européen d'Arbitrage et de Médiation* (CEAM) created in 1959 (latest arbitration rules in 2022);

• the *Centre français d'arbitrage de réassurance et d'assurance* (CEFAREA) created in 1955 (latest arbitration rules in 2018).

A more exhaustive list can be found on the website of the *Fédération des centres d'arbitrage* (Arbitration Centre Federation) at http://www.fca-arbitrage.com/les-centres-membres/.

7. Is there a specialist arbitration court in your country?

Yes.

First, there are specific judges acting in support of the arbitration and whose role is mainly to help overcome difficulties encountered when constituting the arbitral tribunal (*juge d'appui*).

In domestic arbitration, the judge acting in support of the arbitration is the President of the *tribunal judiciaire* (first instance court) of the seat of the arbitration and, if no seat is designated in the arbitration agreement, the court of the domicile of the Respondent. The parties can alternatively designate the President of the *tribunal de commerce* (commercial court) as *juge d'appui* (Article 1459 CCP).

In international arbitration, the judge acting in support of the arbitration will be the President of the Paris *tribunal judiciaire* (Article 1505 CCP).

Second, as mentioned in Question No. 5, in 2017, France also created an international commercial chamber at the Paris Court of Appeal (called the ICCP-CA) as well as an international commercial chamber at the Paris commercial court (called the ICCP-CC). These specialist international courts were created to handle international business disputes, including disputes related to arbitration (such as annulment proceedings).

French judges fluent in English and highly specialized in arbitration law, business law and private international law, sit in these courts. The English language may be used in the proceedings, and the procedure will be similar to that of the common law; it will allow witnesses and experts to be heard at the hearing, in English, with the possibility of cross-examination, as well as communication of exhibits in English, under the judge's supervision.

The final judgment may be rendered in French with an English translation.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

Under French law, the conditions governing the validity of an arbitration agreement differ between international and domestic arbitration.

In domestic arbitration, arbitration agreements must be entered into in writing to be valid (Article 1443 CCP). In addition, arbitration agreements must abide by the provisions of Articles 1444 CCP (on the designation of the arbitrators) and 1445 CCP (on the subject-matter of the dispute).

In international arbitration, it is not required that arbitration agreements be in writing as under Article 1507 CCP, "[a]*n arbitration agreement shall not be subject to any requirements as to its form*". In practice, having the arbitration agreement in a written form is preferable, primarily due to the provisions of Articles 1516 and 1516 CCP, which require the demonstration of an existing arbitration agreement for the recognition and enforcement of an award.

For both domestic and international arbitrations, there are no substantial validity requirements, but the subject matter of the arbitration must be arbitrable.

9. Are arbitration clauses considered separable from the main contract?

Yes.

The principle of autonomy or separability of the arbitration agreement from the main contract is a well-established principle of French arbitration law.

This rule guarantees the enforceability of arbitration agreements, which remain valid even if the contract that contains it is alleged to be null and void. This principle was established by the *Cour de Cassation* in 1963 in the *Gosset* decision (Cass., Civ. 1, 7 May 1963, No. 58-12.874, *Etablissements Gosset c/ Carapelli*). Today, this principle is codified under Article 1447 CCP (applicable to international arbitration pursuant to Article 1506 CCP).

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

Under French arbitration law, French courts apply the French material rules of international arbitration, irrespective of the location of the seat of arbitration.

French courts have adopted a rather unique approach in this regard by elaborating a set of rules that directly govern arbitration agreements. In France, the 1972 Hecht decision was the starting point of the construction by the Paris Court of Appeal of a set of material rules

governing arbitration agreements (Cass. Civ. 1, 4 July 1972, Hecht, No. 70-14.163).

According to the formula later adopted in the Dalico case: "*by virtue of a material rule of international law of arbitration, the arbitration agreement is legally independent from the main contract that contains it directly or by reference and its existence and effectiveness are determined according to the common intention of the parties without reference to a national law, subject to the mandatory rules of French law and international public policy*" (Cass. Civ. 1, 20 December. 1993, Dalico, No. 91-16.828).

The French choice of the material rules method flows from the idea that international arbitration is a transnational dispute resolution system that must follow its own set of rules favoring efficiency and independence from local laws. The material regime applicable to arbitration agreements is broad and encompasses every question that may arise before a French judge relating to their validity, scope, interpretation, transfer and effects, regardless of the location of the seat of arbitration.

Although the *Cour de Cassation* admits the possibility for the parties to depart from French material rules and submit the arbitration agreement to a national law, such a choice must be expressed in unequivocal terms (Cass. Civ. 1, 30 March 2004, Uni-Kod, No. 01-14.311; Cass. Civ. 1, 28 September 2022, No. 20-20.260, *Kout Food Group*).

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

Yes.

In multi-party arbitration, French courts pay attention to the principle of equality between the parties as a matter of international public policy. If the claimant has already selected an arbitrator independently, it is not permissible to compel two or more defendants to jointly designate an arbitrator (Cass., Civ. 1, 7 January 1992, No. 89-18.708, *Dutco*). This solution has been codified under Article 1453 CCP, providing that in case of disagreement between the parties, the arbitration institution or the judge acting in support of the arbitration (*juge d'appui*) will appoint the arbitral tribunal.

In multi-contract arbitration, under French law, parties are free to consolidate claims arising from multiple contracts into a single arbitration. This possibility is expressly referred to in Article 1442 CCP in relation to domestic arbitration.

As to international arbitration, the CCP does not refer specifically to the possibility of consolidating separate claims or proceedings. The consolidation possibility must emanate from the parties' agreement or the rules of the designated arbitral institution.

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Article 2061 Civil Code sets forth the general principle whereby to be enforceable, the arbitration agreement must have been accepted by the parties.

Since the 1980s, the Paris Court of Appeal and the *Cour de Cassation* have developed an increasingly liberal case law with respect to jurisdiction over non-signatories.

The material rule of extension was formulated for the first time in the *Korsnas Marma* decision of 1988 by the Paris Court of Appeal. The court held that: "*the arbitration agreement inserted in an international contract has a validity and efficiency of its own that command to extend its application to parties directly involved in the performance of the contract and in the disputes that can arise therefrom, whenever it can be assumed, based on their contractual situation and activities, that they knew of the existence and scope of the arbitration agreement, notwithstanding the fact that they did not sign the contract providing for it.*" (Paris Court of Appeal, 30 November 1988, No. 88/10719; see also Paris Court of Appeal, 26 November 2019, No. 18/20873).

The direct involvement of the third party in the performance of the contract is often sufficient to extend to it the arbitration agreement, the knowledge of which is presumed based on objective elements such as the situation and activities of the third party. Certain decisions, in particular those of the *Cour de Cassation*, do not even refer to the presumed knowledge of the arbitration agreement (Cass. Civ. 1, 27 March 2007, No. 04-20.842, *stés ABS et AGF Iart c/ sté Amkor Technology et a;* see also Paris Court of Appeal, 7 May 2009, No. 08/02025; Paris Court of Appeal, 5 May 2011, No. 10/04688).

