France: International Arbitration

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

For a full list of jurisdictional Q&As visit [here](#)
1. **What legislation applies to arbitration in your country? Are there any mandatory laws?**

Book IV of the French Code of Civil Procedure ("FCCP") (Articles 1442-1527) governs arbitration. In addition, Book III, Title XVI of the French Civil Code (Articles 2059-2061) governs the arbitration agreement. The decisions of the Court of Cassation and of the Paris Court of Appeal are important in interpreting the codes and specifying their content because, although there is no doctrine of binding precedent under French law, lower courts generally rely on decisions of higher courts.

French law distinguishes between domestic arbitration (FCCP Articles 1442-1503) and international arbitration (FCCP Articles 1504-1527). However, pursuant to FCCP Article 1506, several provisions of domestic arbitration apply also to international arbitration. The criterion to distinguish between domestic and international arbitration is whether interests of international trade are affected (FCCP Article 1504). This criterion is economic, rather than legal. As established by the Paris Court of Appeal in its judgment dated 5 April 1990, what matters is that the underlying economic transaction operates a transfer of goods, services, or funds, across national borders (see Société Courrèges Design v. Société André Courrèges et autres, Paris Court of Appeal, 5 April 1990 in 1992 Rev. Arb. 110).

Certain provisions of the FCCP are mandatory in arbitration and applicable to the parties and the arbitral tribunal. Several of these provisions guarantee the fairness of the arbitration proceeding. This includes the principles of due process and of equal treatment of the parties’ implemented by article 1510 of the FCCP. Additionally, French courts can deny the enforcement of an arbitral award if the award would result in a “flagrant, effective and concrete” violation of international public policy (SA Thalès Air Défense v GIE Euromissile, Paris Court of Appeal, 18 November 2004, No 2002/19606).

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 New York Convention. It entered into force in France on 24 September 1959. In practice, the New York Convention is rarely applied, as French arbitration rules on recognition and enforcement are generally more favourable than the New York Convention (Article VII (1) of the New York Convention).

France made a reciprocity reservation in the New York Convention, but it does not concern the provisions applicable to the recognition and enforcement of foreign awards. These provisions are applicable to all awards rendered in foreign countries, regardless of whether they are signatories of the New York Convention or not.

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

France has ratified several multilateral treaties such as the European Convention on

In addition, as of 1 October 2019, 94 BITs are in force between France and foreign States. France is also a member of the European Union, which as of 1 October 2019 is a party to 56 multilateral treaties in force, including the European Energy Charter.

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

French international arbitration law is not based on the UNCITRAL Model Law. There are, however, not many significant differences between French international arbitration law and the UNCITRAL Model Law. French law generally appears as more favourable to arbitration than the UNCITRAL Model Law in some respects.

For example, contrary to Article 36(1)(a)(v) of the UNCITRAL Model Law, French law provides that the setting-aside of an award by a court at the seat of the arbitration is not a ground to deny enforcement of the arbitral award in France (Omnium de Traitement et de Valorisation – OTV v. Hilmarton, French Court of Cassation, First Civil Chamber, 10 June 1997; Putrabali Société PT Putrabali Adyamulia v. Société Rena Holding et Société Moguntia Est Epices, French Court of Cassation, First Civil Chamber, 29 June 2007).

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

There are currently no impending arbitration reforms in France.

The latest reforms of the arbitration legislation in France date back to Decree No. 2011-48 dated 13 January 2011, which codified some well-established jurisprudence and developed new principles, and Law No. 2016-1547 dated 18 November 2016 “for the modernization of XXIst century justice.”

Article 2061 of the French Civil Code was amended by article 11-3°of Law No. 2016-1547. It now provides that arbitration clauses are only enforceable against the parties who concluded these clauses in their professional capacity.

Additionally, this new law promotes alternative dispute resolution in its article 4, which provides that:

>“Under penalty of inadmissibility, which the judge may raise ex officio, referral to the court of first instance by declaration to the registry must be preceded by an attempted conciliation conducted by a conciliator of justice, except:
1° If at least one of the parties requests the approval of an agreement;

2° If the parties justify further steps taken to reach an amicable resolution of their dispute;

3° If the absence of recourse to conciliation is justified by a legitimate reason.” (free translation)

However, there has been no Decree implementing this provision into the FCCP yet. This means that it is not yet in force as French arbitration law.

This year, Law No. 2019-222 dated 23 March 2019 “on programming 2018-2022 and reform for justice” introduced two new articles 4-1 and 4-2 to article 4 of Law No. 2016-1547. These provisions will subject online alternative dispute resolution services (conciliation, mediation and arbitration) to obligations relating to personal data protection. In addition, article 4-2 provides for the possibility of rendering arbitral awards in electronic form under certain conditions. Law No. 2019-222 has also not yet been implemented by Decree so as to incorporate these provisions into the FCCP.

Finally, on 7 February 2018 two protocols were concluded between the Ministry of Justice, the Paris Bar Council and the Paris Court of Appeal on the one hand, and the Ministry of Justice, the Paris Bar Council, and the Paris Commercial Court on the other hand. These protocols created two international Chambers, one at the Paris Court of Appeal, and one at the Paris Commercial Court, to deal with disputes arising out of international trade contracts (regardless as to where the substantive applicable law is French law or a foreign law). The protocols are applicable to proceedings initiated on or after 1 March 2018. These international chambers offer a tailor-made procedure for international disputes, under the supervision of the judge: English can be used in the debates and proceedings; witnesses and experts can be heard and cross-examined in English; exhibits can also be communicated in English.

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

The best-known arbitral institution in France is the International Chamber of Commerce (ICC) which is headquartered in Paris. The latest version of the ICC Rules is dated 1 March 2017.

