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IBA ARBITRATION COMMITTEE

Arbitration Guide

FRANCE

UPDATED MARCH 2024

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*The authors are grateful to Charles Denis for his valuable research assistance.

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

France is one of the main international arbitration hubs with strong support from courts. On 13 January 2011, France adopted an arbitration statute which is amongst the most arbitration-friendly in the world. The fact that the ICC International Court of Arbitration is based in France contributes to the development of international arbitration practice in France. Almost all major international law firms have arbitration teams based in Paris, and the number of specialised boutiques has increased in the past decade.

Despite some criticism in the public opinion, international arbitration is still recognised as the normal way of solving international business disputes.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Arbitration is widely used in international disputes, with either reference to institutional rules or ad hoc proceedings. Domestic arbitration is also used, yet less prevalent than in some other jurisdictions. In international arbitration, the ICC Rules are amongst the most widely used. Other local centres which play an important role in the international arbitration landscape are AFA (*Association Française d'Arbitrage*), CMAP (*Centre de Médiation et d'Arbitrage de Paris*) and CAIP (*Chambre Arbitrale Internationale de Paris*). There are also several sector specific arbitration centres (eg CEFAREA, *Chambre Arbitrale Maritime de Paris*). For ad hoc arbitrations, the UNCITRAL Rules are commonly referred to.

(iii) What types of disputes are typically arbitrated?

Any kind of business dispute can be arbitrated in France. Arbitration is used to resolve disputes in a wide range of business sectors, including energy, construction, telecommunications, air and space, international trade, etc.

(iv) How long do arbitral proceedings usually last in your country?

There is no specific time frame for the duration of arbitrations seated in France. The swift and efficient support of French courts strongly contributes to streamline the arbitration process.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

There are no such restrictions.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

French Arbitration law is contained in Book IV (Art 1442 *et seq*) of the Code of Civil Procedure (CCP). The 13 January 2011 Decree has substantially modified the former provisions (Decrees of 1980 and 1981) through the codification

of French case law and the implementation of new rules in support of arbitration. Articles 2059 to 2061 of the Civil Code (CC) also deal with arbitration agreements (but the restrictions contained in Article 2060 are not applicable to international arbitration).

Case law also plays an important role in the making of arbitration law in France. Both the French Supreme Court (*Cour de Cassation*) and the Paris Court of Appeal have, for many decades, strongly contributed to building a supportive and arbitration-friendly regime. In 2018, the International Chamber of the Paris Court of Appeal (CICAP) was created. The CICAP was set up to hear international trade disputes, which include cases related to international arbitration. The procedure before this new Chamber is tailored to be adapted to international trade and to improve the efficiency of proceedings (timetable may be discussed and agreed amongst parties and the Court, exhibits can be submitted without being translated into French and pleadings can be conducted in English). It is also possible to hear witnesses and experts in English. However, parties' submissions are still to be drafted in French. The decisions are available both in French and English languages. Over the past few years, administrative courts (*Conseil d'Etat*) have also gained growing importance, with the Tribunal of Conflicts affirming the jurisdiction of administrative courts over the control of awards involving mandatory rules of French public law.

As explained below, French law has different regimes for domestic and international arbitration.

France has not adopted the UNCITRAL Model Law, which has however had a certain influence on the evolution of French case law as a comprehensive set of general principles commonly accepted in international arbitration.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

The CCP provides two different legal regimes for domestic (Art 1442 to 1503 CCP) and international arbitration (Art 1504 to 1527 CCP). However, certain provisions applicable to domestic arbitration, expressly listed in Article 1506 CCP, are also applicable to international arbitration.

Pursuant to Article 1504 CCP, the relevant criterion for the distinction is economic and based on the nature of the underlying transaction.

The reason underlying such distinction is to provide for a more liberal regime applicable to international arbitration than to domestic arbitration. For instance, contrary to domestic arbitration, there are no requirements of form for the arbitration agreements in international disputes.

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

France is a signatory to the New York Convention of 10 June 1958, which was ratified on 26 May 1959, the European Convention on International Arbitration of 21 April 1961, which was ratified on 21 August 1967, and the Washington Convention of 18 March 1965, which was ratified on 16 December 1966.

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

In domestic arbitration, Article 1478 CCP provides that *´the arbitral tribunal shall decide the dispute in accordance with the law, unless the parties have empowered it to rule as amiable compositeur´*.

In international arbitration, Article 1511 CCP provides that *´the arbitral tribunal shall decide the dispute in accordance with the rules of law chosen by the parties or, where no such choice has been made, in accordance with the rules of law it considers appropriate. In either case, the arbitral tribunal shall take account trade usages into account it takes account´*. Article 1512 CCP also provides that *´the arbitral tribunal shall rule as amiable compositeur if the parties have empowered it to do so´*

III. Arbitration Agreements

(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?

In domestic arbitration, Article 1443 CCP provides that *´to be valid, an arbitration agreement shall be in writing* […]*´*. In international arbitration, Article 1507 CCP provides that *´an arbitration agreement shall not be subject to any requirements as to its form´*.

The absence of any requirement of form in international arbitration had already been established by case law for many decades when the 2011 reform entered into force.

There is also no requirement in international arbitration that the procedure for the appointment of the arbitrators be specified in the arbitration agreement. Article 1508 CCP provides to that effect that *´an arbitration agreement may designate the arbitrators or provide for the procedure for their appointment, directly or by reference to arbitration rules or the procedural rules´*.

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

French law provides for the complete autonomy of the arbitration agreement and applies the principle of competence-competence both in its positive and negative effects.

Article 1447 §1 CCP, which applies to both domestic and international arbitration, provides to that effect that *´an arbitration agreement is independent of the contract to which it relates, it shall not be affected if such contract is void´*.