There are numerous recent cases on the extension of arbitration agreements to third parties or non-signatories:

- In the *Kout Food Group* case, the Paris Court of Appeal held that "*the arbitration agreement inserted in an international contract has a*

validity and efficiency of its own that command to extend its application to parties directly involved in the performance of the contract and the disputes that can arise therefrom, from the moment it can be assumed, based on their contractual situation and activities, that they have accepted the arbitration agreement knowing its existence and scope, notwithstanding the fact that they did not sign the contract providing for it." The Paris Court of Appeal further held that the third party had been involved in the performance, termination and renegotiation of the relevant contract and its implementation agreements for several years, which justified extending the arbitration agreement to it (Paris Court of Appeal, 23 June 2020, No. 17/22943, *Kout Food Group*, see also Question No. 14)

- In the *Axa France* case, the Paris Court of Appeal extended the arbitration agreement to the insurer that indemnified the insured under the insurance policy as it considered that it was legally subrogated to all the insured rights, including the arbitration agreement. In other words, the Court of Appeal required knowledge but not acceptance of the clause (Paris Court of Appeal, 26 November 2019, No. 18/20873, *Axa France*).
- In the *Legrand* case, the Paris Court of Appeal did not make any reference to the knowledge or acceptance of the arbitration agreement but merely outlined: "*in international arbitration, the effect of the international arbitration clause extends to the parties directly involved in the performance of the contract and to any disputes arising therefrom*" (Paris Court of Appeal, 1 March 2022, No. 20/13575, *Legrand*). The Court therefore extended the arbitration agreement to the parent company of one of the parties to the contract as it had been involved in the follow-up and performance of the said contract as well as the dispute related to it.
- In the *MCB and TDIC v. AEC* case, in a multi-party and multi-contract dispute over an international infrastructure project, the Paris Court of Appeal relied on its longstanding case law as well as on the principle of good faith for the interpretation of contractual undertakings and on the principle of useful effect (*effet utile*). In this dispute, international investors and their joint subsidiary entered into multiple contracts with a local State company to carry out an international infrastructure project. Some of the contracts were concluded between the international investors and the State entity and some were concluded by the joint subsidiary and the State entity. The State entity initiated arbitration, based on different contracts, against the international investors and the joint subsidiary. Pursuant to the principles mentioned above, the Court held that "*it does not follow that the parties have expressed the intention to oppose any extension* [of the arbitration agreements to the non-signatory parties], *as such it cannot be inferred from the mere existence of several contracts and clauses. Moreover, the fact that the various aspects of their contractual relations were dealt with different contracts, depending on the commitments and level of involvement of each party in the completion of the Project, does not have the effect of manifesting a clear will on the part of the parties to oppose the extension of the arbitration clauses*." (Paris Court of Appeal, 13 June 2023, No. 21/07296, MCB and TDIC v. AEC).

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

French law provides a dynamic definition of arbitrability and distinguishes between "*objective arbitrability*" ("*arbitrabilité objective*") and "*subjective arbitrability*" ("*arbitrabilité subjective*").

First, objective arbitrability is provided for by Articles 2059, 2060 and 2061 Civil Code:

- Under Article 2059, parties are allowed to submit to arbitration a dispute relating to any rights they possess. This principle is however subject to many exceptions and clarifications.
- Article 2060 lists the subject matters that cannot be submitted to arbitration, i.e., disputes related to the civil status of individuals and the legal capacity of individuals, divorce, as well as conflicts involving public authorities and entities, or more generally public order matters.
- Article 2061 Civil Code provides that the effects of arbitration agreements may be limited for non-professional parties.

French case law has progressively narrowed down the scope of these limitations, holding that a dispute involving public policy rules does not in itself preclude arbitration. In other words, arbitral tribunals can apply

public policy rules and/or decide on whether they were violated (Paris Court of Appeal, 19 May 1993, No. 92/21091; Cass., Com., 9 April 2002, No. 98-16.829, *Toulousy v. Philam*).

Some subjects are nonetheless still considered as non-arbitrable whether in domestic or international arbitration, even if the non-arbitrability is always stronger in domestic arbitration. Criminal law or tax law-related matters are inherently non-arbitrable due to their strong associations with public order and state authority.

Furthermore, "weak parties" to a contract (employees, consumers) are subject to special protection and case law has progressively established a legal framework ensuring the efficiency of arbitration combined with the protection of the weaker parties' interests:

- For employees, the *Cour de cassation* has held that an arbitration agreement contained in an international employment contract cannot be enforced against an employee who has duly brought proceedings before the competent French courts, regardless of the law governing the employment contract (Cass., Soc., 12 March 2008, No. 01-44.654; Cass., Soc., 30 November 2011, No. 11-12.905, No. 11-12.906).
- For consumers, the *Cour de cassation* has recently held that arbitration agreements in consumer contracts could be deemed to be abusive clauses prohibited under EU law (Cass., Civ. 1, 30 September 2020, No. 18-19.241).

Second, subjective arbitrability refers to the capacity of States and State entities to resort to arbitration. French law allows State entities with an industrial and commercial activity to resort to arbitration, subject to specific statutory authorizations (Article 2060(2) Civil Code).

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

Yes, the *Kout Food Group* case as explained hereafter.

Under French arbitration law, French courts apply the French material rules of international arbitration, irrespective of the location of the seat of arbitration (see Question No. 10).

According to French case law, in order to submit the arbitration agreement to a national law, such a choice must be expressed in unequivocal terms (Cass. Civ. 1, 30 March 2004, *Uni-Kod*, No. 01-14.311; Cass. Civ. 1, 28 September 2022, No. 20-20.260, *Kout Food*).

In the *Kout Food Group* case handled by the Paris Court of Appeal, which also came before the English Courts around the same time (Paris Court of Appeal, 23 June 2020, No. 17/22943; *Kabab-Ji SAL* (*Lebanon) (Appellant*) v. *Kout Food Group (Kuwait) (Respondent*) [2021] UKSC 48), Paris was the seat of the arbitration and English law was applicable to the contracts. Paris being the seat of arbitration, the arbitral tribunal applied French material rules of international arbitration to establish its jurisdiction over the respondent.

A motion for annulment was filed against the award. The claimant asserted, among other grounds, that the arbitral tribunal had wrongly retained jurisdiction and that it should have applied English law to the arbitration agreement.

In accordance with its case law, the Paris Court of Appeal held that "[p]*ursuant to a material rule of international arbitration law, the arbitration agreement is legally independent from the main contract that contains it, directly or by reference, and its existence and validity must be appreciated, subject to mandatory rules of French law and international public policy, according to the parties' common intention, without the need to refer to a national rule of law*". The Court further stated that "[t]*he designation of English law as governing the Agreements in a general fashion and the prohibition made to the arbitrators to apply a rule that would contradict the Agreements, could not be sufficient, by themselves, to establish the parties' common intention to submit the arbitration agreements to English law…*".

The Court dismissed the motion for annulment finding that the claimant did not submit any element "*establishing in non-equivocal terms the parties' common intention to designate English law to govern the validity, transfer or extension of the arbitration agreement which regime is independent from that of the Agreements*".

This reasoning was approved by the *Cour de cassation* in its decision of 2022 (Cass. Civ. 1, 28 September 2022, No. 20-20.260, *Kout Food*).

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

In international arbitration, the arbitral tribunal shall

decide the dispute in accordance with the rules of law designated by the parties and, where no such choice has been made, in accordance with the rules of law it considers appropriate. In either case, the arbitral tribunal shall take trade usage into account (Article 1511 CCP).

In specific circumstances, the arbitrator is allowed to disregard the law chosen by the parties. This includes cases where the chosen law contradicts international public policy or when it is essential to uphold mandatory rules.

In domestic arbitration, under Article 1478 CCP, the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties. This choice of law is made without prejudice to the mandatory provisions of French law.

16. In your country, are there any restrictions in the appointment of arbitrators?

Under Articles 1444 CCP (domestic arbitration) and 1508 CCP (international arbitration), the parties are free to determine the procedure for the appointment of arbitrators. There are no general qualification requirements, but the arbitrator must be a natural person with the full capacity to exercise his or her rights (Article 1450 CCP).

