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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).

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

International arbitration is governed by Articles 1504 to 1527 of the 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 of the CCP, which relate to domestic arbitration, are made applicable to international arbitration by way of reference as set forth in Article 1506 of the CCP. Articles 2059 to 2061 of the 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 (the "New York Convention"), form part of French arbitration law (for a more complete list of international conventions related to arbitration concluded by France, see Question No. 2).

Third, case law is an essential source of French arbitration law according to the French material rules method. Such material rules enunciated by the French courts, apply whether the arbitration is seated in France (or not) and govern all aspects of arbitration agreements (validity, scope, parties, etc.). 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 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 of the CCP on the equal treatment of the parties or Articles 1479 and 1506 of the 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 annul 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, *République du Kirghizistan v. M. Belokon*), the prohibition of human rights violations (Paris Court of Appeal, 5 October 2021, No. 19/16601, *DNO v. 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 of the CCP).
- The principle of severability or autonomy of the arbitration agreement applies as a matter of public policy (Articles 1447 and 1506 of the CCP).
- The same is true of the principle of

compétence-compétence (Articles 1448, 1465 and 1506 of the CCP).

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*".

French arbitration law is generally more favorable to the recognition and enforcement of arbitral awards than the New York Convention:

- Under Article 1507 of the 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 courts can grant enforcement to 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*).
- Contrary to Article V(2)(b) of the New York Convention, France distinguishes between French public policy and international public policy (see for instance Articles 1514 and 1520 of the CCP). Only the latter, which is construed very narrowly as the principles of universal justice regarded in France as having an absolute international value (Cass. Civ. 1, 25 May 1948, Bull. civ. 1948, I, No. 163), is applicable to international arbitration.

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 Sustainable Investment Facilitation Agreements between the European Union and the Republic of Angola (2023) and the EU-UK Trade and Cooperation Agreement (2020).

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 withdrew from the Energy Charter Treaty ("ECT") effective since 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.

France has not adopted the UNCITRAL Model Law and its law is considered more arbitration friendly than the UNCITRAL Model Law.

Among the significant differences:

Unlike the UNCITRAL Model Law, under French law, the arbitration agreement is not only autonomous from the underlying contract but also independent from any national law (Cass. Civ. 1, 4 July 1972, *Hecht*, No.

70-14.163; Cass. Civ. 1, 28 September 2022, No. 20-20.260, *Kabab-Ji SAL v. Kout Food Group*, see Question No. 9).

In contrast to Article 8 of the UNCITRAL Model Law, French arbitration law expressly acknowledges the negative aspect of the competence-competence principle. According to Article 1448(1) of the CCP, national courts do not have jurisdiction over disputes relating to the jurisdiction of an arbitral tribunal, except if an arbitral tribunal has not yet been seized of the dispute and if the arbitration agreement is manifestly void or manifestly not applicable.

Moreover, unlike Article 16(3) of the UNCITRAL Model Law, if an arbitral tribunal issues a preliminary ruling that it has jurisdiction over the dispute, it is not possible under French law for a respondent to appeal the tribunal's ruling to the relevant court. Parties will have to initiate annulment proceedings against the partial award.

Finally, French courts agree to grant enforcement to awards annulled at the seat of arbitration (Cass. Civ. 1, 23 March 1994, No. 92-15.137, *Hilmarton*; Cass. Civ. 1, 29 June 2007, No. 06-13.293, *Putrabali*). By comparison, Article 36(1)(a)(v) of the UNCITRAL Model Law states that the recognition or enforcement of an award may be refused if it has not yet become binding or has been annulled 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 enacted Law No. 2016-1547 of 18 November 2016, which amended Article 2061 of the Civil Code. The amendment stipulates that if an arbitration agreement was not entered into in a professional capacity, it cannot be enforced against the non-professional party. However, the agreement is not automatically void, as the non-professional party retains the right to initiate arbitration if they choose to do so.

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 commercial disputes, including disputes related to arbitration (such as annulment proceedings) (see Question No. 7). In 2024, France enacted Law No. 2024-537 expressly providing that the ICCP-CC has jurisdiction over annulment and enforcement proceedings in international arbitration proceedings.

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 (the "ICC") (see *QMUL, 2021 International Arbitration Survey: Adapting Arbitration to a Changing World*). The ICC amended its arbitration rules in 2021 to enhance the clarity and efficiency of ICC arbitration and to reflect the increased use of technology in international arbitration and is preparing new amendments to its rules for 2026.