Other prominent arbitration institutions based in Paris include:

○ Paris Centre for Mediation and Arbitration (Centre de médiation et d’arbitrage de Paris, CMAP). Its latest arbitration rules became effective on 1 March 2012.
International Arbitration Chamber of Paris (Chambre arbitrale internationale de Paris). Its latest arbitration rules became effective on 1 July 2019.

Paris also offers specialized arbitration centres, for shipping or insurance disputes (Paris Maritime Arbitration Chamber, French Reinsurance and Insurance Arbitration Centre).

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

In domestic arbitrations, an arbitration agreement must be in writing. It can be included in a written communication or in a document to which reference is made in the main agreement (FCCP Article 1443).

In international arbitrations, arbitration agreements are not subject to any form requirement (FCCP Article 1507). In practice, the existence of an arbitration agreement is evidently easier to prove if it has been recorded in some form.

French law provides no other substantive requirement to the validity of an arbitration agreement except for the arbitrability of the dispute (French Civil Code Article 2059).

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

French law recognizes the principle of separability of arbitration agreements from the main contract (FCCP Articles 1447 and 1506).

The nullity of the main contract does not affect the validity of the arbitration agreement and an arbitral tribunal has jurisdiction to rule on claims as to the nullity of the main contract if that contract contains an arbitration clause that is not manifestly void. The jurisdiction of the arbitral tribunal is based on the principle of competence-competence (see at 19 below).

French courts have in fact established a “substantive” rule of international arbitration (“règle matérielle”) regarding the legal “autonomy” of the arbitration clause (Municipality of Khoms El Mergeb v. Dalico, Court of Cassation, First Civil Chamber, 20 December 1993, No. 91-16.828). Under this principle, an arbitration clause is presumed valid unless otherwise proven (Zanzi v. J.de Coninck and others, Court of Cassation, First Civil Chamber, 5 January 1999, No. 96-21.430).

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

○ Multi-contract arbitration:

French law does not preclude the parties from bringing claims arising out of more than one
contract in one arbitral proceeding.

FCCP Article 1442 defines an arbitration clause as “an agreement by which the parties to one or more contracts undertake to submit to arbitration any disputes that may arise in relation to that or those contracts.” This provision clearly permits multi-contract arbitration on the condition that the parties have so agreed. However, this provision only applies to domestic arbitration.

- Multi-party arbitration:

Multi-party proceedings have received particular attention under French law following the famous Dutco case (Dutco v BKMI and Siemens, French Court of Cassation, First Civil Chamber, 7 January 1992, No. 89-18.708). In that case, the French Supreme Court held that the principle of equality of the parties in the designation of arbitrators is a matter of public policy, which may not be waived before the emergence of a dispute. Therefore, two or more defendants cannot be required to appoint an arbitrator jointly if the claimant has had the opportunity, alone, to designate an arbitrator. As a result of this decision, FCCP Article 1453 following the 2011 Decree provides that if there are more than two parties to the dispute and they fail to agree on the procedure for constituting 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 (the juge d’appui) shall appoint the arbitrator(s). This article specifically applies to international arbitration but not to domestic arbitrations.

10. **In what instances can third parties or non-signatories be bound by an arbitration agreement?**

French contract law provides that a contract only binds the parties to that contract (Civil Code Article 1199). The same rule applies to arbitration agreements: as a matter of principle, only the parties to the arbitration agreement are bound by this agreement. There are however three main exceptions where a third party can be bound by an arbitration clause that it has not signed:

1. When there is a chain of contracts involving transfer of contractual rights, the arbitration clause will be transferred as an accessory to the substantive rights being transferred *(ABS and AGF v Amkor technology, Amkor technology, Amkor technology euroservices, Amkor Wafer and Anam semiconductor, Court of Cassation, First Civil Chamber, 27 March 2007, No. 04-20842, Bulletin 2007 I.129).*

2. When a third party directly takes over the rights and obligations of the signatory. *(Films du Jeudi v Taurus Films, Beta Films and Omnia Film, Court of Cassation, First Civil Chamber, 8 February 2000, No. 95-14330).*

When a third party is directly involved in the negotiation, performance or termination of a contract containing an arbitration clause, French courts presume that the party has implicitly consented to be bound by the arbitration agreement. *(Iakovoglou Prodomos and Oebe TH*
Although France is acclaimed as a hotbed for the application of the “group of companies doctrine”, to be clear, the existence of a group of companies is not sufficient in and of itself to extend an arbitration agreement to third parties. It is merely a circumstance that may favour such an extension, which requires interpreting a party’s behaviour to infer its consent to be bound by the arbitration agreement. French courts are more likely to compel a non-signatory to arbitrate in the context of international arbitration than in the context of domestic arbitration. For example, in the case of a group of companies, where the parent company of the signatory was actively involved in the negotiation and performance of the contract, the Paris Court of Appeal held that the parent was bound by the arbitration clause contained in the contract (Paris Court of Appeal, 21 October 1983, 1984 Rev. Arb., 98).

French courts have also accepted that an arbitration clause signed by a private party and a state-owned company can be extended to a state that did not sign the arbitration clause in certain circumstances (Paris Court of Appeal, 17 February 2011, 2011 Rev. Arb. 286). Most specifically, a third party (even where it was not a party to the arbitration) may be liable for an arbitration award under the piercing of the corporate veil and agency doctrines. For example, an award rendered against a state can be enforced against a state-owned company if the party seeking enforcement of the award can prove that the company is in fact the alter ego of that State (Société nationale des pétroles du Congo, Paris Court of Appeal, 3 July 2003, No. 2002/03185). Similarly, an award rendered against a subsidiary would be enforceable against its parent company if the conditions for piercing the corporate veil under French law are met.