In the event of multi-party arbitration, French law nonetheless requires that each party has an equal opportunity in appointing the arbitrators (Cass. Civ. 1, 7 January 1992, No. 89-18.708, *Dutco*). In this type of case, if the parties fail to agree on the procedure for constituting the arbitral tribunal, the person responsible for administering the arbitration (appointing authority or institution) or, where there is no such person, the judge acting in support of the arbitration (*juge d'appui*), shall appoint the arbitrator(s) (Article 1453 CPP, applicable to international arbitration pursuant to Article 1506 CCP).

The prospective arbitrators must, in any event, be independent and impartial (Article 1456 CCP, applicable to international arbitration pursuant to Article 1506 CCP).

It should finally be noted that the exercise of certain professional activities might also prevent a person from acting as an arbitrator in certain situations. For instance, a state judge, a public agent or employee or a professor can be appointed as arbitrator subject to the condition that he or she does not act against the French State (Conseil d'Etat, 6 November 1992, *SCI les Hameaux de Perrin*, *Rec*. 395).

17. Are there any default requirements as to the selection of a tribunal?

Yes.

First, French law provides for default requirements as to the number of arbitrators in domestic arbitration. Under Article 1451 CCP, the arbitral tribunal is composed of one or several arbitrators, always in an impaired number. They are designated either by (i) the parties or by (ii) the judge acting in support of the arbitration if external help is required to constitute the tribunal.

In international arbitration, since the number of arbitrators is left to the discretion of the parties, the award cannot be annulled by the French judge simply because it is composed of a pair number, unless the parties specifically provided for an impaired number of arbitrators (the parties will be able to challenge the award on the ground of Article 1520 2° CCP).

Second, French law provides for default requirements as to the appointment of the arbitrator(s).

Under Articles 1444 CCP (domestic arbitration) and 1508 CCP (international arbitration), parties are, in principle, free to designate the arbitrator(s) or to specify the procedure for their appointment, directly or by reference to arbitration rules or to procedural rules. Absent any agreement on the procedure for the appointment of the arbitrators, the following rules apply in accordance with Article 1452 CCP (applicable to international arbitration pursuant to Article 1506 CCP):

• In case of arbitration by a sole arbitrator, the arbitrator shall be appointed by (i) the parties and, if they fail to agree (ii) by the person responsible for administering the arbitration or, where there is no such person, (iii) by the judge acting in support of the arbitration;

• In case of arbitration by a tribunal of three arbitrators, each party will appoint one. The two party-appointed arbitrators will then choose the third arbitrator. If a party fails to appoint an arbitrator within one month following receipt of a request to that effect by the other party, or if the two arbitrators fail to agree on the third arbitrator within one month of having accepted their mandate, the person responsible for administering the arbitration or, where there is no such person, the judge acting in support of the arbitration, shall appoint the third arbitrator.

In multi-party arbitration, if the parties disagree on the constitution of the arbitral tribunal, the person responsible for administering the arbitration or, where there is no such person, the judge acting in support of the arbitration, shall appoint the arbitrator(s) (Article

1453 CCP, applicable to international arbitration pursuant to Article 1506 CCP).

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Yes.

In France, the judge acting in support of the arbitration (*juge d'appui*) has jurisdiction to resolve any dispute related to (i) the constitution of the arbitral tribunal (Articles 1452 to 1454 CCP applicable to international arbitration pursuant to Article 1506 CCP), (ii) the challenge of arbitrators (Article 1456 CCP) as well as (iii) an abstention, resignation, or impediment of an arbitrator (Article 1457 CCP).

Pursuant to Article 1505 CCP, the judge acting in support of the arbitration will have jurisdiction if (alternative conditions):

• The seat of arbitration is in France;

• The parties have agreed to submit the arbitration to French procedure law;

• The parties have expressly given jurisdiction to French courts over disputes relating to the arbitral procedure; or

• One of the parties is at risk of a denial of justice.

In domestic arbitration, the judge acting in support of the arbitration is the President of the *tribunal judiciaire* (first instance court) of the seat of the arbitration and, if no seat is designated in the arbitration agreement, the court of the domicile of the Respondent. The parties can alternatively designate the President of the *tribunal de commerce* (commercial court) as *juge d'appui* (Article 1459 CCP).

In international arbitration, the judge acting in support of the arbitration will be the President of the Paris *tribunal judiciaire* (Article 1505 CCP).

Under Article 1460 CCP (applicable to international arbitration pursuant to Article 1506 CCP), application to the judge acting in support of the arbitration shall be made either by a party or by the arbitral tribunal or one of its members. Such application shall be made, heard, and decided in expedited proceedings (*référé*). The judge acting in support of the arbitration shall rule by way of a final order that cannot be appealed, unless the dispute relates to an allegedly manifestly void or manifestly not applicable arbitration agreement(s) (Article 1455 CCP).

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Yes. The appointment of an arbitrator can be challenged.

First, as arbitrators should be independent and impartial (see Question No. 16), a party can challenge his or her independence and/or impartiality before French courts. Under Article 1456 CCP (applicable to international arbitration pursuant to Article 1506 CCP), before accepting an appointment, an arbitrator shall disclose any circumstance that may affect his or her independence or impartiality. These obligations have respectively been interpreted by French courts as follows: (i) arbitrators must disclose any circumstances likely to affect their judgment and raise in the minds of the parties a reasonable doubt as to their impartiality and independence (ii) this duty will be assessed taking into account the extent of public knowledge of the situation and its impact on the arbitrator's judgment (see for example Paris Court of Appeal 18 September 2018, No. 16/26009; Paris Court of Appeal, 10 January 2023, No. 20/18330). A party can then challenge the arbitrator for lack of independence and, if the parties cannot agree on the removal of an arbitrator, the issue shall be resolved by the person responsible for administering the arbitration or, where there is no such person, by the judge acting in support of the arbitration.

The application before French courts must be made within one month following the disclosure or the discovery of the fact at issue.

If a party invokes a lack of independence or impartiality of an arbitrator during the proceedings, it will be able to ask the annulment judge to set aside the award on this ground later (Article 1520 2° CCP).

Second, in accordance with Article 1458 CCP (applicable to international arbitration pursuant to Article 1506 CCP), the parties may unanimously agree to dismiss an arbitrator. In the absence of an agreement, the matter should be referred to the institution in charge of administrating the arbitration, or the judge acting in support of the arbitration as per Article 1456(3) CCP.

Dismissing an arbitrator can result (i) from a lack of independence and impartiality or (ii) from a lack of compliance with his or her obligations to conduct the arbitration in a manner that is efficient and with loyalty (Article 1464(3) CCP applicable to international arbitration pursuant to Article 1506 CCP).

In both cases, the decision of the judge acting in support

of the arbitration cannot be appealed at the setting aside stage, unless new facts have occurred in the meantime (Versailles Court of Appeal, 4 June 2019, No. 17/06632). It should be noted that a party will be able to assert a lack of independence and impartiality of an arbitrator in front of the annulment judge only if this has been ra

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators

Yes.

There have been recent developments in French case law concerning the duty of independence and impartiality of arbitrators.

First, concerning the timing of the challenge of an arbitrator, it has recently been decided that invoking this irregularity in front of the institution in charge of administrating the arbitration was not enough and that it should be invoked in front of the arbitral tribunal as well, failing which the party will be precluded from raising this irregularity at the stage of annulment proceedings (Cass., Civ. 1, 7 June 2023, No. 21-24.968).