Many other arbitral institutions exist in France, including:

- the *Chambre Arbitrale Internationale de Paris* (CAIP) created in 1926 (latest arbitration rules in 2024);
- the *Centre de Médiation et d'Arbitrage de Paris* (CMAP) created in 1995 (latest arbitration rules in 2022);
- the *Association Française d'Arbitrage* created in 1957 (latest arbitration rules in 2017);
- 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).

A more exhaustive list of French arbitration centres 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, before the award is issued, the President of the Paris *Tribunal judiciaire* can assist with the constitution of the arbitral tribunal (*juge d'appui*, Article 1505 of the CCP).

Under Article 1505 of the CCP, the President of the Paris *Tribunal judiciaire* has jurisdiction when (1) the arbitration takes place in France, (2) the parties have agreed that French procedural law shall apply to the arbitration, (3) the parties have expressly granted jurisdiction to French courts over disputes relating to the arbitral procedure, or (4) one of the parties is exposed to a risk of a denial of justice.

Second, after the award is issued, the international commercial chamber of the Paris Court of Appeal (above referred to as the "ICCP-CA") has jurisdiction over annulment and enforcement proceedings in international arbitration proceedings (Law No. 2024-537). The ICCP-CA is a specialized division of the Paris Court of Appeal, consisting of three highly skilled judges who are fluent in English and have common law experience.

Before this specialized chamber, at the beginning of the case, the parties will be asked whether they agree to the application of the "international protocol". If both parties agree, the special regime of the ICCP-CA will apply. This includes broader use of the English language: documents, witness statements, and expert reports in English can be submitted without translation; parties, witnesses, and experts can use English during ICCP-CA hearings without requiring translation. The award, however, must still be produced in its original language, accompanied by a French translation. Furthermore, witnesses and parties may be examined by counsel, and a mandatory procedural timetable will be established in coordination with both the parties and the judges.

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 Article 1507 of the 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 1515 and 1516 of the 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.

Under French arbitration law, the arbitration agreement is independent from the law governing the contract (Cass. Civ. 1, 4 July 1972, No. 70-14.163, *Hecht*). French arbitration law considers that 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. However, the *Cour de Cassation* recently acknowledged that the parties can expressly designate a law to govern the arbitration agreement (Cass. Civ. 1, 28 September 2022, No. 20-20.260, *Kabab-Ji SAL v. Kout Food Group*).

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

Yes.

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

Under French arbitration law, the separability of the arbitration agreement is twofold:

First, the arbitration agreement is separable from the contract, ensuring its enforceability even if the contract containing it is claimed to be null and void. This principle was established by the *Cour de Cassation* in the 1963 *Gosset* decision (Cass. Civ. 1, 7 May 1963, No. 58-12.874, *Etablissements Gosset v. Carapelli*) and is now codified under Article 1447 of the CCP, which applies to international arbitration pursuant to Article 1506 of the CCP.

Second, the arbitration agreement is independent from the law governing the contract (Cass. Civ. 1, 4 July 1972,

No. 70-14.163, *Hecht*). French arbitration law considers that 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. Nonetheless, the *Cour de Cassation* recently recognized that the parties can explicitly choose a law to govern the arbitration agreement (Cass. Civ. 1, 28 September 2022, No. 20-20.260, *Kabab-Ji SAL v. Kout Food Group*).

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?

French courts have adopted a rather unique approach by elaborating a set of material rules that directly govern the validity and enforceability of arbitration agreements, irrespective of any national law (Cass. Civ. 1, 4 July 1972, No. 70-14.163, *Hecht*).

According to the formula 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, No. 91-16.828, *Dalico*).

The French choice of the material rules method flows from the idea that international arbitration must follow its own set of rules favoring efficiency and independence from local laws. The material regime applicable to arbitration agreements 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, No. 01-14.311, *Uni-Kod*; 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, France has adopted a liberal approach with respect to jurisdiction in multi-party or multi-contract disputes (see Question No. 12).

In multi-party arbitration, French courts enforce the principle of equality between the parties in the designation of the arbitral tribunal as a matter of international public policy. This principle ensures that if the claimant has independently appointed an arbitrator, it is not permissible to require two or more respondents to jointly designate a single arbitrator (Cass. Civ. 1, 7 January 1992, No. 89-18.708, *Dutco*). This material rule now appears in Article 1453 of the CCP, providing that in case of multi-party arbitration, if the parties do not agree on the constitution of the arbitral tribunal, the institution or the supporting judge (*juge d'appui*) will appoint the arbitral tribunal.