11. 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 tribunal must decide the dispute in accordance with the rules of law chosen by the parties. Absent such choice, the tribunal may choose the rules of law it considers appropriate. The tribunal need not use specific conflict-of-law rules in doing so. However, it must, in all cases, consider trade usages (FCCP Article 1511). Parties may agree to exclude the application of mandatory French laws that are not part of international French public policy. In international arbitration, the parties may also empower the arbitral tribunal to rule as amiable compositeur, i.e. to have it decide the dispute ex aequo et bono (FCCP Article 1512).

In domestic arbitration, FCCP Article 1478 provides that the arbitral tribunal decides the dispute according to the rules of law, unless the parties have empowered the tribunal to rule as an amiable compositeur. The rules of law chosen by the parties cannot however breach French mandatory rules or rules of public policy. Where no rules of law have been chosen by the parties, general conflicts of law rules apply.

12. Are any types of dispute considered non-arbitrable? Has there been any evolution in
Parties may have recourse to arbitration with respect to any right that they freely enjoy (French Civil Code, Article 2059). Article 2060 of the French Civil Code provides that the only disputes that cannot be resolved by arbitration are those relating to civil status and capacity of natural persons, divorce and judicial separation of spouses, or disputes involving public authorities and entities and more generally any matter of public policy.

In the case of an international employment contract containing an arbitration clause, the French courts once considered that the arbitration clause was not valid and that the employee was free to initiate a claim before the French Employment Courts (French Court of Cassation, Social Chamber, 16 February 1999, No. 96-40.643). Now, according to Article 2061 of French Civil Code, an arbitration clause involving a consumer is legal. Nevertheless, following the 2016 reform, the second paragraph of this article provides that the clause cannot be relied on against a party which did not contract in a professional capacity.

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

As a matter of principle, the parties are free to determine the number of arbitrators and the manner in which they are appointed, directly or by reference to arbitration rules (FCCP Articles 1444 and 1508). Arbitrators must be and remain independent and impartial (FCCP Articles 1456 and Article 1506).

In international arbitration the parties may, directly or by reference to institutional arbitration rules, appoint one or several arbitrators, or provide the conditions for their appointment in their arbitration agreement (FCCP Article 1508). The parties are free to determine the number of arbitrators.

In domestic arbitration, the tribunal must be composed of an uneven number of arbitrators; otherwise the arbitral tribunal is completed by the addition of one arbitrator (FCCP Article 1451). Only physical persons may act as arbitrators. If the arbitration agreement designates a legal person, the same will only be allowed to administer the arbitration (FCCP Article 1450). In practice, parties more often refer to a physical person rather than to a legal person to act as arbitrator in their arbitration agreement.

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

The default provisions on the selection of a tribunal are set out at FCCP Articles 1452 and 1453. Article 1452 FCCP provides:

- Where the dispute is to be resolved by a sole arbitrator and the parties fail to agree on an arbitrator, the same will be appointed by the juge d’appui or by the administering institution.
- Where the dispute shall be resolved by three arbitrators, each party appoints an
arbitrator, and the co-arbitrators shall designate a third arbitrator, who will act as the president of the tribunal. If either party fails to appoint an arbitrator within one month from the receipt of a request to that effect from the other party, or, if the co-arbitrators fail to designate a third arbitrator within one month from the date on which they accepted their appointment, the appointment falls upon the arbitration institution or the juge d’appui.

As mentioned above at 9., in multi-party arbitration, the administering institution, or, alternatively, the juge d’appui may appoint the arbitrator where the multiple parties cannot agree (FCCP Article 1453).

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

At the parties’ request, the juge d’appui can appoint one or more arbitrators when the proceeding is not administered.

In international arbitration, unless the arbitration agreement provides otherwise, the juge d’appui shall be the President of the Tribunal de Grande Instance of Paris if one of the following conditions is met (FCCP Article 1505):

- The seat of arbitration is in France; or
- The parties have agreed that French procedural law applies to the arbitration; or
- The parties have expressly granted jurisdiction to the 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 juge d’appui is the President of the Tribunal de Grande Instance or the President of the Tribunal de commerce (French Commercial court) if so provided by the arbitration agreement. In the absence of a specific agreement of the parties, the Tribunal de Grande Instance which has territorial jurisdiction is the Tribunal of the seat of arbitration. In the absence of such choice, the judge that has territorial jurisdiction shall be that of the defendant’s domicile, or the claimant’s if the defendant does not reside in France (FCCP Article 1459).

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

It is the arbitrator’s duty to inform the parties of any circumstances that could affect his independence or impartiality; if he fails to do so, the parties can challenge his appointment (Article 1456 CPP). In addition, the arbitrator can be removed by unanimous consent of the parties (Article 1458 CCP). If the parties to the arbitration do not unanimously consent to an arbitrator’s removal, it will be up to the administering institution or to the juge d’appui to decide whether the arbitrator should be removed. The time limit to file an application before the juge d’appui is one month following the disclosure or the discovery of the fact at issue.
Those provisions apply both to domestic and international arbitration proceedings.

As a rule, the arbitrator must perform his mandate until the end of it, i.e. from his appointment until the final award has been rendered, unless he justifies an impediment or a legitimate cause of abstention or resignation (FCCP Article 1457).

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

A truncated tribunal can lead to the interruption of the proceedings, making it impossible for the tribunal to continue the arbitration. This type of situation usually follows an arbitrator’s death, removal, incapacity or refusal to deliberate. This issue will be resolved according to the applicable arbitration rules, or otherwise by agreement of the parties.