Second, concerning the text according to which the criteria will be evaluated, the Paris Court of Appeal has held that the arbitration institution rules should take precedence over the CCP (Paris Court of Appeal, 17 May 2022, No. 20/15162 where the notions of independence and impartiality were interpreted in light of the 2016 ICC note to the parties).

Third, concerning the assessment of both criteria, the Cour de Cassation has recalled that there was no obligation to disclose if the facts on the basis of which the arbitrator is being challenged were notorious (Cass., Civ. 1, 13 April 2023, No. 18-11.290).

Finally, in a recent decision, the Paris Court of Appeal has set aside an award on the ground that the arbitrator neglected its duty of disclosure (Paris Court of Appeal, 10 January 2023, No. 20/18330) in a case where tight connections were not disclosed between one of the arbitrators and the counsel of the party that designated it. The particularity of this case was that the close connection was revealed in a tribute published on a news website by the arbitrator after the passing away of the counsel.

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

Yes.

A truncated tribunal can be the consequence of an arbitrator's resignation, challenge, passing away or refusal to take part in the proceedings. The solutions of French arbitration law will differ depending on whether the arbitration is domestic or international.

For domestic arbitration, the proceedings will be suspended in case of a truncated tribunal, until a new complete tribunal is formed (Article 1473 CCP).

This does not apply to international arbitration and the proceedings will not be suspended in case of a truncated tribunal.

For both domestic and international arbitration, however, Article 1457 CCP (applicable to international arbitration pursuant to 1506 CCP) provides that an arbitrator shall pursue his or her mission until the end unless he or she justifies an impediment or legitimate cause for abstention or resignation.

Unless the parties have agreed otherwise in the arbitration agreement or in the course of the proceedings, the reality of the motive will be settled by (i) the institution in charge of administrating the arbitration or if that is not possible (ii) by the judge acting in support of the arbitration seized by a request filed within one month following the fact in question (Article 1457(2) CCP, applicable pursuant to Article 1506(2) CCP).

22. Are arbitrators immune from liability?

Arbitrators are immune from any liability arising from any factual or legal error in the arbitral award (i.e., the merits of the dispute).

The arbitrator, however, can be held liable for breach of his or her contractual and legal undertakings.

First, arbitrators can be held liable for their "personal faults", i.e., fraud, gross negligence or denial of justice as such misconduct is incompatible with the judicial function of an arbitrator (Paris Court of Appeal, 1 March 2011, No. 09/22701).

Second, arbitrators can be held liable for any breach of a contractual undertaking (Paris Court of Appeal, 12 October 1995, Revue de l'arbitrage 1999, p. 324, note P. Fouchard). This type of liability is generally related to the conduct of the arbitration itself (lack of

independence/impartiality for example, if the arbitration is not conducted with loyalty or efficiency).

Finally, an arbitrator can be challenged in accordance with Article 1458 CCP (applicable to international arbitration pursuant to Article 1506 CCP) if the parties unanimously agree to it. Certain institutional rules also provide that the institution itself may dismiss him or her. This dismissal could result from a lack of independence or impartiality or if the arbitrator does not conduct the arbitration efficiently and loyally (Article 1464(3) CCP applicable to international arbitration pursuant to 1506 CCP).

23. Is the principle of competence-competence recognized in your country?

Yes, with both its negative and positive effects.

French law recognizes the positive effect of the *compétence-compétence* principle according to which the arbitral tribunal has exclusive jurisdiction to decide on its jurisdiction (Article 1465 CCP, applicable to international arbitration pursuant to Article 1506 CCP).

French law also recognizes the negative effect of the *compétence-compétence* principle, according to which State courts seized by a party that is bound by an arbitration agreement must decline jurisdiction if one of the defendants raises objections and unless the arbitration agreement is manifestly void or unenforceable (Article 1448(1) CCP, applicable to international arbitration by reference from Article 1506 CCP).

In this regard, it was recently judged that a party's impecuniosity does not make the arbitration agreement manifestly unenforceable within the meaning of Article 1448(1) CCP and thus does not prevent State courts from applying the negative effect of the principle of *compétence-compétence* (Cass., Civ. 1, 28 September 2022, No. 21-21.738).

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

In accordance with the negative effect of the principle of *compétence-compétence*, French courts must decline jurisdiction if one of the parties raises objections and unless the arbitration agreement is manifestly void or unenforceable (Article 1448 CCP applicable pursuant to Article 1506 CCP).

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

Under French arbitration law, when a respondent fails to participate in the arbitration, no rule prevents the arbitration proceedings from continuing. The only requirement set out by French case law is for such proceedings called "*prodédure par défaut*" to respect the principle of the right to be heard.

This means that an arbitral award can be rendered while a party did not participate in the arbitration proceedings as long as "*the defaulting respondent to the arbitration has been notified in an uncontroversial manner of the request for arbitration made against it*". (Paris Court of Appeal, 14 February 1985, *société Tuvomon v. société Amaltex*).

It bears noting that a request for arbitration submitted in accordance with the arbitration rules agreed by the parties in the arbitration agreement is deemed to have been submitted in an uncontroversial manner (Paris Court of Appeal, 13 September 2007, *société Comptoir Commercial Blidéen v. société l'Union Invivo*).

French law does not empower local courts to compel a defaulting party to take part in the arbitration proceedings. The only solution is thus the "*procédure par défaut*" that is also set out in many arbitration rules (Article 6(8) of the ICC Rules, Article 15.8 of the LCIA Rules or Article 20.9 of the SIAC Rules).

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Under French arbitration law, arbitration is based on the consent of the parties which is why, except in some particular cases, only signatory parties are bound by an arbitration agreement and are entitled/expected to participate in arbitration proceedings (see Question No. 12).

French law does not provide for any rule as to the voluntary joinder of third parties to arbitration. Once a dispute has arisen, however, parties can agree to submit said dispute to arbitration (*compromis d'arbitrage* of Article 1447 CCP). In that sense and regarding the importance given to the consent of the parties as a matter of French law, one can consider that should all the parties agree to the voluntary joinder of a third

party, the latter should be authorized to join the arbitration procedure and such agreement should bind the arbitral tribunal.

In any event, the issue of joinder is usually dealt with arbitration rules. Joinder of third parties is more discussed in arbitration rules such as Article 7 of the ICC Rules or Article 8 of the Rules of Arbitration of the International Arbitration Chamber of Paris.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Under Article 1449 CCP (applicable to international arbitration pursuant to Article 1506 CCP), prior to the constitution of the tribunal, parties are entitled to apply to French courts to seek measures on the taking of evidence or provisional or conservatory measures. Available interim measures before French courts are the following:

• The so-called *in futurum* requests to preserve or seize factual evidence, relevant and material to the outcome of a dispute (Article 145 CCP). Such measures are granted, should the applicant demonstrate that (i) the arbitral tribunal is not constituted yet and (ii) that it has legitimate reasons to seek the preservation or the establishment of evidence relevant and material to the outcome of a dispute. The measures can be ordered against an opposing party but also against third parties (Cass., Civ. 2, 15 December 2005, No. 03-20.081).

• A variety of provisional measures granted by the French *juge des référés* (expedited proceedings) are also available, such as:

- Any provisional measures that are justified by the emergency of the situation and that do not come up against any serious contestation or that are justified by the existence of the dispute (Articles 808 and 834 CCP).
- Conservatory measures to prevent damage or to stop a manifestly unlawful disturbance. The applicant needs to demonstrate the urgency of its request or a manifestly illicit disturbance (Article 835(1) CCP).
- Interim payment of a claimed amount that is not seriously disputable (*référé provision*) (Article 835(2) CCP).
- Interim injunction ordering a party to perform a non-seriously disputable obligation (Article 835(2) CCP).