Article 1448 §1 CCP, which also applies to domestic and international arbitration, provides that *´when a dispute subject to an arbitration agreement is brought before a court, such court shall decline its jurisdiction, except if an arbitral tribunal has not yet been seized with the dispute and if the arbitration agreement is manifestly void or manifestly not applicable´*.

Consequently, if the dispute is submitted to a court before the constitution of the arbitral tribunal, the court will refer the parties to arbitration (ie negative effect of the competence-competence principle), unless it finds that the arbitration agreement is manifestly void or inapplicable. If the dispute is submitted to a court after the constitution of the arbitral tribunal, such court will always decline jurisdiction. Case law considers, finally, that the existence and effectiveness of the arbitration agreement is assessed in accordance with the common intent of the parties and is not subject to the laws of any State. French courts, to that effect, have established a principle of validity of the arbitration agreement.

(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

There are no restrictions to the enforceability of muti-tier clauses.

According to case law, the consequence of commencing an arbitration despite a mandatory mediation or amicable settlement clause is the non-admissibility of the claim, a substantive issue to be decided by the tribunal thus falling outside the realm of control of the courts.

(iv) What are the requirements for a valid multi-party arbitration agreement?

Parties are free to frame their multi-party arbitration agreement as they wish. However, the *Cour de Cassation* established in *Dutco* (Cass. 1e civ., 7 January 1992, 89-18.708, 89-18.726) a principle of public policy according to which the parties should be entitled to equal participation in the constitution of the arbitral tribunal.

Accordingly, Article 1453 CCP, which is applicable to both domestic and international arbitration, 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, shall appoint the arbitrator(s)'*.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

French case law traditionally admits the validity of arbitration agreements whereby one of the parties, or both parties, have the right to elect either arbitration or litigation.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

There is no requirement of formal consent to an arbitration agreement. Consequently, French law admits that an arbitration agreement may bind non-signatories if the circumstances of the case show that such party accepted to be bound by its terms. There is significant case law on this issue and circumstances in which such consent to arbitration by non-signatories is found to exist or not. Recent case law stated that third-party funders are not considered as co-claimants to whom the arbitration agreement can be extended.

A different scenario is when the arbitration agreement is transmitted, for example in case of assignment of the claim or of the contract. French case law admits, in such case, that the arbitration agreement may be transmitted to the assignee.

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The existence and effectiveness of the arbitration agreement are governed by the law chosen by the parties to this specific effect. However, it stems from case law that a general choice-of-law clause in a contract will not apply to the arbitration agreement, in this case it will rather be governed by a substantive rule of private international law. The existence and validity of the arbitration agreement consequently depends upon the parties' consent to arbitration and the respect of mandatory French rules and international public policy.

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

Such distinction is not made by the courts in France. For instance, in the context of a liability action, it was held that the services provided by an arbitrator in the framework of the arbitration proceedings should be considered as performed at the seat of arbitration, irrespectively of the actual location of such arbitrator at the time of performance.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

There is no rule on the arbitrability of blockchain – and NFT – related disputes in France.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

As it stems from the full autonomy principle, the arbitration agreement is independent of the contract to which it is related. Hence the nullity or voidance of the contract will not affect the validity of the arbitration agreement.

However, the arbitration agreement itself may be no longer valid in very particular circumstances. For instance, French courts have declared invalid an arbitration agreement as the entity designated in it to act as arbitrator no longer existed and such designation was deemed as a decisive factor for the parties' consent to arbitration.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

Article 2059 CC provides that *´all persons may make arbitration agreements relating to rights of which they have the free disposal´*.

Article 2060 CC restricts recourse to arbitration *´in matters of status and capacity of persons, in those relating to divorce and judicial separation or on controversies concerning public bodies and institutions and more generally in all matters in which public policy is concerned´*.

Case law has however, restricted to a considerable extent the application of Article 2060, particularly in international arbitration. It is widely admitted that matters in which public policy is concerned are arbitrable. This is also the case if an overriding mandatory rule *(loi de police)* is involved.

It has traditionally been admitted that international arbitration could involve public bodies (subjective arbitrability), both French and foreign, and public contracts (objective arbitrability). However, the *Conseil d'Etat* has recently confirmed that French public entities cannot circumvent the rules determining the jurisdiction of national courts by deferring to an arbitral tribunal the resolution of disputes, unless otherwise provided by national legislation or an international agreement.

In addition, Article 2061 of the CC was modified by Law No. 2016-1547 of 18 November 2016, which now provides that an arbitration agreement can be theoretically considered valid in areas that were so far off-limits for arbitration such as labour, consumer, and administrative contracts. Therefore, the arbitration agreement should be considered enforceable even if it was not executed in the course of a professional activity but cannot be opposed to weak parties. The amended Article 2061, as its previous versions, is likely to apply only to domestic arbitration. In international arbitration, French law has long held that the international arbitration agreement is in principle valid.

The negative effect of competence-competence would give the arbitral tribunal initial jurisdiction to decide on a dispute relating to arbitrability. This will however be subject to review by the court having jurisdiction over challenges against the award. To that effect, Article 1465 CCP, which applies to both domestic and international arbitration, provides that '*the arbitral tribunal has exclusive jurisdiction to rule over dispute on its jurisdictional powers*'. Such provision encompasses all matters relating to the jurisdiction and powers of the arbitral tribunal, as well as matters of arbitrability.

(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?

As for the procedure to be applied if court proceedings are initiated despite an arbitration agreement, see our response to section III (ii) above. Objections to jurisdiction before the court must be made on a preliminary basis, failing which, the party is deemed to have accepted the jurisdiction of the court.

Likewise, a party which proceeds with the arbitration without raising an objection to jurisdiction is deemed to have accepted the jurisdiction of the arbitral tribunal.