18. Are arbitrators immune from liability?

Under French law, arbitrators cannot be held liable for what they have decided, even if they make a legal or factual error (Bompard v. Consorts C. and others, Paris Court of Appeal, 22 May 1991). However, in the exercise of their function, arbitrators are liable if they breach obligations arising from their relationship with the parties such as rendering an award once the deadline for doing so has passed (Louis Juliet and Benoît Juliet v. Paul Castagnet, Pierre Couilleaux and Adolphe Biotteau, French Court of Cassation, First Civil Chamber, 6 December 2005, No. 03-13.116). Arbitrators must also provide each party a reasonable opportunity to present its factual and legal arguments, and a reasonable opportunity to respond to the arguments made by the other parties before the arbitral tribunal decides on any issue in the case. In the Blow Pack Case (21 May 2019, No. 17/12238), the Paris Court of Appeal upheld the judgment of the Tribunal de Grande Instance, holding that a breach of due process by the arbitral tribunal (which, in that case, led to the partial annulment of the underlying arbitral award), relates to the tribunal’s jurisdictional power, and does not trigger the arbitrator’s personal (civil) liability.

Under French criminal law, arbitrators may also be found liable for corruption (French Penal Code, Articles 434-9 and 435-7).

19. Is the principle of competence-competence recognised in your country?

In France, the principle of competence-competence is recognized and applied both in domestic and international arbitrations (FCCP Articles 1448 and 1465).

The principle implies that:

- The arbitral tribunal has jurisdiction to rule on its own jurisdiction in the first instance (also referred to as the “positive” aspect of competence-competence).
- French courts must decline jurisdiction over a dispute that is subject to an arbitration
Nevertheless, before the constitution of the tribunal, a court can accept jurisdiction if the arbitration agreement is manifestly void or manifestly not applicable. However, French courts interpret this prima facie inquiry restrictively, i.e. any ambiguity is resolved in favour of the arbitral tribunal's power to decide the issue (Alimport v. Ebonu, Court of Cassation, Common Chamber, 21 February 2006, No. 04-11030).

Furthermore, domestic courts can review the arbitral tribunal's jurisdiction when requested to set aside an award. In such case, the court reviews the issue *de novo* without being bound by the factual and legal findings of the arbitral tribunal.

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

As mentioned at 19., pursuant to FCCP Article 1448, a French court must decline jurisdiction when a dispute is brought before it despite the existence of an arbitration agreement unless the matter has not yet been referred to the arbitral tribunal and the arbitration agreement is manifestly void or manifestly unenforceable.

Therefore, if the dispute is subject to an arbitration agreement, the court will declare itself incompetent unless the arbitration proceedings have not commenced and the agreement is manifestly null and void or inapplicable (French Court of Cassation, First Civil Chamber, 28 November 2006, No. 04-10384).

21. **How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?**

French law does not impose specific procedural steps. Parties can follow the proceedings chosen in their arbitration agreement. Usually, the proceedings commence by an unequivocal service of a notice of arbitration on the other party.

The parties may agree upon contractual limitation periods or time bar applicable to arbitral proceedings. Absent any such agreement, limitation periods are governed by the law governing the merits of the dispute (Civil Code Article 2221). According to this provision, a general limitation period of 5 years applies to contractual and tortious matters from the date that the parties become aware (or should have been aware) of the event giving rise to the dispute. The submission of the dispute through the arbitration agreement interrupts the limitation period (Civil Code Article 2241; Court of Cassation, First Civil Chamber, 11 December 1985, No. 84- 14.209).

22. **In what circumstances is it possible for a state or state entity to invoke state
immunity in connection with the commencement of arbitration proceedings?

Sovereign States and emanations of the State as a matter of principle enjoy immunity from jurisdiction in France. According to this principle, sovereign States and emanations of the State may not be sued before French courts with regard to acts made in their sovereign capacity (jure imperii). On the other hand, States are not immune from jurisdiction when the dispute relates to their acts of a private or commercial nature (jure gestionis).

A waiver of immunity from jurisdiction may be provided expressly, in terms that must be certain, express and unequivocal. A waiver may also be implied if the State or State-emanation agreed to submit disputes to arbitration or failed to raise an immunity defence at the outset of the proceedings before French domestic courts (UNESCO v. Boulois, Paris Court of Appeal, 19 June 1998, Rev. Arb. 343 (1999)). A State can, however, challenge the jurisdiction of an arbitral tribunal by arguing the absence of consent to the arbitration agreement.

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

French law does not provide rules on the default of a respondent to participate in an arbitration. French courts recognize the possibility to proceed with arbitral proceedings, irrespective of whether the respondent participates in the arbitration.

The Paris Court of Appeal imposes two requirements to enforce or recognize the award:

- Firstly, the respondent must have had the opportunity to participate in the proceedings.
- Secondly, the arbitral proceeding must take account of both sides’ (actual or potential) arguments.

Nothing under French law allows the courts to compel a respondent to participate in the arbitration. In practice, the administering institution or the juge d’appui will nominate the arbitrator in lieu of the respondent.

24. Can local courts order third parties to participate in arbitration proceedings in your country?

See above at 10.

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

Prior to the constitution of the arbitral tribunal and unless otherwise agreed by the parties, French courts have the power to order provisional or conservatory measures as well as any
measures relating to the taking of evidence (FCCP Article 1449).

Any such application for interim relief must be made to the President of the Tribunal de Grande Instance or of the Commercial Court. The application is decided through expedited proceedings based upon an ex parte request ("sur requête" or "en référé") FCCP Article 1449).