It is worth noting that in *LItech Management v. Business Asia Consultants*, the Paris Court of Appeal held that the presence of an emergency arbitrator provision in the arbitration rules the parties decided to apply does not preclude a party from seeking interim measures before French courts as long as the emergency arbitrator has not been confirmed (Paris Court of Appeal, 31 October 2019, No. 19/05913).

Once the arbitral tribunal is constituted, it is not possible to seek interim measures before the French judge. At this stage, interim measures are within the jurisdiction of the arbitral tribunal as it can "*take any protective or provisional measure it deems appropriate under the conditions it shall determine*" (Article 1468 CCP). The tribunal's powers are particularly wide, and it can order that the non-compliance with an interim measure is subject to an obligation to pay a fine (*astreinte*).

Under the same provision, however, arbitral tribunals cannot order interim measures as a matter of seizure of goods (*saisies conservatoires*) and judicial securities (*sûretés judiciaires*). Interim measures against third parties also fall outside the jurisdiction of the arbitral tribunal (Article 1469 CCP).

Finally, although there was a debate in the 2000s, interim awards are considered as enforceable in France as long as they "*definitely settle, in all or partly, the dispute [...] on the merits, the jurisdiction or on any procedural issues*" (see Paris Court of Appeal, 7 October 2004, *société Otor Participations et autres v. Carlyle Holdings 1 et autres*; Cass., Civ. 1, 12 October 2011, No. 09-72.439, *SA Groupe Antoine Tabet (GAT) v République du Congo*). French courts are not bound by the qualification given by arbitrators to their decision, whether it is 'order', 'procedural order' or 'interim award' (Paris Court of Appeal, 1 July 1999, *société Braspetro Oil Service (Brasoil) v. GMA*).

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Anti-suit injunctions as conceived in common law jurisdictions, i.e. injunctions prohibiting a litigant from instituting other, related litigation or arbitration, between the same parties on the same issues and under penalty of contempt of court sanctions, which may include jail sentences, are unknown to French law.

In intra-EU relationships, French courts do not issue anti-suit injunctions as the ECJ considers that they are incompatible with EU law (ECJ, 27 April 2004, Case No. C-159/02, *Turner*). The same goes for an anti-suit injunction issued to prevent a party from going before a domestic court in breach of an arbitration agreement

(ECJ, 10 February 2009, Case No. C-185/07, *West Tankers*).

This line of cases does not prevent Member States from enforcing anti-suit injunctions issued by arbitral tribunals (ECJ, 13 May 2015, Case No. C-536/13, *Gazprom* OAO).

For extra-EU relationships, French Courts have accepted to issue orders that seemed to pursue the same objective as that sought by parties with anti-suit injunctions or anti-anti-suit injunctions in accordance with the injunctive powers of the President of the commercial court (Articles 872 to 873-1 CCP) and of the President of the *tribunal judiciaire* (Articles 834 to 838 CCP). These orders, however, were only accompanied by monetary penalties (*astreinte*) (Cass. Civ. 1, 19 November 2002, No. 00-22.334, *Banque Worms*; Paris Court of Appeal, 3 March 2020, No. 19/21426, *Lenovo*).

Interestingly, French courts also accepted to issue 'anti anti-suit injunctions'. In the Lenovo case of March 2020, the Paris Court of Appeal confirmed the decision of the French *juge des référés* ordering two US companies to withdraw a motion seeking for an anti-suit injunction before Californian courts and not to seek any similar relief before any court in the context of the dispute. (Paris Court of Appeal, 3 March 2020, No. 19/21426, *IPCom v. Lenovo*).

French courts also refused to issue anti-arbitration injunctions since they are not available under French law and would be contrary to the *compétence-compétence* principle set out in Article 1458 CCP (Cass., Civ. 1, 12 October 2011, No. 11-11.058, *Elf Aquitaine*)

As for the enforcement of foreign anti-suit injunctions, in accordance with ECJ case law, French courts also refuse to enforce anti-suit injunctions issued by EU members.

For extra-EU relationships, French courts seem to recognize the ones rendered by non-EU members such as United-States as long as said injunctions "*have the sole purpose to provide a sanction for the breach of a pre-existing contractual obligation and are not contrary to international public policy*" (Cass., Civ. 1, 14 October 2009, No. 08-16.369, *In Zone Brands*).

French Courts may also recognize anti-suit injunctions issued by arbitral tribunals, even in intra-EU relationships. As explained by the European Court of Justice, the prohibition of anti-suit injunctions in intra-EU relationships does not concern anti-suit injunctions issued by arbitral tribunals since "[UE law] *does not govern the recognition and enforcement, in a Member State, of an arbitral award issued by an arbitral tribunal in another Member State*" (ECJ, 13 May 2015, Case No. C-536/13, *Gazprom*).

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

Under Article 1509 CCP, parties are free to choose directly or by reference the procedural rules to be followed by the arbitral tribunal, including the rules governing evidentiary matters (such as the IBA Rules on the Taking of Evidence as recognized by the Cass., Civ. 1, 6 November 2019, No. 17-20.573). Absent such agreement, the tribunal will conduct the procedure by reference to arbitration rules or procedural rules.

Article 1467 CCP also provides the power for the arbitral tribunal to hear any person. It can also order any party to produce any evidence it deems appropriate. As illustrated by the Paris Court of Appeal in *Otor v. Carlyle* (Paris Court of Appeal, 7 October 2004, *Otor v. Carlyle*), if a party refuses or fails to comply with the order to produce evidence, French law grants arbitral tribunals the power to issue a monetary penalty (*astreinte*).

As already mentioned, (see Question No. 27) French courts can provide help on evidentiary matters only as long as the arbitral tribunal is not constituted.

However, a party can request the president of the *tribunal judiciaire*, at the invitation of the arbitral tribunal, to order a third party to produce evidence (Article 1469 CCP).

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

French law does not provide for any code or similar regulation governing ethical matters in the context of international arbitration.

Some French arbitration institutions however provide codes of conduct or ethical guidelines for arbitrators such as the Arbitration Ethical Charter of the *Fédération des Centres d'Arbitrage*. Said guidelines expect arbitrators to accept appointments only if they have sufficient experience, competence, availability and the capacity conduct the arbitration diligently. They also require arbitrators to be independent and impartial as set out in Article 1456 CCP.

In addition, Article 1464(3) CCP sets out that the parties and arbitrators must act with celerity and fairness in the

conduct of the proceedings.

Finally, arbitrators and counsels admitted to the French Bar must comply with the French ethical rules for lawyers as set out in the *Règlement Intérieur National de la profession d'avocat*, any regulation enacted by the *Conseil National des Barreaux* as well as, if applicable, any local regulation enacted by the *Conseil de l'Ordre des avocat*s where the counsel or arbitrator is enrolled.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

Under French law, confidentiality is applicable as a matter of principle in domestic arbitration, unless the parties agree otherwise (Article 1464(4) CCP).

For international arbitration, there is no specific provision regarding confidentiality. Today, it is generally considered that international arbitration is not confidential unless the parties have expressly agreed otherwise or chosen arbitration rules which provide for a confidentiality obligation.

The duty of confidentiality as a matter of French arbitration mainly lies on arbitrators and arbitration institutions. For instance, Article 1479 CCP provides that the deliberations of the tribunal are confidential (applicable to international arbitration by virtue of Article 1506 CCP).

32. How are the costs of arbitration proceedings estimated and allocated?

French law does not deal with the estimation and allocation of costs in arbitration proceedings. It will generally be dealt with either by the parties' agreement or by the arbitration rules designated by the parties. Absent any agreement, cost allocation is left to the discretion of the arbitrators.