The *Cour de Cassation* has accordingly held that participation of a party to the arbitration proceedings without any reservation constitutes a waiver of any objection as to the arbitrators' jurisdiction. Consequently, it is inadmissible for such party *´ on the basis of the rule of estoppel, to argue* […] *that the tribunal had rendered its decision in the absence of an arbitration agreement or on the basis of an arbitration agreement that is null and void´* (*Golshani v. Gouv. Rép. Islamique d'Iran*, Cass. 1e civ., 6 July 2005, 01-15.912).

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?

The arbitral tribunal has exclusive jurisdiction to rule on an objection to its jurisdiction, according to the principle of competence-competence (Art 1465 CCP). The word 'exclusive' indicates that courts do not have any prior or concurrent jurisdiction to decide the issue (except if the clause is *´manifestly void or manifestly not applicable´* pursuant to Article 1448 CCP. See section III (ii) above).

Courts may exercise control over the arbitrators' jurisdiction only in two circumstances: (i) if the court is seized of the dispute before the constitution of the arbitral tribunal, in which case the court will only assess, prima facie, whether the arbitration agreement is manifestly void or inapplicable; and (ii) in the context of set-aside proceedings. In the latter case, according to case law, the control by the court of the tribunal's jurisdiction is exercised by reviewing *de novo* all elements of facts and law.

This review tends now to be increasingly invasive as courts now accept new arguments and pieces of evidence relevant to the jurisdiction issue if it was already raised before the arbitral tribunal (even if it was on another question related to jurisdiction).

It is noteworthy that it was recently admitted that the negative effect of the competence-competence principle in international arbitration could be set aside by the parties, only if such waiver was express and unequivocal (this was already possible in domestic arbitration – Art 1448 §3 CCP).

A recent ruling of the Paris Court of Appeal decided that where the dispute resolution clause provides for an option for the parties between arbitration and court proceedings, the competence-competence principle does not apply.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

Parties are free to agree on the modalities of selection of the arbitrators. They are free to agree that the arbitrators will be appointed by an arbitral institution.

In domestic arbitration, Article 1451 CCP provides that the arbitral tribunal shall be composed of a sole arbitrator or an uneven number of arbitrators, and that, if the arbitration agreement provides for an even number of arbitrators, an additional arbitrator shall be appointed.

Article 1452 CCP, which is applicable to both domestic and international arbitration, provides that *´if the parties have not agreed on the procedure for appointing the arbitrator(s):*

i. Where there is to be a sole arbitrator and if the parties fail to agree on the arbitrator, he or she shall be appointed by the person responsible for administering the arbitration or, where there is no such person, by the judge acting in support of the arbitration;

ii. Where there are to be three arbitrators, each party shall appoint an arbitrator and the two arbitrators so appointed shall appoint a third arbitrator. If a party fails to appoint an arbitrator within one month following receipt of a request to that effect by the other party, or if the two arbitrators fail to agree on the third arbitrator within one month of having accepted their mandate, the person responsible for administering the arbitration or, where there is no such person, the judge acting in support of the arbitration, shall appoint the third arbitrator´.

With respect to the jurisdiction of the courts in support of the arbitration, Article 1505 CCP provides that ´in international arbitration, and unless otherwise stipulated, the judge acting in support of the arbitration shall be the President of the Tribunal Judiciaire of Paris when: (1) the arbitration takes place in France; or (2) the parties agreed that French procedural law shall apply to the arbitration; or (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´.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

Article 1456 CCP, which applies to domestic and international arbitration, provides that *´the constitution of an arbitral tribunal shall be complete upon the arbitrators' acceptance of their mandate. As of that date, the tribunal is seized of the dispute. Before accepting a mandate, an arbitrator shall disclose any circumstance that may affect his or her independence or impartiality. He or she also shall disclose promptly any such circumstance that may arise after accepting the mandate. 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 to whom application must be made within one month following the disclosure or the discovery of the fact at issue´*.

The non-disclosure by the arbitrator of information that may affect his or her independence or impartiality is not sufficient per se to characterise a lack of independence or impartiality. It should give rise to a reasonable doubt in the parties' eyes, *´that is, a doubt that may arise in a person placed in the same situation and having access to the same reasonably available information´*.

Parties have a '*duty of curiosity*', that goes in line with the '*notorious information'* exception to the arbitrators' duty to disclose circumstances that affect his or her independence or impartiality. However, information made public after the acceptance by the arbitrator of their mandate should be disclosed to the parties, as they are not expected to pursue their research after this date.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

In domestic arbitration, Article 1450 CCP provides that *´only a natural person having full capacity to exercise his or her rights may act as an arbitrator. Where an arbitration agreement designates a legal person, such person shall only have the power to administer the arbitration´*. This article is not applicable to international arbitration.

As to the arbitrators' ethical duties, Article 1464 §3 CCP, which applies to domestic and international arbitration, provides that *´both parties and arbitrators shall act diligently and in good faith in the conduct of the proceedings* […]*´*.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

Case law has repeatedly held that arbitrators have the duty to disclose *´all circumstances likely to affect his or her judgment and that may provoke, in the eyes of the parties, a reasonable doubt concerning his or her impartiality or independence´*.

In dealing with issues of arbitrators' conflict of interest, French courts would normally not make direct reference to the IBA Guidelines on Conflicts of Interest in International Arbitration.

VI. Interim Measures and Emergency Arbitration

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

According to Article 1468 CCP, the arbitral tribunal can order any conservatory or provisional measures it deems appropriate and penalties to such order. However, Article 1468 CCP excludes the jurisdiction of the arbitral tribunal with respect to conservatory attachments and judicial security.