Once the arbitral tribunal is constituted, the power to order conservatory or interim measures shifts to the arbitral tribunal. The arbitral tribunal can order any type of provisional or preliminary measures that it deems appropriate. Whereas in the past, the parties were free to continue to seek urgent interim relief from French courts after the constitution of the arbitral tribunal, Article 1449 which results from the 2011 Decree provides that French courts may only grant interim relief “as long as the arbitral tribunal has not been constituted.”

However, French courts retain exclusive jurisdiction to order conservatory attachments or judicial security, as well as to ensure satisfaction of a future award (FCCP Article 1468). In addition, recourse to a court may be necessary to enforce any measure ordered by the arbitral tribunal that is not voluntarily complied with.

26. 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?

In general, arbitral tribunals have the right to undertake all necessary steps concerning evidentiary matters.

Parties can freely agree on the procedural rules applicable to the arbitration proceedings and confer specific powers on the arbitral tribunal.

Pursuant to FCCP Article 1467, the arbitral tribunal can order investigatory measures and hear any person. Moreover, the arbitral tribunal can order a party to disclose an element of evidence. Unless otherwise stipulated, the arbitral tribunal has the power to rule on a request for verification of handwriting or a claim of forgery in accordance with FCCP Articles 287 to 294 and Article 299 (FCCP Article 1470). Arbitrators may hear any person. Witnesses need not be sworn in before the arbitral tribunal (FCCP Articles 1469 and 1506). In the absence of specific indications in the arbitration agreement, the arbitral tribunal has broad discretionary power as regards the probative force of testimony (Fichtner GmbH & CO.KG. v LKSUR, Paris Court of Appeal, Pole 1 - 1st Chamber, 17 December 2009).

Local courts may assist in obtaining evidence. After the constitution of the arbitral tribunal, if any evidence, or official/authentic (“acte authentique”) or private deed (“acte sous seing-prévé”) is held by a third party, the President of the Tribunal de Grande Instance may
intervene on a party’s request. (FCCP Articles 1469 and 1506). Prior to the constitution of an arbitral tribunal, the President of the Tribunal de Grande Instance (or of the Commercial Court), at a party’s request, may order measures related to the obtaining of evidence which might be used in a forthcoming arbitration (FCCP Articles 145, 1449 and 1506).

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

France does not impose specific ethical codes or standards on arbitrators or counsel. However, any counsel or arbitrator admitted to the French bar, must respect, even when abroad, the Code of Ethics of the French Bar including the National Rules applicable to the Profession of Attorney ("Règlement Intérieur National de la Profession d'Avocat"), and the Code of Conduct for European Lawyers.

Under the resolution adopted on 26 February 2008 by the Paris Bar, lawyers admitted to the Paris Bar are expressly allowed to prepare witnesses for cross-examination in arbitral proceedings.

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

FCCP Article 1464 provides that subject to legal obligations and unless the parties otherwise agree, the arbitral proceedings are subject to confidentiality. However, this obligation only applies to domestic arbitration.

In order for the arbitral proceedings to be subject to confidentiality in an international arbitration, parties who select France as the seat of the arbitration need to expressly include a confidentiality undertaking in their arbitration agreement. Parties can also submit their arbitration to institutions that provide in their Rules for the confidentiality of the arbitral proceedings.

In any event, the deliberations of the arbitral tribunal are secret (FCCP Articles 1479 and 1506).

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

There are no specific provisions related to arbitration costs under French law. Usually, in ad hoc arbitration, fees are determined in agreement between the parties and the arbitral tribunal. Institutional arbitration rules usually include specific provisions on costs.

In general, parties can freely choose a legal fee structure such as flat fees or an hourly rate. Lawyers admitted to practice in France cannot be paid on a purely contingency fee basis. Success fees are only allowed in addition to a non-contingent fee arrangement. However,

There is also no method under French law to calculate costs and fees, such as the fees and expenses of the arbitrators and the parties’ legal and other related costs (travel cost, hearing costs, administrative fees and expenses, experts’ fees). Both parties are liable to the arbitral tribunal for the payment of their fees (Getma v. Republic of Guinea, Paris Court of Appeal, 30 June 2015).

The allocation of costs between or among the parties is not determined by specific rules. Therefore, arbitrators have wide discretion to divide the costs unless the parties have agreed otherwise.

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

An arbitral tribunal can award interest. The arbitral tribunal must determine the relevant factors (including the relevant law) to determine the rate. Under French law, the legal interest rate, where applicable, is fixed by Decree each semester.

There are two types of late payment interest (“intérêts moratoires”) in France:

- According to FCCP Article 1153, interest on damages (“intérêts sur les dommages-intérêts”) must be claimed by the parties. It runs from the notice to pay or its equivalent, which in international arbitration would often be the request for arbitration.
- The arbitral tribunal has wide latitude to decide from when post-award interest (“intérêts de condamnation”), pursuant to FCCP Article 1553-1 should run (Fontan Tessaur v. Société ISS Abilis France, Paris Court of Appeal, 1st Chamber, 25 mars 2004, Arb., 2004.671). However, for interest related to enforcement (exequatur), the French Court of Cassation has stated that interest runs from the date of the enforcement decision (RSCC v. Orion Satellite, French Court of Cassation, First Civil Chamber, 6 March 2007, case No. 04-17.127).

31. **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?**

Under French law, there are two requirements for the recognition and the enforcement of an award. The first is substantial and the second is formal.