Under French law, arbitral tribunals have jurisdiction to award interests for damages awarded and costs. In the event no interest rate is indicated by the arbitral tribunal and absent any agreement between the parties, the French official legal interest rate will apply (see for instance *Arrêté du 27 juin 2023 relatif à la fixation du taux de l'intérêt legal*).

Finally, even if the arbitral tribunal does not award any interest, the legal interest rate will apply (Article 1231(7) Civil Code).

33. Can pre- and post-award interest be included on the principal claim and costs incurred?

Question answered above.

34. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

First, the legal requirements for recognition and enforcement of an arbitral award are set by Articles 1487 CCP (for domestic arbitration), 1514 and 1515 CCP (for international arbitration). The concerned party must, by an ex parte application to the President of the *Tribunal judiciaire* of the place where the award is rendered, or before the Paris *Tribunal judiciaire* when the award is rendered abroad:

(i) prove the existence of the award, by producing the original award and the arbitration agreement or duly certified copies thereof (together with a translation of these documents if they were not drafted in French), and

(ii) prove that there will be no manifest violation of French international public policy as a result of the recognition or enforcement of this award.

The proceedings will be non-contradictory (Articles 1487 and 1516 CCP).

If enforcement is granted, it will not be possible to appeal the order granting enforcement of the award (Article 1499 CCP). In international arbitration, if the parties waive their right to seek annulment of the award, they will be able to appeal the order granting enforcement of the award in all cases (Articles 1522(2), and 1524 CCP).

If enforcement is denied, it will be possible to appeal the order denying enforcement to the award (Articles 1500 and 1523 CCP), in which case it will undergo a deeper review based on the criteria set forth in Articles 1492 CCP (domestic arbitration) or 1520 CCP (international arbitration) for annulment proceedings.

Both actions should be brought within one month from the service (*signification*) of the decision and an additional two months if the appealing party is located abroad.

Second, Article 1482 CCP (applicable to international arbitration under Article 1506 CCP) requires the arbitral

tribunal to provide reasons for its decisions. However, while domestic arbitration provides that the award will be annulled if this Article is not complied with (Article 1492(6) CCP), it does not apply in the context of international arbitration. The failure to reason an award is therefore not a ground to set it aside. This may, however, be raised in the context of setting aside proceedings under Article 1520 3° CCP (arbitrator's compliance with the terms of reference) and Article 1520 4° CCP (arbitrator's compliance with the adversarial process).

35. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

The decision for the recognition and enforcement of an award will be rendered within a few weeks.

Motions for recognition and enforcement of an award are brought on an ex parte basis (Articles 1487 and 1516 CCP).

36. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Yes.

There is a different standard of review for recognition and enforcement of a foreign award compared with a domestic award.

First, when a party brings a motion for recognition and enforcement of the award, it shall prove the existence of the award and its compliance with public policy. In domestic arbitration, the review will be done according to "*national public policy*" (Article 1488 CCP) while in international arbitration the review will be done in accordance with "*international public policy*" (Article 1514 CCP).

Second, the grounds to set aside the award differ slightly between international arbitration and domestic arbitration. In international arbitration, parties can seek annulment of the award based on five limited grounds set out in Article 1520 CCP. In domestic arbitration, French law provides that, in addition to the five grounds of Article 1520 CCP, the award can be set aside if it was not reasoned by the arbitrator (Article 1492 6° CCP) i.e., if the award failed to explain the reasons upon which it is based, the date on which it was made, the names or signatures of the arbitrator(s) having rendered the award, or where the award was not rendered by majority decision.

37. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

There are no specific limits as to the remedies available which can be awarded by an arbitral tribunal under French law, unless directly restricted by the parties in the arbitration agreement.

The arbitrators can award remedies that go from an injunction, to damages, to the performance of the contract, to conservatory and provisional measures.

Some remedies, however, might not be enforceable by the local court if they are contrary to international public policy. For instance, for punitive damages, while French courts do not consider it per se contrary to French law, they will verify that the amount awarded is not disproportionate compared to the damages actually suffered by the injured party (Cass. Civ. 1, 1 December 2010, No. 09-13.303, *Fountaine Pajot*). If it is not, the remedy will be deemed non-enforceable.

38. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

The solution varies between domestic and international arbitration.

In international arbitration, French arbitration law does not provide for the possibility to appeal an award, and this right cannot be provided for in the arbitration agreement (Cass., Civ. 1, 13 March 2007, No. 04-10.970).

In domestic arbitration, awards cannot be appealed, but parties can agree that the award can be appealed (Article 1489 CCP).

In both types of arbitrations, parties may appeal a decision declining or upholding recognition or enforcement of an award (Articles 1499-1501 and 1522-1524 CCP) as well as ruling on the recognition and enforcement of a foreign award (Article 1525 CCP). Those appeals should be brought within one month from the service ("*signification*") of the decision.

Likewise, the parties may seek annulment of the award

(Articles 1491 and 1518 CCP) before the Court of Appeal of the seat of arbitration within one month from the notification of the award (Articles 1494 and 1519(2)) and an additional two months if the applying party is located abroad.

In international arbitration, set-aside proceedings will not suspend the enforcement of the award (Article 1526(1) CCP) unless there is a risk of causing severe damages to the rights of a party (Article 1526(2) CCP). In domestic arbitration, set-aside proceedings will suspend the enforcement of the award unless the award is provisionally enforceable (Article 1496 CCP).

The grounds to annul the award are exhaustively listed in Articles 1492 (domestic arbitration) and 1520 (international arbitration) CCP:

- The arbitral tribunal wrongly upheld or declined its jurisdiction; or
- The arbitral tribunal was not properly constituted; or
- The arbitral tribunal ruled without complying with the mandate given to it; or
- Due process was violated; or
- Recognition and enforcement of the arbitral award is contrary to international public policy.

In domestic arbitration, it is also possible to argue that the award is not properly reasoned, that it does not provide the date on which it was rendered, the name of the arbitrator(s), their signature or the fact that it was rendered by a majority (Article 1492 6° CCP)

39. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

In international arbitration, by way of a specific agreement the parties may, at any time, expressly waive their right to bring a motion to set aside the award (Article 1522 CCP). Where such right has been waived, the parties nonetheless retain their right to appeal an enforcement order on one of the grounds set forth in Article 1520 CCP.

In domestic arbitration, it is not possible in the arbitration agreement to waive the right to bring a motion to set aside the award (Article 1491 CCP).

40. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

While an arbitral award does not have *res judicata* towards third parties, it may be asserted against them (Cass., Com., 23 January 2007, No. 05-19.523).

In addition, under French arbitration law, third parties do not have a right to *tierce-opposition* (i.e to challenge the recognition of the award as a third party) and the award cannot give way to a recourse to at *Cour de cassation* level through a *pourvoi en cassation* (Article 1481(1) CCP applicable to international arbitration pursuant to Article 1506 CCP).

41. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

France does not directly provide a regulatory framework for third-party funding. Funding agreements have been qualified by French courts in 2006 as a *sui generis* contract category and their validity has been confirmed in principle (Versailles Court of Appeal, 1 June 2006, No. 05/01038, *Foris AG v. Veolia*).

In 2017, the Paris Bar nevertheless provided some guidance on the ethical rules that can be affected by third-party funding for French lawyers:

- Lawyers are bound by their ethical obligations towards their client, and not towards the funder, i.e., lawyers cannot disclose their communications with clients to funders.
- Lawyers cannot represent the funded party and the funder.
- It is recommended to disclose the existence of the third-party funding agreement to the tribunal (this is also required under Article 11(7) of the 2021 ICC Arbitration Rules).