Case law has established that to be enforced or set aside as an award, the arbitral tribunal's decision must decide in a final manner all or part of the merits, a question of jurisdiction or a question of procedure which is such as to put an end to the proceedings.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

Article 1449 CCP, which is applicable to domestic and international arbitration, provides that *´the existence of an arbitration agreement, insofar as the arbitral tribunal has not yet been constituted, shall not preclude a party from applying to a court for measures relating to the taking of evidence or provisional or conservatory measures. Subject to the provisions governing conservatory attachments and judicial security, application shall be made to the President of the Tribunal Judiciaire or of the Tribunal de Commerce who shall rule on the measures relating to the taking of evidence in accordance with the provisions of Article 145 and, where the matter is urgent, on the provisional or conservatory measures requested by the parties to the arbitration agreement´*.

Pursuant to this article, provisional or conservatory measures may not be sought in court after the constitution of the arbitral tribunal.

Whether any court's order of provisional relief will remain in force after the constitution of the arbitral tribunal depends on the content of the court's order.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

See the response to section VI (ii) above.

(iv) Are decisions by emergency arbitrators enforceable in your country?

Decisions by emergency arbitrators are enforceable in France. To this effect, the Paris Court of Appeal recognised a shared jurisdiction between emergency arbitrators (eg as provided by Art 29 of the 2021 ICC Rules) and the summary proceedings judge (*juge des référés*).

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

As a civil law country, France has traditionally been hostile towards anti-suit injunctions, which cannot be delivered by courts. However, foreign anti-suit injunctions are not deemed contrary to international public policy, insofar as their purpose is merely to sanction the breach of a pre-existing contractual obligation (this particular ruling did not concern arbitration though).

According to the Court of Justice of the European Union (CJEU)'s case law, anti-suit injunctions cannot be delivered by courts of a member state against others, even if it is to support an arbitration agreement between the parties. However, arbitrators can deliver an anti-suit injunction against courts to protect their elected forum.

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

Article 1469 §1 CCP, which is applicable to both domestic and international arbitration, provides that *´if one of the parties to arbitral proceedings intends to rely on an official* (acte authentique*) or private (*acte sous seing privé*) deed to which it was not a party, or on evidence held by a third party, it may, upon leave of the arbitral tribunal, have that third party summoned before the President of the Tribunal Judiciaire for the purpose of obtaining a copy thereof (*expédition*) or the production of the deed or item of evidence´*.

§2 of the same article provides that *´the territorial jurisdiction of the President of the Tribunal Judiciaire is determined in accordance with Articles 42 to 48 of the Code of Civil Procedure´*. Hence courts may aid foreign-seated arbitrations, including for disclosure of documents, upon some locational criteria (eg defendant's domicile in France).

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

The applicable rules to disclosure of documents and document requests are subject to the rules applicable in each arbitration as per the arbitration rules provided for in the arbitration agreement.

There is no *'discovery'* as such in France. However, pre-arbitration application to courts to obtain a judicial order from courts to preserve or obtain evidence is available (Art 145 and 1449 CCP).

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

See response to section VII (i) above.

(iii) Are there special rules for handling electronically stored information?

The main framework regarding this matter is the General Data Protection Regulation (GDPR) (EU Regulation, 2016/679). In this respect, French practitioners may rely on the joint IBA-ICCA 'Roadmap to Data protection in international arbitration' published in 2022, that deals in length with the impact of the GDPR in the field of arbitration.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

Article 1464 §4 CCP, which is only applicable to domestic arbitration, provides that *´subject to legal requirements, and unless otherwise agreed by the parties, arbitral proceedings shall be confidential´*.

As for international arbitration, there is no rule on confidentiality.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

French law does not restrict in any manner the arbitral tribunal's power to protect trade secrets and confidential information.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

Correspondence exchanged between members of the Bar is subject to privilege. In-house counsel, however, do not benefit from such rule in the European Union. Arbitral tribunals are however free to adopt the rules they believe appropriate in this respect, with the aim of protecting the principle of party equality. Arbitral tribunals may in this respect draw inspiration from or apply directly Article 9.4 of the IBA Rules on the Taking of Evidence (2020).

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

Although it is common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence as a rule or as a source of inspiration, there is no specific requirement in French law to do so.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

Arbitral tribunals have full discretion in the conduct of the procedure of an arbitration, subject to the principles of due process, which in France form part of international public policy. Article 1510 CCP provides, to that effect, that *´irrespective of the procedure adopted, the arbitral tribunal shall ensure that the parties are treated equally and shall uphold the principle of due process´*.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

As far as international arbitration is concerned, procedures conducted in France apply internationally recognised procedures, including the use of witness statements and cross-examination. In this respect, the Paris Bar clarified that it is not contrary to French lawyers' ethical duties to prepare witnesses according to the established arbitral practice.

Whether arbitrators would allow the direct examination or questioning of witnesses depends on the parties' agreement and the legal background of the arbitrators. There is no specific practice or provision in French law with respect to this issue.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

In international arbitrations seated in France, any party can appear as a witness. There are no mandatory rules in France on oath or affirmation.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?

See answer to section IX (iv) above.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

Subject to the general requirements of due process and the fairness of the arbitration, there are no specific formal requirements in France regarding the independence and/or impartiality of expert witnesses. It is generally accepted in arbitrations conducted in France that experts owe a duty to the arbitral tribunal rather than to the parties.