Firstly, the award must not be contrary to French public policy in case of a domestic arbitration (FCCP Article 1488), or to French international public policy in case of an international arbitration (FCCP Article 1514).
Secondly, Parties must submit original or duly authenticated copies of the award and of the arbitration agreement in order to prove the existence of the award (FCCP Articles 1487 and 1488 for domestic arbitration; FCCP Articles 1514 and 1515 for international arbitration). In international arbitrations, the Parties must provide a translation of the arbitration agreement and of the award if they are drafted in a foreign language. The translation must be by a translator whose name appears on a list of court experts or a translator accredited by the administrative or judicial authorities of another Member State of the European Union, a Contracting Party to the European Economic Area Agreement or the Swiss Confederation (FCCP Article 1515).

There is no requirement under French law that an award rendered in international arbitration be reasoned, substantiated or motivated. However, a domestic award must state reasons (FCCP Article 1492).

32. 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?

In practice it tends to take up to around two to three weeks to obtain an exequatur order to enforce an arbitral award from the Tribunal de Grande Instance.

Under French law only a party that has an interest in the arbitration proceedings can bring a motion for recognition and enforcement of the award. The motion is brought on an ex parte basis, without notice to the award debtor.

33. 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?

The standard of review for recognition and enforcement of a foreign award or an award rendered in France in an international arbitration is similar to the enforcement regime of a domestic award. The only exception concerns the standard to determine whether the award is manifestly contrary to public policy which refers to French international policy in case of an international award, and French internal public policy in the case of a domestic award (FCCP Article 1488).

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

Arbitrators are free to order a wide range of remedies such as payment of damages or injunctions. Once ordered by an arbitral tribunal, these remedies can be enforced by domestic courts. There are no restrictions in French law on the types of remedies that can be awarded. However, the damages awarded by the arbitral tribunal must not be contrary to French (international or domestic) public policy. The Court of Cassation does not consider punitive damages as contrary to international public policy unless they are “disproportionate
35. **Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?**

Arbitral awards rendered in France can be challenged and set aside by French courts.

In domestic arbitration, enforcement of an award is stayed upon the filing of an appeal or action to set aside, or until the time limit for such an appeal or application has expired, unless the award states that it is provisionally enforceable (FCCP Article 1496). By contrast, FCCP Article 1526 provides that, in international arbitration, neither an action to set aside an award nor an appeal against an enforcement order shall suspend enforcement of an award. As a result, an award is immediately enforceable even if it has been challenged, except where the Court of Appeal suspends or limits the enforcement to preserve the rights of one of the parties.

In international arbitration, the award can be set aside but not appealed. As a rule, when the place of arbitration is in France, a party can challenge an award before the Court of Appeal of the place where the award was made (FCCP Article 1519).

FCCP Article 1520 provides five grounds to set aside an award in international arbitration:

- The tribunal arbitral wrongly assumed or declined jurisdiction;
- The arbitral tribunal was not properly constituted;
- The arbitral tribunal ruled without complying with the terms of the arbitral reference;
- Due process was violated;
- Recognition or enforcement of the award would be contrary to French international public policy.

In domestic arbitration, the award can be appealed if the Parties have so agreed (FCCP Articles 1489 and 1490). If the Parties have not provided for a right to appeal, the domestic award can be set aside on 6 grounds (FCCP Article 1492):

- Same 5 grounds as above concerning international arbitration (except that French domestic public policy is considered for domestic awards, not international public policy).

There are no reasons stated for the award, there is no mention of the date of the award, there is no indication of the name or signature of the arbitrators, or, the award was not rendered by a majority.

36. **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)?

Parties to an international arbitration can waive their right to bring an action to set aside an award (FCCP Article 1522). Where the right to set aside has been waived in international arbitration, the parties still retain the right to appeal an enforcement order issued by a French Court (FCCP Article 1522). In domestic arbitration, however, the right to bring an action to set aside an award is mandatory – that is, the right cannot be waived – unless the parties have provided for a right to appeal (FCCP Article 1491).

37. **To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?**

Pursuant to Article L 111-1-2 of the Code of Civil Enforcement Procedures, assets belonging to a sovereign State are, as a matter of principle, immune from enforcement in France, unless:

(i) the State has expressly consented to the taking of interim and/or enforcement measures;

(ii) the State has earmarked or allocated assets for the satisfaction of the relevant claim; or

(iii) a judgment or an arbitral award has been rendered against the relevant State and the asset concerned (a) is in use or intended for use for purposes other than non-commercial purposes; and (b) has a connection with the entity against which the proceeding was brought.

Under Article L 111-1-1 of the Code of Civil Enforcement Proceedings a party must apply for prior judicial authorisation to carry out any interim or enforcement measures against the assets of a foreign State. Such application is brought ex parte and heard by the President of the Paris First Instance Court.

Under Article L 111-1-2 (1) of the Code of Civil Enforcement Proceedings, a State may waive its immunity from enforcement. Such waiver must be express. With respect to assets used or intended for use in the operation of the State’s diplomatic mission, an express and special waiver is required (Article L 111-1-3 of the French Code of Civil Enforcement Procedures).

38. **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?**

French courts are very reluctant to allow the attachment and seizure of assets belonging to entities other than the debtor itself. As a matter of principle, arbitral awards can be invoked against third parties (“opposables aux tiers”) in both domestic (FCCP Article 1484; *Camaieu SA & Camaieu International v. Montrico*, Court of Cassation, Commercial chamber, 23 January 2007, No. 05-19.523; *ITM Entreprises, ITM Sud Est et Ulade & Prodim Grand Est*, Court of Cassation, Commercial chamber, 2 December 2008, No. 07-17.539) and
In domestic arbitration, third parties can object to the recognition of an award through the third-party proceedings ("tierce opposition") (FCCP Article 1500). Contrary to the setting-aside of the award which has effect erga omnes, third-party proceedings only retract or vary the award in favour of the third party who impugns it (FCCP Article 582). This proceeding is available in three situations (FCCP Article 583):

- The third party or non-signatories show “an interest” and was neither a party to nor represented in the arbitration proceedings.
- They are creditors or assignees of a party and the award violates their rights ("violent leurs droits")
- Their objection is made in their capacity as creditors or assignees of a party.