With respect to joinder and consolidation, while the CCP does not refer specifically to such possibility, these remain subject to 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?

Since the 1980s, the French courts 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:

- 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, *Kabab-Ji SAL v. Kout Food Group*, see also Question No. 14)
- 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 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 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. For instance, in most cases under French law, French public entities cannot refer their disputes to international arbitration, subject to derogations provided by express legislative provisions or international conventions (Article 2060(2) Civil Code; for an application in international arbitration see Conseil d'Etat, 17 October 2023, No. 465761, *SMAC v.Ryanair*).

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 to arbitration agreements, irrespective of the location of the seat of arbitration or any national laws (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, *Kabab-Ji SAL v. Kout Food Group*).

In the *Kout Food Group* case 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, *Kabab-Ji SAL v. Kout Food Group*).

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

With respect to international arbitration proceedings in France, as in many jurisdictions, the law applicable to the

merits is the one chosen by the parties, and, absent such choice, the arbitral tribunal shall decide the dispute in accordance with the rules of law it considers appropriate (Article 1511 of the CCP). In both cases, the arbitral tribunal shall take into account trade usage.

Nonetheless, in specific circumstances, the arbitrators are allowed to disregard the law chosen by the parties, for example when the chosen law contradicts international public policy or when it is essential to uphold mandatory rules.

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

Both in domestic (Article 1444 of the CCP) and international arbitration (Article 1508 of the CCP), the parties are free to determine the procedure for the appointment of arbitrators.

There are no general qualification requirements, but the arbitrators must nonetheless present certain qualities.

First, the arbitrator must be a natural person with the full capacity to exercise his or her rights (Article 1450 of the CCP).

Second, the arbitrator must be independent and impartial (Article 1456 of the CCP, applicable to international arbitration pursuant to Article 1506 of the CCP).

Finally, the arbitrator must not exercise certain professional activities deemed incompatible with the arbitrator's role. 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).

It is worth noting that in the specific case of multi-party arbitration, French law requires each party to have an equal opportunity in appointing the arbitrators (Cass. Civ. 1, 7 January 1992, No. 89-18.708, *Dutco*). In such cases, 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 of the CCP).

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

Yes.

French law provides for default requirements with respect to the appointment of the arbitrator or arbitrators. As mentioned above (see Question No. 7), the *juge d'appui* can assist the parties with the constitution of the arbitral tribunal. Pursuant to Article 1505 of the CCP, said judge has jurisdiction notably when one of the parties is exposed to a risk of denial of justice.

Hence in the absence of an agreement between the parties on the procedure for appointing the arbitrators, the following rules apply in accordance with Article 1452 of the CCP (applicable to international arbitration pursuant to Article 1506 of the CCP):

- In case of arbitration by a sole arbitrator, if the parties are unable to agree on the choice of said arbitrator, the arbitrator shall be appointed by (i) the person responsible for administering the arbitration or, where there is no such person, (ii) the judge acting in support of the arbitration;
- In case of arbitration by a tribunal of three arbitrators, each party will appoint one and the two party-appointed arbitrators will then choose the third arbitrator. If a party fails to appoint an arbitrator within one month from receipt of a request to that effect by the other party, or if the two party-appointed 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 of the CCP, applicable to international arbitration pursuant to Article 1506 of the CCP).

In international arbitration, as the number of arbitrators is left to the discretion of the parties, the award cannot be annulled by the French courts on the sole ground that it is composed of an odd number of arbitrators, unless the parties have expressly provided for this. In that case, the parties will be able to challenge the award on the ground of Article 1520 2° of the CCP.

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

Yes, French courts can intervene in the selection of arbitrators.

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 of the CCP applicable to international arbitration pursuant to Article 1506 of the CCP), (ii) the challenge of arbitrators (Article 1456 of the CCP applicable to international arbitration pursuant to Article 1506 of the CCP) as well as (iii) an abstention, resignation, or impediment of an arbitrator (Article 1457 of the CCP applicable to international arbitration pursuant to Article 1506 of the CCP).

Pursuant to Article 1505 of the CCP, the judge acting in support of the arbitration will have jurisdiction if either:

- The seat of arbitration is in France;
- The parties have agreed to submit the arbitration to French procedural law;
- The parties have expressly granted jurisdiction to French courts to hear disputes relating to the arbitral procedure; or
- One of the parties is at risk of a denial of justice.