In addition, the EU has also decided to regulate third-party funding. In 2022, the European Parliament hence recommended to the Commission to propose a Directive on the regulation of third-party funding in the EU with the title “Responsible funding of litigation.” If adopted in its current form, this directive would regulate third-party funders financing proceedings in the EU with the following features:

- The establishment of a supervisory authority granting permits to funders and monitoring their activities,

- A joint liability of funders with the funded disputing party to pay the cost of the proceedings that may be awarded,
- An obligation on funders to have adequate financial resources to fulfill their liabilities under the funding arrangement,
- A fiduciary duty of care shall be owed by the funder toward the funded disputing party,
- Specific disclosure and transparency obligations to inform competent judicial or administrative organs of the existence of a funding arrangement shall be applicable, and
- The financial stake of funders shall be capped at 40% of the amount of compensation awarded, save for exceptional circumstances.

As of today, this new regulation seems to be postponed and the Commission plans to conduct a mapping study of the existing European litigation funding landscape before rolling out any new rules.

42. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

French arbitration law does not address emergency arbitration but does not prohibit it.

Emergency arbitrator relief is, nonetheless, provided for by several arbitration rules such as the ICC (Art. 29 of the Rules and Appendix V- Emergency Arbitrator Rules) or CMAP rules (arbitration agreement signed after 1st January 2022). They provide for emergency arbitrator relief, respectively by way of an order rendered within 15 days of the transmission of the file to the arbitrator, and by a decision rendered within 28 days of the arbitrator's appointment.

The enforceability of decisions rendered by emergency arbitrators is to be assessed in accordance with French laws and regulations applicable to international or domestic decisions. Even if generally parties agree to comply spontaneously with such decisions according to institutional rules, there are no mandatory provisions with respect to their enforcement, especially when the decisions qualify as orders.

If the decisions qualify as "orders" and not "awards", they might not be enforceable under French law as they are deemed to be of a non-jurisdictional nature (Paris Court of Appeal, 29 April 2003, *Société Nationale des Pétroles du Congo et République du Congo c. TEP Congo*, in the context of the ICC Pre-Arbitral Referee). It is debated whether this somewhat older case law of the Paris Court of Appeal still applies to emergency arbitrator relief.

43. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

French arbitration law does not address simplified or expedited proceedings, but several arbitral institutional rules provide for expedited proceedings.

First, the ICC Rules of Arbitration provide for Expedited Procedure Provisions (Article 30 of the Rules and Appendix VI). The Expedited Procedure Provisions shall take precedence over any contrary terms of the arbitration agreement and will apply under the following cumulative conditions:

- The arbitration agreement was concluded after 1 March 2017;
- The amount in dispute does not exceed USD 2,000,000 if the arbitration agreement was concluded from 1 March 2017 to 31 December 2020, and USD 3,000,000, if the arbitration agreement was concluded on or after 1 January 2021; and
- The parties have not opted out of the Expedited Procedure Rules in the arbitration agreement or at any time thereafter.

The Expedited Procedure Provisions shall also apply, irrespective of the date of conclusion of the arbitration agreement or the amount in dispute, if the parties have agreed to opt in.

According to the latest global ICC statistics of 2020, these proceedings were used in 261 cases, of which 83 were agreed by the parties on an opt-in basis.

Second, the CMAP rules also provide for expedited proceedings upon request of the parties.

Third, the CAIP has established an expedited procedure ("Procédure PAR") for arbitrations with a principal amount in dispute of no more than EUR 100,000.

44. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

There are no mandatory rules imposing criteria for the selection of arbitrators based on gender, age or origin.

Arbitration institutions located in Paris, however, such as ICC, actively promote and encourage diversity and inclusion. This is also strongly encouraged by international associations (i) promoting the appointment of female arbitrators (e.g. ArbitralWomen, Equal Representation in Arbitration Pledge, Mute Off Thursday, which published in 2023 Compendium of Unicorns: A Guide to Women Arbitrators, ICC YAAF), (ii) or more broadly raising awareness on diversity and gender equality and the need to appoint more arbitrators coming from under-represented continents such as Africa (such as AfricArb, ICC Africa Commission).

45. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

France is known to be very arbitration-friendly when it comes to the recognition and enforcement of arbitral awards. In that sense, Article 1514 CCP, which sets out the grounds to refuse the recognition and the enforcement of an award in France, is more favorable than Article V of the New York Convention.

Article V(1)(e) of the New York Convention provides that the annulment of an award by the courts of the seat of arbitration is a ground to refuse its recognition and enforcement abroad. This interpretation is not shared by French courts, which have a long-standing position to consider that the grounds to refuse the enforcement of an award in France are the ones set out by French law and not by the New York Convention (Cass., Civ. 1, 9 October 1984, No. 83-11.355, Norsolor).

In the *Hilmarton* decision, the *Cour de cassation* held that an award rendered in Switzerland "*was not integrated to the [*Swiss*] legal order, so that its existence remained established despite its annulment and that its recognition in France was not contrary to international public policy*" (Cass., Civ. 1, 23 March 1994, No. 92-15.137, *Hilmarton*).

In 2007, in the *Putrabali* decision, the *Cour de cassation* went further and clearly clarified that an "*international arbitral award, which is not affiliated to any national legal order, is an international judicial decision whose legality is examined in the light of the rules applicable in the country where its recognition and enforcement are sought*" (Cass., Civ. 1, 29 June 2007, No. 05-18.053, Putrabali).

Accordingly, awards that have been set aside at the seat of arbitration may still be recognized and enforced in France by French courts. This principle of the autonomy of the arbitral award has been recently reaffirmed by the Paris Court of Appeal (Paris Court of Appeal, 11 January 2022, No. 20/17923 and Paris Court of Appeal, 6 July 2023, No. 22/15721).

It is worth noting that, pursuant to Article 1514 CCP, which is applicable to both international arbitral awards and domestic awards rendered abroad, the principle set out by the Court of Appeal in *Putrabali* also applies as a matter of domestic arbitration when the award is rendered abroad. This view was recently confirmed in *Egyptian General Petroleum Corporation v National Gas Company* (Cass. Civ. 1, 13 January 2021, No. 19-22.932).

46. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

The issue of corruption as a matter of international arbitration, and in particular the extent of French court's review of awards challenged on the basis of corruption allegations, has been widely discussed over the last years.

In the 2010s, French courts had adopted a so-called minimalist review, which strongly relied on the principle prohibiting the review of the merits of the award (de novo review prohibition). As illustrated in the *Thales* or the *Schneider* decisions, the Paris Court of Appeal was therefore limiting its control to a *prima facie* review, i.e., the review of only "*blatant, actual and concrete*" evidence of corruption (Paris Court of Appeal, 18 November 2004, No. 2002/19606, *S.A. Thales Air Défense v. G.I.E. Euromissile*; Paris Court of Appeal, 10 September 2009, No. 08/11757, *Schneider*).

Throughout the years, the scope of the review conducted by French courts has extended, as illustrated in the decision *Société Gulf Leaders* where the Paris Court of Appeal held that French judges must conduct a legal and factual inquiry of all elements necessary to assess the alleged corruption (Paris Court of Appeal, 4 March 2014, No. 12/17681, *Société Gulf Leaders*).

In 2016, the Paris Court of Appeal then replaced the requirement of a concrete and actual violation of international public policy with a "*manifest, actual and concrete*" violation of international public policy (Paris Court of Appeal, 27 September 2016, No. 15/12614, *Indrago*).