When an award-creditor holds a debt against a State, the French courts will only allow the creditor to seize the assets of a State-owned entity in satisfaction of the State’s debt provided that the State-owned entity can be shown to be a mere “emanation” (alter ego) of the State. Under French law, this is a difficult standard to meet.

To prove that a State-owned entity is an emanation of the State, French case law requires proof that the relevant company:

- lacks functional independence from the State, which requires showing a “permanent control of the State over the entity’s day-to-day existence” (CA Paris, 31 October 2013, No 12/16888; CA Paris, 31 January 2013, No 12/10267); and
- does not have a separate asset base (“patrimoine”) from that of the State (see French Supreme Court, First Civil Section, 6 February 2007, Société Nationale des Pétroles du Congo Holdings Ltd, No 04-13.108 and 04-16.889).

39. Have courts in your jurisdiction considered third party funding in connection with arbitration proceedings recently?

This issue has not been addressed much before French courts.

In 2006, the Versailles Court of Appeal (Sté Veolia Propreté c. Fortis AG, Versailles, 12ème Ch. Sect. 2, 1 June 2016, No. 05/01038) was asked to decide if a successful party in an arbitration could claim the third-party funder who had funded the arbitration to pay the arbitration fees in lieu of the liable party. The Versailles Court of Appeal declined jurisdiction in favour of the German courts. However, it did not express any doubt regarding the validity of the third-party funding. It merely observed that the funding agreement is a sui generis contract, unknown to EU Member States with the exception of States with a Germanic culture.

On 21 February 2017, the Paris Bar Council ("Conseil de l’Ordre") approved a resolution
confirming that third party funding of legal proceedings in general is allowed under French law. The resolution requires that special attention be paid to the potential interference by a third party in the attorney-client relationship.

Moreover, the resolution addresses the issue of whether the funding arrangement should be disclosed to the arbitral tribunal. A lawyer should advise the client to disclose the existence of any funding arrangement to the arbitral tribunal and warn the client of potential consequences that lack of disclosure may create, such as annulment or problems regarding enforcement.

According to the resolution, French lawyers should not communicate with, or give advice to the third-party providing funds to their clients. They must not provide any information to third party funders or have meetings with them in the absence of their client.

40. **Is emergency arbitrator relief available in your country? Is this frequently used?**

French Law does not include provisions on emergency arbitration. However, parties can have access to an emergency arbitrator by agreeing to arbitral rules, such as the ICC Arbitration Rules or the AFA Rules, that provide for emergency arbitration procedures. Where arbitral rules provide for the possibility to appoint an emergency arbitrator, those provisions are upheld in France as a matter of contract (see with regard to the pre-arbitral referee Rules: *Société Nationale des Pétroles du Congo v. Republic of Congo, Total Fina Elf E & P Congo*, Paris Court of Appeal, 29 April 2003, 2003 Rev Arb 1296). The number of requests for emergency arbitration before the ICC has increased to 25 in 2018 (White & Case, ICC Task Force on Emergency Arbitrator Proceedings releases findings, 15 April 2019).

41. **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?**

There is no expedited or simplified arbitration procedure under French Law. The only way to access expedited procedures is for the parties to submit their arbitration to the rules of arbitral institutions that provide for such procedures. In France, institutions such as the ICC and the International Arbitration Chamber of Paris (CAIP) offer expedited proceedings.

As mentioned above at 6, Article 30 and Appendix VI (“Expedited Procedure Provisions”) of the ICC Rules came into force in March 2017. This procedure applies only if:

- the arbitration agreement was concluded after 1 March 2017; and;
- the amount in dispute does not exceed USD 2,000,000, and;
- the parties have not opted out of the Expedited Procedure Rules in the arbitration agreement or at any time thereafter.

Under ICC Rules Article 30, the procedure is simplified, and the final award is rendered
within six months from the case management conference.

Since July 2019, the CAIP introduced a rapid and an accelerated arbitration procedure called “P.A.R” and “PARAD.” Parties may have recourse to the P.A.R. arbitration procedure where the money claim does not exceed in principal the sum of EUR 100,000 and to PARAD when the claim does not exceed EUR 150,000 (Article 3.1 of Annex II and Article 3.A of Annex II of the CAIP).

42. Have measures been taken by arbitral institutions in your country to promote transparency in arbitration?

Recently, the ICC Court started publishing a note to Parties and Arbitral Tribunals on the conduct of arbitration, which enhances transparency as described below. Its latest version which can be found on the ICC’s website, is dated 1 January 2019.

At the request of any of the parties, the ICC Court may provide the reasons in respect of:

- A decision on a challenge to an arbitrator pursuant to Article 14 of the ICC Rules;
- A decision to initiate a replacement of an arbitrator on the ICC Court’s motion under Article 15(2) of the ICC Rules;
- Decisions taken in accordance with Article 6(4), (prima facie decisions on jurisdiction) and Article 10 (consolidation of arbitration proceedings).

For arbitration proceedings conducted under the ICC Rules before the entry into force of the 2017 Rules, a request for disclosure of the reasons must be made jointly by all the parties. Any request must be made before the decision for which reasons are sought. The ICC Court shall decide in its sole discretion, whether to accept or reject an application for disclosure of reasons.