The competent judge will be, unless otherwise agreed, the President of the Paris *Tribunal judiciaire* (Article 1505 of the CCP).

Under Article 1460 of the CCP (applicable to international arbitration pursuant to Article 1506 of the CCP), application to the judge acting in support of the arbitration shall be made either by a party, 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 inapplicable arbitration agreement(s) (Article 1455 of the CCP applicable to international arbitration pursuant to Article 1506 of the 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 of the CCP (applicable to international arbitration pursuant to Article 1506 of the 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).

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.

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° of the CCP).

Second, in accordance with Article 1458 of the CCP (applicable to international arbitration pursuant to Article 1506 of the 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) of the CCP (applicable to international arbitration pursuant to Article 1506 of the CCP). The application before French courts must be made within one month following the disclosure or the discovery of the fact at issue.

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 an efficient manner and with loyalty (Article 1464(3) of the CCP applicable to international arbitration pursuant to Article 1506 of the CCP).

In both cases, the decision of the judge acting in support of the arbitration cannot be appealed at the annulment proceedings 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 ground has been invoked previously during the proceedings (Article 1466 applicable to international arbitration pursuant to Article 1506 of the CCP). However, if the facts were discovered after the award was rendered, the party that discovered them will still be able to assert the lack of independence or impartiality at the annulment stage (Paris Court of Appeal, 10 January 2023, No. 20/18330).

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

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 annulment stage (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 indicated 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). On this subject, the Paris Court of Appeal recalled in two decisions issued in December 2023 that a failure to comply with the duty of disclosure will not systematically result in the annulment of the award, the annulment judge will indeed have to ascertain whether the undisclosed facts are such as to create a reasonable doubt, in the minds of the parties, as to the arbitrator's independence and impartiality (Paris Court of Appeal, 5 December 2023, No. 22/20051, *ESISCO*; Paris Court of Appeal, 12 December 2023, No. 22/15255, *IASC*).

For example, the Paris Court of Appeal has annulled 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.

Finally, in its recent *Opportunity Fund* decision, the Paris Court of Appeal addressed the issue of the arbitrator's independence. During the review proceeding of the award, which was initiated in 2017, Telecom Italia disclosed that Vivendi, a long-term client of the presiding arbitrator's law firm, became in 2015, i.e., during the arbitration proceedings, one of its shareholders.

Although the purchase of these shares had been the subject of press releases, the Court held that the existence of such links between Vivendi, a third party with an interest in the arbitration proceedings, and the law firm in which the presiding arbitrator was a partner, were such as to affect her independence.

The Court indicated that, even though the integrity of the presiding arbitrator could not be called into questioning in the present case, these links nonetheless characterized an objective situation of conflict of interest likely to give rise to reasonable doubt in the minds of the parties as to the arbitrator's independence and thus annulled the award (Paris Court of Appeal, 2 May 2024, No.21/08610, *Opportunity Fund v. Telecom Italia*).

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

If the arbitral tribunal is truncated, as a result of an arbitrator's resignation, abstention, challenge, passing away or refusal to take part in the proceedings, the tribunal will nevertheless be able to continue with the proceedings.

The solutions of French arbitration law will differ depending on whether the arbitration is domestic or international.

For domestic arbitration, unless otherwise provided, the proceedings will be suspended in case of a truncated tribunal until a new and complete tribunal is formed (Article 1473 of the CCP). This Article does not apply to international arbitration which means that in that case, the proceedings will not be suspended in the event of a truncated tribunal.

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

In the event of a dispute as to the reality of the reason invoked, the issue will be settled by (i) the person in charge of administrating the arbitration or if that is not possible (ii) the judge acting in support of the arbitration seized by a request filed within one month following the impediment, abstention or resignation (Article 1457 of the CCP, applicable pursuant to Article 1506 of the CCP).

22. Are arbitrators immune from liability?

While arbitrators are in principle exempt from any liability in connection with their jurisdictional function, they can however be held liable in the event of a breach of their contractual mission.

This means that the arbitrators cannot be held liable on the basis of the content of the award rendered, unless a personal fault amounting to fraud, gross negligence or denial of justice, can be demonstrated (Cass. Civ. 1, 15 January 2014, No. 11-17.196).

Arbitrators can nevertheless be held liable for any breach of a contractual undertaking (Paris Court of Appeal, 12 October 1995, *Rev. Arb.* 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).