As of 2018, French courts started to favor a so-called maximalist approach in the review of corruption allegations. In the Alstom saga for instance, French courts have recognized the importance of the red flags methodology when identifying facts of corruption and the necessity to rely on a "*sufficiently serious, precise and consistent*" body of indicia (the most recent decisions in the Alstom series are Cass., Civ. 1, 29 September 2021, No. 19-19.769 and Versailles Court of Appeal, 14 March 2023, No. 21/06191, *Alstom v. Société Alexander Brothers*).

In the *Belokon* decision, the *Cour de cassation* also consecrated the maximalist approach by reaffirming the methodology of relying on serious, precise and consistent indicia when establishing acts of corruption and indicating that such assessment "*is not limited to the evidence produced before the arbitrators*" and that the Court is not "*bound by their findings, appreciations and qualifications*". It refused the enforcement of the award because it would "*manifestly violate*" international public policy, departing from the previous case law terminology (Paris Court of Appeal, 21 February 2017, No. 15/01650, *République du Kirghizistan v. M. Belokon* confirmed by Cass., Civ. 1, 23 March 2022, No. 17-17.981).

Finally, on 7 September 2022, the *Cour de cassation* found that corruption allegations could be raised for the very first time before French courts to refuse the enforcement of the award. The Court therefore accepted corruption as an annulment ground even if it has not been raised in front of the arbitral tribunal, despite the waiver rule set out in Article 1466 CCP (Paris Court of Appeal, 17 November 2020, No. 18/02568, *Etat de Libye v. Sorelec* confirmed by Cass., Civ. 1, 7 September 2022, No. 20-22.118).

47. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

In France, the ICC quickly issued, on 17 March 2020, an urgent COVID-19 message to the dispute resolution community, advising that all communications with the Secretariat of the ICC be conducted by email and authorizing the submission of requests for arbitration and other applications electronically.

On 9 April 2020, the ICC also published a Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic. The note intends to mitigate COVID-19 related delays, provide guidance for virtual initial consultation with the parties for the organization of the case management virtual hearings as well as electronic communications and submissions.

These recommendations have been made permanent through the 2021 Arbitration ICC Rules, which now expressly authorize the parties to communicate the request for arbitration and the answer by electronic means (Articles 4 and 5) and the arbitral tribunal to decide that hearings can be held remotely after consulting the parties (Article 26(1)).

48. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

As indicated previously, as part of the measures initiated to address the COVID-19 pandemic (Question No. 46), the ICC has encouraged the parties to communicate electronically and arbitrators to hold virtual hearings, when possible, and this possibility has been made permanent in the 2021 ICC Arbitration Rules.

Article 26(1) of the Rules now provides that: "[t]*he arbitral tribunal may decide, after consulting the parties, and on the basis of the relevant facts and circumstances of the case, that any hearing will be conducted by physical attendance or remotely by videoconference, telephone or other appropriate means of communication*".

As early as 22 December 2020, the ICC had already published a Checklist for a Procotol on Virtual Hearings and Suggested Clauses for Cyber-Protocols and Procedural Orders Dealing with the Organization of Virtual Hearings, and on 29 December 2020, the institution encouraged virtual hearings in the context of Expedited Procedure and Emergency Arbitration in the Note to Parties and Arbitral Tribunals On the Conduct of the Arbitration Under the ICC Rules of Arbitration.

On 18 February 2022, the ICC launched a new working group to reflect on how technology is changing the face of arbitration. The activities of the working groups are ongoing.

49. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

In France, climate change litigation has recently become a hot discussion topic both the public and private

sectors.

In a first decision dated 1 July 2020, the *Conseil d'Etat* (which is the French Administrative Supreme Court) ordered the French administration to take measures to curb domestic emissions to ensure compatibility with national and European targets (*Conseil d'Etat*, 1 July 2020, No. 427301, *Commune de Grande-Synthe*). A few months later, on 14 October 2021, the Paris Administrative Court rendered a decision concluding that the French State failed to comply with its legal and international obligations in the combat against climate change (Paris Administrative Court, 14 October 2021, Nos. 1904967, 1904968, 1904972 and 1904976/4-1, *Association Oxfam France et al*.).

On 16 June 2023, the Paris Administrative Court also condemned the French State to indemnify air pollution victims considering that the damage caused was the result of France's faulty negligence in combating air pollution (Paris Administrative Court, 16 June 2023, Nos. 2019924 and 2019925).

Similar situations can also be found in the private sector where companies have a legal obligation to implement a so-called *devoir de vigilance* by issuing prevention plans to limit environmental risks as well as risks on human rights (Law No. 2017-399 of 27 March 2017). For instance, on 23 February 2023, the NGOs *Les Amis de la Terre France, Oxfam France and Notre Affaires à tous* filed a lawsuit against BNP Paribas alleging a breach of its devoir de vigilance on the ground that it is taking part in the climate crisis by financing fossil sources of energy.

As to human rights, the Paris Court of Appeal has recognized in the DNO decision that "*combating human rights violations safeguarded in particular by the European Convention for Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the International Covenant on Civil and Political Rights of 16 December 1966 as well as the combating of international humanitarian law violations*" are part of the French conception of the international public policy as set out in Article 1520(5) CCP (Paris Court of Appeal, 5 October 2021, No. 19/16601, DNO v Yemen). As is the case for corruption allegations, the Court of Appeal requires plain, effective and specific evidence of the alleged violation.

50. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

Under French law, international economic sanctions can be considered as forming part of the French international public policy.

In a recent case of 15 January 2020, the *Cour de cassation* held that "*the resolutions of the United Nations Security Council concerning the introduction of embargoes undoubtedly constitute the framework of a truly international public policy which is binding on all, and in particular on judges and arbitrators in international commerce*" regardless of the fact that United Nations resolutions have no direct effect, since "[w]*hat matters [...] is the claim of a norm to embody a value of public order which is a quasi-universally shared value of public policy*" (Cass. Civ. 1, 15 January 2020, No. 18-18.088).

As a result, embargo resolutions issued by the United Nations Security Council are considered part of the French international public policy.

This solution was confirmed by the Paris Court of Appeal in the *Sofregaz v. NGSC* decision of 3 June 2020 (Paris Court of Appeal, 3 June 2020, No. 19/07261, *Sofregaz v. NGSC*). In this decision, the Paris Court of Appeal confirmed that sanctions issued by the United Nations as well as the European Union are a part of the French international public policy. For sanctions issued by the United States, the Paris Court of Appeal held that "*the unilateral sanctions taken by the US authorities against Iran cannot be regarded as the expression of an international consensus*" and are not considered to be a part of the French international public policy.

51. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

The use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration has been a trending hot topic in France.

The Law No. 2019-222 of 23 March 2019, known as the "Law on programming 2018-2022 and reform for justice" has established the digitalization of arbitration proceedings by introducing provisions related to online arbitration, protection of personal data and confidentiality. This law has enabled the creation of online arbitration websites like "Fast-Arbitre" or "e-Just".

These new provisions, however, do not allow the use of artificial intelligence in arbitration proceedings.

In France, arbitration is still based on a classic framework, with the intervention of a human arbitrator who will decide by means of an award signed by the arbitrator or by the arbitration institution.

Under Article 4 of Law No. 2019-22:

- It is possible to render arbitral awards in an electronic form.
- Online arbitration services should abide by French rules on the protection of personal data and confidentiality undertakings.
- It is not allowed to have online arbitration services with no human intervention. If there is the use of an algorithm, it is necessary to inform the parties and expressly obtain their consent to it.

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