As to the presentation of the expert testimony, there are no specific formal requirements in French law.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

An arbitral tribunal sitting in France may or may not, depending on the characteristics of each case, appoint experts in addition to those that have been appointed by the parties. Lists of experts are administered by French courts, but there is no requirement that arbitrators sitting in France resort to such lists when appointing experts.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

There is no specific legal provision in France in this respect. In practice, hot- tubbing tends to be used to examine experts where technical matters are concerned.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

There are no specific rules or requirements in French law as to the use of arbitral secretaries. As in other jurisdictions, arbitral secretaries may be used for administrative matters in complex cases. Arbitral institutions, such as the ICC (2021 ICC Notes to Parties and Arbitral Tribunals on the Conduct of the Arbitration) often provide guidance to arbitral tribunals in this respect.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

In France, counsel must comply with the lawyers' code of ethics (*code de déontolgie des avocats*). It includes ethical rules such as the principle of confidentiality of communications between a lawyer and his or her client. The rules contained in this code of ethics are mandatory for all lawyers belonging to a bar in France.

Among the soft law tools specific to arbitration proceedings, the AFA drafted in 2014 *´The Ethical Charter of the Fédération des Centres d'Arbitrage´* which aims at applying to arbitrators, counsel, parties, experts, etc.

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

French Arbitral institutions in France have not implemented such rules. In 2016, the arbitration court of the ICC issued conflict of interests' guidance (as part of its Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of the Arbitration) aimed at arbitrators only. Article 17(2) of the 2021 ICC Rules of Arbitration allows the arbitral tribunal to exclude counsel as a measure to avoid a conflict of interest.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

France has not adopted any rules regarding remote hearings, however the Paris Court of Appeal recently ruled that virtual hearings held by a tribunal were a solution accepted in practice and that could not amount to a violation of the arbitrators' mission.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

Article 1481 CCP, which is applicable to both domestic and international arbitration, provides that *´the arbitral award shall state: (1) the full names of the parties, as well as their domicile or corporate headquarters; (2) if applicable, the names of the counsel or other persons who represented or assisted the parties; (3) the names of the arbitrators who made it; (4) the date on which it was made;(5) the place where the award was made´*.

Article 1482 CCP, which is also applicable to both domestic and international arbitration, provides that *´the arbitral award shall succinctly set forth the respective claims and arguments of the parties. The award shall state the reasons upon which it is based´*. However, in international arbitration, the reasoning requirement is not part of international public policy, hence the parties may agree to an award without reasoning.

French law does not state any limitation on the type of permissible relief. Nevertheless, the rules applicable to the substance may limit in certain cases the permissible relief (eg specific performance with respect to certain types of *intuitu personae* obligations).

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

As to punitive and exemplary damages, there is no express provision in the French statute preventing arbitrators sitting in France from awarding such damages. It is however uncertain whether an arbitral award ordering punitive or exemplary damages would be considered as contrary to international public policy in the context of set-aside proceedings. There is no case law on this specific issue, but French courts have admitted the recognition in France of a foreign judgement awarding punitive damages, subject to a proportionality test.

Arbitrators may award interest and compound interest.

(iii) Are interim or partial awards enforceable?

Interim or partial awards are enforceable if they comply with the conditions for the recognition and enforcement of any award.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Dissenting opinions are not contrary to international public policy and cannot by themselves entail the nullity of the award. There are no requirements of form or content relating to dissenting opinions. However, most scholars share the view that arbitrators should carefully draft their dissenting opinions in order not to violate the confidentiality of the arbitral tribunal's deliberations (Art 1479 CCP, applicable to both domestic and international arbitration).

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Case law has ruled that an award by consent, insofar as it merely acknowledges the parties' agreement, could not be characterised as a proper arbitral award. Such awards may however be characterised as settlement agreements which benefit from a specific regime as per Articles 2044 *et seq* CC.

Arbitral proceedings may be terminated, other than by an award, for instance, by a procedural order in the case of the agreement of all parties or by a settlement agreement.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Article 1485 §1 and 2 CCP, which applies to domestic and international arbitration, provides that *´once an award is made, the arbitral tribunal shall no longer be vested with the power to rule on the claims adjudicated in that award. However, on application of a party, the arbitral tribunal may interpret the award, rectify clerical errors and omissions, or make an additional award where it failed to rule on a claim. The arbitral tribunal shall rule after having heard the parties or having given them the opportunity to be heard´*. Hence, if the tribunal omitted to rule on a claim *(infra petita*), this is not a ground for annulment as parties can still go back to the tribunal itself.

Article 1485 §3 CCP, which only applies to domestic arbitration, provides that if the arbitral tribunal cannot be reconvened and if the parties cannot agree on the constitution of a new tribunal, the power to interpret or correct the award *´shall vest in the court which would have had jurisdiction had there been no arbitration´*.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

French law does not provide for any rules on the allocation of costs. Such a matter is therefore within the discretion of the arbitral tribunal, subject to the parties' agreement.

In the context of domestic arbitration, some arbitrators may draw inspiration from Article 696 CCP, which applies to all proceedings, and pursuant to which *´the legal cost will be borne by the losing party, unless the judge, by a reasoned decision, imposes the whole or part of it on another party´*.

(ii) What are the elements of costs that are typically awarded?

Costs typically awarded are the fees and expenses of the arbitral tribunal, the administrative expenses of the arbitral institution, the fees and expenses of the parties' counsel, the costs of experts and witnesses, and any other expense incurred in relation to the arbitration proceedings without any specific limitation.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

French case law has considered that arbitrators have no jurisdiction to decide on their own fees (as opposed to the allocation of the costs between the parties) and that the arbitral tribunal's decisions on its fees are therefore not binding upon the parties. It has also been decided that the decision of an arbitral institution on the fees of arbitrators must follow a contradictory procedure, failing which it will be set aside. However, it is beyond doubt that the arbitrators have jurisdiction to decide on the allocation of the costs of the arbitration between the parties.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

Subject to the parties' agreement, the arbitral tribunal has discretion to apportion the costs of the arbitration between the parties.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

There is no basis for courts to review the arbitral tribunal's decision on the apportioning of costs. To the contrary, the arbitral tribunal's decision on the amount of its fees and expenses may be reviewed by courts except when the parties agree to entrust an arbitral institution of that task.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

International arbitral awards rendered in France may be challenged by way of an action to set aside the award (Art 1518 CCP). Article 1519 CCP provides that *´an action to set aside shall be brought before the Court of Appeal of the place where the award was made. Such recourse can be made as soon as the award is rendered. If no application is made within one month following notification of the award, recourse shall no longer be admissible. The award shall be notified by service (*signification*), unless otherwise agreed by the parties´*.