It is worth noting that an arbitrator can be challenged in accordance with Article 1458 of the CCP (applicable to international arbitration pursuant to Article 1506 of the 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) of the CCP applicable to international arbitration pursuant to 1506 of the CCP).

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

Yes, with both positive and negative 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 of the CCP, applicable to international arbitration pursuant to Article 1506 of the CCP).

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

In this regard, it was recently judged that a party's impecuniosity does not make the arbitration agreement manifestly void or unenforceable within the meaning of Article 1448(1) of the 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; Cass. Civ. 1, 27 September 2023, No. 22-19.859).

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 unless the arbitration agreement is manifestly void or unenforceable (Article 1448(1) of the CCP, applicable to international arbitration pursuant to Article 1506 of the 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 of the 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 in 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 CAIP Rules.

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

Under Article 1449 of the CCP (applicable to international arbitration pursuant to Article 1506 of the 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 of the 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 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 of the CCP).
    - Conservatory measures to prevent damage or to stop a manifestly unlawful disturbance. The applicant needs to demonstrate urgency of its request or a manifestly illicit disturbance that needs to be stopped (Article 835(1) of the CCP);
    - Interim payment of a claimed amount that is not seriously disputable (*référé provision)* (Article 835(2) of the CCP)
    - Interim injunction ordering a party to perform a non-seriously disputable obligation (Article 835(2) of the 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 of the 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 of the CCP).

Finally, although there was a debate in the 2000s, interim awards are considered 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 however 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 of the CCP) and of the President of the *Tribunal judiciaire* (Articles 834 to 838 of the 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, *IPCom v. Lenovo*).

Interestingly, French courts also accepted to issue 'anti-anti-suit injunctions'. In the *Lenovo* case of 3 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 familiar 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 however 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 of the 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 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 ECJ, 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 issue by an arbitral tribunal in another Member State*" (ECJ, 13 May 2015, Case No. C-536/13, *Gazprom OAO*).

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 of the 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 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 of the 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, *société Otor Participations et autres v. Carlyle Holdings 1 et autre*), if a party refuses or fails to comply with the order to produce evidence, French law grants arbitral tribunals the power to issue 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 of the 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 to conduct the arbitration diligently. They also require arbitrators to be independent and impartial as set out in Article 1456 of the CCP.

In addition, Article 1464(3) of the 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 avocats* 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) of the 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 of the CCP provides that the deliberations of the tribunal are confidential (applicable to international arbitration by virtue of Article 1506 of the CCP).

32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

French law does not deal with the estimation and allocation of costs in arbitration proceedings. It will generally be dealt with by either the parties' agreement or by the arbitration rules designated by the parties. Absent any agreement, the allocation of costs 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 26 juin 2024 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. 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 of the CCP (for domestic arbitration), 1514 and 1515 of the 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:

- 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
- 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 of the CCP).

If enforcement is granted, it will not be possible to appeal the order granting enforcement of the award (Article 1499 of the 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 of the CCP).

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

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

Second, Article 1482 of the CCP (applicable to international arbitration under Article 1506 of the 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) of the CCP), it does not apply in the context of international arbitration. The failure to provide reasons for an award is therefore not a ground to annul it. This may, however, be raised in the context of annulment proceedings under Article 1520 3° of the CCP (arbitrator's compliance with the terms of reference) and Article 1520 4° of the CCP (arbitrator's compliance with the adversarial process).

34. 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 of the CCP).

35. 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 of the CCP) while in international arbitration the review will be done in accordance with "*international public policy*" (Article 1514 of the CCP).

Second, the grounds to annul 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 of the CCP. In domestic arbitration, French law provides that, in addition to the five grounds of Article 1520 of the CCP, the award can be annulled if it was not reasoned by the arbitrator (Article 1492 6° of the 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.

36. 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 that 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 them *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.

37. 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 of the 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 of the CCP) as well as ruling on the recognition and enforcement of a foreign award (Article 1525 of the 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 of the 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, annulment proceedings will not suspend the enforcement of the award (Article 1526(1) of the CCP) unless there is a risk of causing severe damages to the rights of a party (Article 1526(2) of the CCP). In domestic arbitration, annulment proceedings will suspend the enforcement of the award unless the award is provisionally enforceable (Article 1496 of the CCP).

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

38. 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 annul the award (Article 1522 of the 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 of the CCP.

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

39. 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 the *Cour de Cassation* through a *pourvoi en cassation* (Article 1481(1) of the CCP applicable to international arbitration pursuant to Article 1506 of the CCP).