The ICC Court aims to promote transparency without compromising confidentiality expectations. In accordance with this policy, unless the parties agree otherwise, the Court of arbitration shall publish on the ICC website, for arbitration proceedings registered on or after 1 January 2016, the following information:

- The names of the arbitrators;
- The nationality of the arbitrators;
- Their role in a tribunal (President, sole arbitrator, party-appointed arbitrator);
- The terms of their appointment;
- Whether the arbitration is pending or concluded.

Disclosure regarding independence and impartiality by arbitrators also concerns non-parties having an interest in the outcome of arbitration.
Awards rendered on or after 1 January 2019 in ICC arbitrations will be published under the following conditions:

- Final awards made on or after 1 January 2019 may be published in their entirety at least two years after the date of their notification. The parties may agree on a longer or shorter period for publication.
- At any time before publication, a party may object or request that any award be anonymized partially or entirely.
- If a confidentiality agreement covers some aspects of the arbitration or award, publication will require the specific consent of the parties.

Moreover, the ICC Court also publishes information on the nature of the industry sector involved in the dispute and the name of counsel representing the parties, for all arbitrations filed after 1 July 2019.

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

France does not expressly promote diversity in the choice of arbitrators and counsel.

However, several institutions have signed the Equal Representation in Arbitration Pledge, calling for an increase in the number of women appointed as arbitrators with the goal of full parity. Some of the members are law firms with offices in France or arbitration institutions such as the LCIA, HKIAC, SIAC and ICC. The ICC has revealed a surge in the number of women appointed and confirmed by it, from 136 in 2015 to 273 in 2018 (statistics available on the ICC Website).

As far as the choice of counsel is concerned, this issue has not been dealt with and seems difficult to address from a regulatory perspective since the parties remain entirely free to choose their counsel.

44. **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?**

Most recently, an Egyptian domestic award that was set aside in Egypt because it was considered contrary to public policy was held enforceable by the French Court of Appeal (*Egyptian General Petroleum Corporation v. National Gas Company* (NATGAS), Paris Court of Appeal, 21 May 2019, No. 17/19850). In this case, the Cairo arbitral tribunal on 12 September 2009 ordered EGPC to pay a sum of approximately 255,000,000 Egyptian pounds (about EUR 30 Million). This award was enforced by the president of the Paris Court of First Instance and then subject to several appeals before the Court of Appeal and Court of Cassation (*Egyptian General Petroleum Corporation v. National Gas Company* (NATGAS), Court of Cassation, First Chamber, 1rst June 2017 No. 16-130729).
The Paris Court of Appeal finally confirmed the exequatur order. In doing so the Court stated: Articles 1498 et seq., now 1514 et seq., on the recognition and enforcement of arbitral awards are applicable to both international arbitral awards and to awards rendered abroad, regardless of their domestic or international character. The lawfulness of such awards is examined in the light of the rules applicable in the country where their recognition and enforcement are sought, the purpose of exequatur being to welcome foreign awards into the French legal system under the conditions it has imposed.” (free translation)

45. Is corruption an issue that is regularly raised in your jurisdiction? What standard do local courts apply for proving of corruption?

Since at least 2004, French courts have had to deal with corruption issues in arbitrations. Corruption would be included in the grounds for setting aside an international award. FCCP Article 1520 provides that the recognition or enforcement of the award may be denied if this recognition is contrary to international public policy. Regarding the violation of international public policy, recent French court decisions have expressly mentioned corruption.

The standard for refusing enforcement of an arbitral award on the grounds of public policy is a “flagrant, effective and concrete” violation of public policy. In the Belokon Case (Kirghizstan v. Belokon, Paris Court of Appeal, 21 February 2017, No. 15/01650) and in the MK Group Case (MK Group v. Onix, Paris Court of Appeal, 16 January 2018, No. 15/21703), the reviewing Court reviewed the full case record to decide whether the recognition and enforcement of the award would violate international public policy in a concrete and effective manner.

In the first judgment of the Alstom Case (Alstom Transport SA & Alstom Network UK Ltd v. Alexander Brothers Ltd, Paris Court of Appeal, 10 April 2018, No. 16/11182), the Paris Court of Appeal considered that an agreement to traffic influence or procure a bribe is contrary to international public policy and would allow the Court to investigate all factual and legal elements to reach a decision. The Court reopened the proceedings and ordered the parties to provide various documents it considered relevant. The Court wished to ensure that the enforcement of the award would not have the effect of giving force to a contract procured by corruption. On 28 May 2019, the Paris Court of Appeal held that parties must respect international public policy (Alstom Transport SA & Alstom Network UK Ltd v. Alexander Brothers Ltd, Paris Court of Appeal, 28 May 2019, No. 16/11182). To identify a violation of public policy, the Court focused on the evidence and on the facts and set aside the award holding that there were sufficiently serious, precise and consistent indicia of corruption (without finding, however, precisely identified acts of corruption).

46. Have there been any recent court decisions in your country considering the definition and application of “public policy” in the context of enforcing or setting aside an arbitral award?

See at 7 above.
47. Have there been any recent court decisions in your country considering the judgment of the Court of Justice of the European Union in Slovak Republic v Achmea BV (Case C-284/16) with respect to intra-European Union bilateral investment treaties or the Energy Charter Treaty? Are there any pending decisions?

In France, there has been no recent decision considering the Achmea judgment.

48. Have there been any recent decisions in your country considering the General Court of the European Union’s decision Micula & ors (Joined Cases T-624/15, T-694/15 and T-694.15), ECLI:EU:T:2019:423, dated 18 June 2019? Are there any pending decisions?

In France, there are no pending decisions considering the General Court of the European Union’s decision in Micula.