Pursuant to Article 1520 CCP, international awards may be set aside if *´(1) the arbitral tribunal wrongly upheld or declined jurisdiction; or (2) the arbitral tribunal was not properly constituted: or (3) the arbitral tribunal ruled without complying with the mandate conferred upon it; or (4) due process was violated; or (5) the award is contrary to international public policy´*.

As to foreign arbitral awards, Article 1525 CCP provides for the possibility of a challenge against the order declaring the award enforceable in France. Article 1525 §2 CCP provides that *´the appeal shall be brought within one month following service (signification) of the order´*. The appeal can be brought on the same limited grounds referred to in Article 1520 CCP.

As regards domestic awards, Article 1491 CCP provides that an action to set aside an award may be brought except where the parties have agreed that the award may be appealed pursuant to Article 1489 CCP.

In accordance with Article 1492 CCP, domestic awards may be set aside if *´(1) the arbitral tribunal wrongly upheld or declined jurisdiction; or (2) the arbitral tribunal was not properly constituted*; *or (3) the arbitral tribunal ruled without complying with the mandate conferred upon it; or (4) due process was violated; or (5) the award is contrary to public policy*; *or (6) the award failed to state the reasons upon which it is based, the date on which it was made, the names or signatures of the arbitrator(s) having made the award; or where the award was not made by majority decision´*.

In domestic arbitration, challenge proceedings have the effect of staying enforcement proceedings (Art 1496 CCP). In international arbitration, since the introduction of the new 2011 statute, challenges – or appeals against enforcement orders – no longer stay enforcement proceedings automatically, *´however the first president ruling in expedited proceedings (référé) or, once the matter is referred to him or her, the judge assigned to the matter (conseiller de la mise en état), may stay or set conditions for enforcement for an award where enforcement could severely prejudice the rights of one of the parties´* (Article 1526 CCP).

Challenge proceedings may last from 12 to 15 months. The creation in 2018 of the dedicated chamber at the Paris Court of Appeal to hear set-aside proceedings and appeals against exequatur decisions, has contributed to increase the efficiency of the proceedings.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

Yes. Article 1522 CCP provides to that effect that *´by way of a specific agreement the parties may, at any time, expressly waive their right to bring an action to set aside. 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. Such appeal shall be brought within one month following notification of the award bearing the enforcement order. The award bearing the enforcement order shall be notified by service (signification), unless otherwise agreed by the parties´*.

In light of the necessity for a specific agreement to waive the right to challenge an award, it will not be waived by reference to a general or unspecified waiver clause as, for instance, waiver clauses in institutional rules.

Waiver of the action to set aside is not limited to French nationals, hence parties may agree to it irrespective of their domicile.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

International awards are not subject to appeal. Under the 2011 statute, domestic awards may not be appealed unless otherwise agreed by the parties (Art 1489 CCP) without any reference to specific grounds. After appeal proceedings, decisions can be referred to the *Cour de Cassation*.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

There is no procedure for remand in French law.

(v) Is there a specialist arbitration court in your jurisdiction?

There is no specialist arbitration court per se in France. However, applications to set aside as well as appeals of exequatur orders of international arbitral awards are concentrated before the Paris Court of Appeal and in principle will be heard by its International Chamber which was created in 2018.

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?

French courts consider that while arbitrators must apply the law elected by the parties, a failure to rightly apply it would not amount to a ground for annulment, unless such a failure would entail a violation of international public policy. Such a violation could be constituted by the arbitrators' failure to uphold the parties' due process rights.

XIII. Arbitrator Liability

(i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?

The arbitration law in France does not expressly provide for the immunity of arbitrators, or of any other participant in the arbitration proceedings, from civil liability in connection with their mandate.

However, it was decided by the *Cour de Cassation* that arbitrators *'enjoy immunity, the limit of which would be the commission of acts likely to characterise personal misconduct amounting to fraud, gross negligence or a denial of justice' (Azran*, Cass. 1e civ, 15 January 2014, n°11-17.196). This is consistent with previous case law whereby arbitrators were held liable for not having disclosed their link with one of the parties, or for not having applied to the supporting judge *(juge d'appui*) to request an extension of time while they could have done so. If one is to seek civil responsibility of an arbitral institution, a direct fault of such institution must be proven, as a mere fault of the arbitrators will not suffice. The *Cour de Cassation* distinguishes between the administrative role of the arbitral institutions and the jurisdictional role of the arbitrator.

(ii) Does this immunity, if any, extend to criminal liability?

Arbitrators do not enjoy any immunity as regards criminal liability. Even where the seat of arbitration is in a foreign country, arbitrators may be prosecuted in France if the offence was committed in France.

XIV. Recognition and Enforcement of Awards

(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?

The process for the recognition and enforcement of domestic awards is provided in Articles 1487 and 1488 CCP.

Article 1487 CCP provides that *´an arbitral award may only be enforced by virtue of an enforcement order* (exequatur) *issued by the Tribunal Judiciaire of the place where the award was made. Exequatur proceedings shall not be adversarial. Application for exequatur shall be filed by the most diligent party with the Court Registrar, together with the original award and arbitration agreement, or duly authenticated copies of such documents. The enforcement order shall be affixed to the original or, if the original is not produced, to a duly authenticated copy of the arbitral award, as per the previous paragraph´.*

Article 1488 CCP provides that *´no enforcement order may be granted where an award is manifestly contrary to public policy. An order denying enforcement shall state the reasons upon which it is based´*.