40. 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 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 recommended 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.

To our knowledge, there has been no progress on the adoption of a directive.

41. 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 (Article 29 of the Rules and Appendix V- Emergency Arbitrator Rules) or CMAP rules (arbitration agreement signed after 1 January 2022).

While parties generally 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.

42. 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 procedures, but more and more arbitral institutions provide for expedited procedures which are increasingly popular (e.g., the ICC Rules, the CMAP Rules, the CAIP Rules, etc.)

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

Diversity, whether in terms of gender, origin or age in the choice of both counsel and arbitrators is encouraged in

France, notably by associations and arbitral institutions, but there are no mandatory rules as to such selection.

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?

As mentioned above, French courts accept to grant enforcement to awards annulled at the seat of arbitration (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 stating 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 annulled at the seat of arbitration may still be recognized and enforced in France by French courts.

45. 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 extent of French court's review of awards challenged on the basis of corruption allegations has been widely discussed over the last years.

Throughout the years, the scope of the review conducted by French courts on the issue of corruption 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*).

Since the Alstom saga, French courts apply the red flags methodology when identifying facts of corruption, underlying 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* clarified that the French courts' assessment "*is not limited to the evidence produced before the arbitrators*" and that they are not "*bound by their findings, appreciations and qualifications*" (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).

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 had not been raised in front of the arbitral tribunal, despite the waiver rule set out in Article 1466 of the 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, Paris Court of Appeal, 17 September 2024, No. 22/20012).

46. 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)).

47. 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 Protocol 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.

In 2024, the ICC Commission on Arbitration and ADR announced the creation of a new working group on arbitration and artificial intelligence.

48. 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 for 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 and 1904976/4-1, *Association Oxfam France et al.*).

On 16 June 2023, the Paris Administrative Court held liable 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).

On 24 July 2024, the *Conseil d'Etat* reinforced the importance of fighting against global warming and climate change by affirming that "*the limitation of global warming by reducing greenhouse gas emissions and fossil fuel consumption*" constitutes "*a reason of general interest*" (*Conseil d'Etat*, 24 July 2024, No. 471782).

Finally, it is worth noting that on 9 April 2024, the European Court of Human Rights rendered a historical decision in which it condemned Switzerland for its insufficient action against global warming and climate change. Doing so, not only the ECHR condemned for the first time a State in a matter related to climate, sending a strong signal to other States within its jurisdictions (including France), but has also established, for the first time, a link between climate change and human rights (ECHR, 9 April 2024, No. 53600/20, *Verein Klimaseniorinnen Schweiz et autres v. Switzerland*).

Climate is also discussed 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 to 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) of the CCP (Paris Court of Appeal, 5 October 2021, No. 19/16601, *DNO v. Yémen*). As is the case for corruption allegations, the Court of Appeal requires plain, effective and specific evidence of the alleged violation.

49. 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 decision 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.

Accordingly, international sanctions may preclude parties from enforcing arbitral awards in France. For instance, in 2021, the *Cour de Cassation* refused a party that had obtained the *exequatur* of an arbitral award to perform seizures in France on the goods of a Libyan public entity because the latter was affected by EU asset freezing sanctions (Cass. Civ. 1, 3 November 2021, No. 19-21.995, *société Al Kharafi v. Libyan Investment Authority*).

50. 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?

France does not have a specific legal framework that regulates artificial intelligence ("AI"), particularly in the context of international arbitration. However, the French data protection authority, the CNIL, has indicated its intention to strengthen the regulation of AI in France. Meanwhile, at the European level, the EU has taken a significant step forward by passing the AI Act, which is set to come into force on 1 August 2024. Although the AI Act does not explicitly address arbitration, its provisions may impact the field, as certain arbitration-related activities could be classified as "high-risk" under Annex III, Article 8(a) of the Act.

This classification implies, inter alia, that AI systems used in arbitration will be subject to specific regulatory conditions. Before a high-risk AI system can be placed on the EU market, its provider must conduct a conformity assessment to ensure it complies with regulations aimed at promoting trustworthy AI. These regulations cover important aspects such as data quality, transparency, human oversight, and cybersecurity. If the system or its intended use undergoes substantial changes, this assessment must be repeated. Additionally, AI systems that serve as security components of products regulated by EU sectoral legislation are automatically considered high-risk and must undergo third-party assessment. Biometric systems are also classified as high-risk by default.

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