The process for the recognition and enforcement of arbitral awards made abroad or in international arbitration is provided in Articles 1514 to 1517 CCP.

Pursuant to Article 1514 CCP, *´an arbitral award shall be recognised or enforced in France if the party relying on it can prove its existence and if such recognition or enforcement is not manifestly contrary to international public policy´*.

Article 1515 CCP states that *´the existence of an arbitral award shall be proven by producing the original award, together with the arbitration agreement, or duly authenticated copies of such documents. If such documents are in a language other than French, the party applying for recognition or enforcement shall produce a translation. The applicant may be requested to provide a translation 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´*.

Article 1516 CCP states that *´an arbitral award may only be enforced by virtue of an enforcement order* (exequatur) *issued by the Tribunal Judiciaire of the place where the award was made or by the Tribunal Judiciaire of Paris if the award was made abroad. Exequatur proceedings shall not be adversarial. Application for exequatur shall be filed by the most diligent party with the Court Registrar, together with the original award and arbitrating agreement, or duly authenticated copies of such documents´*.

Pursuant to Article 1517 CCP, *´the enforcement order shall be affixed to the original or, if the original is not produced, to a duly authenticated copy of the arbitral award, as per the final paragraph of Article 1516. Where an arbitral award is in a language other than French, the enforcement order shall also be affixed to the translation produced as per Article 1515. An order denying enforcement of an arbitral award shall state the reasons upon which it is based´*. As regards domestic awards, *´no recourse may be had against an order granting enforcement of an award. However, an appeal or an action to set aside an award shall be deemed to constitute recourse against the order of the judge having ruled on enforcement or shall bring an end to said judge's jurisdiction, as regards the parts of the award which are challenged´* (Art 1499 CCP).

As regards international awards rendered in France, orders granting enforcement or recognition may only be appealed if, by way of a specific agreement, the parties have expressly waived their right to bring an action to set aside (Art 1522 and 1524 CCP).

In the case of awards rendered abroad, a party may appeal the order granting – or denying – its recognition or enforcement (Art 1525 §1 CCP) under the grounds listed in Article 1520 CCP (see response to question XIII (i)).

Regarding the stay of enforcement proceedings, see response to section XII (i).

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

Once the exequatur is obtained, it is necessary to initiate enforcement proceedings by, as the case may be, attaching the debtor's assets. In such case, the debtor may challenge the enforcement operations in the conditions provided to that effect by the French Code of Civil Enforcement Procedures.

(iii) Are conservatory measures available pending enforcement of the award?

Enforcement of the award may entail measures of attachment and judicial seizures. Conservatory measures may also be available on a provisional basis in the case of a stay of the enforcement proceedings.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

French courts show a great degree of deference towards arbitral awards, which are rarely quashed, except for lack of jurisdiction, irregularity in the constitution of the arbitral tribunal, excess of powers or breach of due process. French courts take a narrow approach to the concept of international public policy, which may entail the annulment of the award only in case of a flagrant breach of the most fundamental rules.

French courts have repeatedly held that the annulment of an award at the place of arbitration is not a ground for denying enforcement in France. The famous cases *Hilmarton* (Cass. 1e civ. 23 March 1994, n°92-15.137) and *Putrabali* (Cass. 1e civ. 29 June 2007, n°05-18.053), that have been continuously reaffirmed, illustrate the French position, seeing in the award *´an international judicial decision´*, *´which is not integrated in any national legal system´*.

(v) How long does enforcement typically take? Are there time limits for seeking the en-forcement of an award?

See response to section XII (i) above.

XV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

French law traditionally distinguishes between jurisdictional immunities and enforcement immunities. As for jurisdictional immunities, French courts admit that the submission to arbitration is equivalent to a waiver of the immunity. As for enforcement immunities, French law provides sovereign states with immunity for actions with respect to assets allocated to a sovereign activity as opposed to those performed with respect to assets allocated to an economic or a commercial activity. International organisations may benefit, based on the relevant treaties, from special immunities.

In *Creighton* (Cass. 1e civ, 6 July 2000, n°98-19.068), the *Cour de Cassation* ruled that an implicit waiver of the enforcement immunity resulted from the submission to an ICC arbitration. The decision stated that ´[t]*he obligation entered into by the State by signing the arbitration agreement to carry out the award according to Article 24 of the International Chamber of Commerce Arbitration Rules* [Article 28(6) of the ICC 1998 Rules of Arbitration, now Article 35(6) of the 2021 Rules] *implies a waiver of the State's enforcement immunity´.*

Case law on the execution immunity has varied over time. After the entry into force of the Law No. 2016-1691 (Sapin II) dated 9 December 2016, a waiver of a state's immunity from execution must always be express, and to apply to assets of diplomatic missions it must also be specific.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

Similarly to section XV (i) above, French case law uses the distinction between assets allocated to a sovereign activity *(jure imperii* activity), which are protected assets, and those allocated to an economic or a commercial activity *(jure gestionis* activity), which are not protected by the states' immunity.

Special rules will apply to the enforcement of an award against an entity that is considered a state emanation.

(iii) Are there any requirements for arbitrations involving sovereign entities?

There is no requirement for arbitrations involving sovereign entities.

XVI. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

France signed the Washington Convention in 1965. It entered into force on 20 September 1967. France was a signatory to the Energy Charter Treaty (ECT), which it effectively withdrew from on 1 January 2024. Pursuant to the sunset clause of the ECT, investments made prior to withdrawal will continue to be protected for 20 years. France has not signed any other multilateral treaty on the protection of investments.

(ii) Has your country entered into bilateral investment treaties with other countries?

Per UNCTAD's available data, to date, France has entered 116 bilateral investment treaties (BITs), 84 of which are currently in force. It is noteworthy that many terminations have taken place within the last few years, because of the *Achmea* decision of the CJEU, with intra-EU BITs conflicting with EU law and the jurisdiction of the CJEU.

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

Yes, recent decisions concerning intra-European investor-state arbitration all followed the interpretation given by the CJEU (*La République de Moldavie v. Société Stileks Scientific and Production Firm LLC, intervenante volontaire à titre principal pour la Société Komstroy*, CA Paris, 10 January 2023, n° 18/14721; *République de Pologne v. Société CEC Praha et Société Slot Group AS*, CA Paris, 19 April 2022, n°20/14581).

XVII. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

Main treatises on arbitration in France:

- Seraglini C, Ortscheidt J, *Droit de l'arbitrage interne et international* (LGDJ 2019)
- Racine J, *Droit de l'arbitrage* (Themis - PUF 2016)

- De Boisséson M, Fouchard C, Madesclair J, *Le droit français de l'arbitrage* (LGDJ 2023)
- Clay T, De Fontmichel M, *Code de l'arbitrage commenté* (LexisNexis 2021)
- El Ahdab J, Mainguy D, *Droit de l'arbitrage, Théorie et pratique* (LexisNexis 2021)
- Fadlallah I, Hascher D, *Les grandes décisions du droit de l'arbitrage commercial* (Dalloz 2019)
- Dupeyré R, Nougein H, *Règles et pratiques du droit français de l'arbitrage* (Lextenso 2012)

Journals:

- The *Revue de l'Arbitrage* (Rev. Arb.), edited by the *Comité français de l'arbitrage* (CFA),
- *Cahiers de l'Arbitrage / Paris Journal of International Arbitration*
- The *Journal du droit international* (Clunet or JDI)
- The *Revue Critique de Droit International Privé* (Rev. Crit. Dr. Int. Pr.)
- International Business Law Journal (IBLJ)

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

- Paris Arbitration Week (generally in March-April)
- ICC pre-moot (arbitration): application is usually opened on early October. For the 31st Willem C. Vis Moot see (**https://2go.iccwbo.org/icc-vis-pre-moot.html**)
- ICC Institute Annual Conference (generally in November)
- *Comité Français de l'Arbitrage* Annual Conference (generally in November) and other events throughout the year
- ICC *France* (various events throughout the year)
- *Paris Place de l'Arbitrage* (various events throughout the year)
- AFA Annual Conference (generally in October)
- CFA-40 events (various events throughout the year)

XVIII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Arbitration is considered to be the normal method of solving international business disputes.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

There is a trend towards an increased use of mediation, in both arbitration proceedings and court litigation.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

Over the past ten years, an important trend has been the growing importance of the *Conseil d'Etat* confirming its exclusive jurisdiction in set-aside and exequatur proceedings involving French public entities and public rules.

Also to be noted, the judicial courts, the Paris Court of Appeal and the *Cour de Cassation*, confirmed the proactive approach of the French judges and the increasing control over arbitral awards when corruption allegations infringing the French conception of international public policy are put forward by the parties. In such extreme cases, the *Cour de Cassation* reaffirmed that despite the prohibition of the revision of the arbitral awards, the set-aside judge has the power to reassess the evidence submitted to the arbitral tribunal, to consider new evidence that was not brought before the tribunal (*Belokon*, Cass. 1e civ, 23 March 2022, n°17-17.981) and to assess such allegations even if they were not previously raised during the arbitration proceedings (*Sorelec,* Cass. 1e civ, 7 September 2022, n°20-22.118). In the case of the challenge of the arbitral award based on the tribunal's jurisdiction, the *Cour de Cassation* has asserted the parties' right to submit new arguments and new evidence not previously discussed before the arbitral tribunal (*Schooner*, Cass. 1e civ, 2 December 2020, n° 19-15.396).

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

There are no official plans to reform the arbitration law in France. The 2011 reform has proven to be beneficial and, complemented by the case law on arbitration developed by French judges, provides the necessary tools to face the recent challenges.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

There are no specific rules governing third-party funding in France.

However, in line with the *Tesco* decision (Cass. 1e civ., 10 October 2012, n°11-20.299), it stems from case law that, to assess whether the arbitrator has breached the obligation to disclose, the Court of Appeal will first look at whether there is a link between the third party and the dispute before the arbitrator. If there is such a link, it is incumbent on the arbitrator to disclose any relationship with the third party that is likely to raise any doubts as to his or her impartiality or independence. It was specified that the link in question is any involvement of the third party in the dispute submitted to arbitration, which would thus encompass financial funding.

In 2017, the Paris Bar Council adopted a resolution confirming the positive effect of third-party funding in international arbitration and its legality under French law, and specified that the lawyers representing a funded party have duties vis-à-vis their clients and not the third-party funder.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

France does not have a sanctions regime of its own but is part of the EU and the UN, which both produce sanctions aimed at different objectives and targeting different countries.

In this respect, the Paris Court of Appeal decided that awards may be contrary to international public policy if the arbitral tribunal failed to consider sanctions that embody '*rules and values*' which the French legal system could not allow to be disregarded (CA Paris, 3 June 2020, n°19/07261). What is more, the *'violation of international public policy must be effective and concrete and must therefore be assessed in terms of the material and temporal scope of the sanctions invoked'*. This reasoning was recently confirmed by the *Cour de Cassation* (Cass. 1e civ, 9 February 2022, n° 20-20.376).