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FRANCE

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

MARIE DANIS AND KAROL BUCKI
OF AUGUST DEBOUZY

AUGUST DEBOUZY

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

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DELOS

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

French law is globally known to be one of the most arbitration-friendly in the world. Several important factors were brought together so that Paris can be perceived today as one of the safest and most convenient seats of arbitration. Nowadays, some of the most renowned arbitration practitioners in the world and arbitral institutions have set up offices in Paris.

France is one of the oldest homes of the civil law system. Most of the rules applicable to arbitration are set forth in the Code of Civil Procedure ("**CCP**"). The French arbitration law distinguishes between rules applicable to domestic and international arbitration even though some provisions are applicable to both by virtue of Article 1506 CCP. Pursuant to Article 1504 CCP, arbitration is considered to be "international" when the interests of international trade are at stake. The distinction is important, as rules applicable to international arbitration are more liberal.

Key places of arbitration in the jurisdiction	Paris holds a strong reputation as being the capital of international arbitration with the support of French arbitration law, which is well-known as one of, if not the most, arbitration-friendly in the world. As such, it is a home to leading arbitral institutions and prominent practitioners.
Civil law / Common law environment?	France is a civil law system, but many arbitrations seated in Paris are subject to foreign laws such as Swiss or English law. Arbitral practitioners, including arbitrators, are familiar with general common law concepts.
Confidentiality of arbitrations?	Domestic arbitration: pursuant to Article 1464 CCP, arbitration is confidential unless otherwise agreed upon by the parties. The scope of confidentiality is not defined but it is considered to extend to the names of the arbitrators, the arbitral institution, the legal counsel, and the seat. In addition, Article 1479 CCP provides that members of the arbitral tribunal must keep their deliberations secret. International arbitration: no French legal provision imposes an obligation of confidentiality on the parties. In order to secure confidentiality, parties can, *inter alia*, enter into a separate confidentiality agreement, provide for confidentiality in their arbitration agreement or choose an institution whose rules expressly state that the arbitral proceedings are confidential. The deliberations of the tribunal must be kept confidential as Article 1479 CCP also applies to international arbitration.
Requirement to retain (local) counsel?	There is no formal requirement to retain a local counsel for the arbitration itself. However, should the need arise to request a French judge to decide on certain arbitration-related issues (such as for instance the constitution of the arbitral tribunal or emergency injunctive relief), retaining a local counsel would be recommended.
Ability to present party employee witness testimony?	Pursuant to Article 1467 CCP applicable to domestic arbitration and extended to international arbitration, the arbitral tribunal may hear any person to provide testimony. Witnesses are

	generally not sworn in. The French Bar Council allows witness preparation in international arbitral procedures (Paris Bar Council Resolution, dated 26 February 2008). It is uncertain whether the same applies to domestic procedures. As a general rule, the subornation of perjury is a criminal offence under Article 434-15 of the French Criminal Code.
Ability to hold meetings and/or hearings outside of the seat?	Yes, unless otherwise provided by the parties.
Availability of interest as a remedy?	Arbitrators may award interest on any monetary claim, which will be added to the principal upon enforcement in France. Furthermore, pursuant to Article 1231-7 of the French Civil Code and established case law, interest at the French statutory rate will automatically apply and be added to the principal when the enforcement of an international award is sought in France, unless moratory interest has already been granted under the award.
Ability to claim for reasonable costs incurred for the arbitration?	There is no legal provision limiting the jurisdiction of the arbitral tribunal to render a decision on costs incurred in the arbitration (including counsel and expert's legal fees). As such, parties may claim before the arbitral tribunal for costs incurred in the scope of the arbitration.
Restrictions regarding contingency fee arrangements and/or third-party funding?	There are no specific legal provisions governing third-party funding. However, the Paris Bar Council has recently adopted a resolution confirming that third-party funding is a positive development for access to justice and does not contravene French Law (Paris Bar Council Resolution, dated 21 February 2017). Disclosure of third-party funding is recommended but not compulsory. Under French law, contingency fee arrangements where the entirety of attorney's remuneration is dependent on the outcome of the case (*quota litis* pacts) are prohibited. However, the Paris Court of Appeal held that such "pure" success fee arrangements in international arbitration procedures are not contrary to the French definition of international public policy if the agreed fees are not manifestly excessive. The National Council of the French Bars recently published a status report reflecting on the evolution of the *quota litis* pact and the possible lifting of its prohibition (National Council of the French Bars Resolution, dated 6-7 October 2017).
Party to the New York Convention?	France signed the New York Convention on 25 November 1958. It was ratified on 26 June 1959 and it entered into force on 24 September 1959.
Other key points to note	(1) An arbitration agreement entered into by the parties to international arbitration is deemed to be valid; (2) Annulment of an arbitral award at the seat of the arbitration does not prevent the award from being enforced in France.
WJP Civil Justice score (2018)	0.70

ARBITRATION PRACTITIONER SUMMARY

France has one of the most advanced and liberal arbitration frameworks in the world. Arbitration practitioners have thus wide discretion to adapt the arbitral proceedings. The State courts widely support arbitration and systematically give priority to the arbitrators to rule upon their jurisdiction. Overall, unless the arbitration agreement is held to be manifestly void or manifestly inapplicable, which is extremely rare, the State courts systematically decide that they lack jurisdiction when they are confronted with a dispute that appears to arise from an arbitration agreement. Finally, the enforcement of foreign arbitral awards is highly effective, notably because an award set aside at the seat can still be enforced in France.

Date of arbitration law?	The rules applicable to domestic and international arbitration were compiled in the second part of the 20th century and result from a decree of 14 May 1980 on domestic arbitration and a decree of 12 May 1981 on international arbitration. A decree of 13 January 2011 reformed the current rules on both domestic and international arbitration, embodied in Articles 1442 to 1503 CCP (domestic arbitration) and 1504 to 1527 CCP (international arbitration).
UNCITRAL Model Law? If so, any key changes thereto?	The French arbitration law had existed long before the UNCITRAL Model Law was created and implemented in numerous countries. Although both systems adopt a liberal approach to international arbitration, the French system seems even more liberal than the UNCITRAL Model Law. By way of example, French arbitration law does not require the international arbitration agreement to be in writing whereas the UNCITRAL Model Law does. In addition, the enforcement of a foreign award cannot be refused on the ground that the award was set aside at the seat of arbitration.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	With regards to both domestic and international arbitration, the decree of 13 January 2011 created a dedicated judge (*juge d'appui*) who has jurisdiction over arbitration-related issues and who acts in support of arbitral proceedings. Such judge may assist the parties in the constitution of the arbitral tribunal if any problem arises. In addition, the Paris Court of Appeal has a dedicated division exclusively focused on arbitration (Section 1, Chamber 1) in order to ensure coherent case law. Similarly, the French *Cour de cassation* – the higher degree of jurisdiction in set-aside proceedings in France – systematically assigns such proceedings to its first civil division. Given the number of arbitral proceedings seated in France and the arbitration-friendly approach adopted by French lawmakers, judges dealing with arbitration-related matters are generally used to arbitration and they are familiar with the applicable rules.
Availability of *ex parte* pre-arbitration interim measures?	Pursuant to Article 1449 CCP, which is applicable to both domestic and international arbitration, the existence of an arbitration agreement does not prevent a party from seeking

	pre-arbitration interim or conservatory measures before a State court as long as the arbitral tribunal has not been appointed. Such measures can be ordered to gather evidence before commencement of the arbitral proceedings. A party who seeks other interim or provisional measures, such as freezing orders (*mesures conservatoires*) or constitution of escrow accounts reserves (*séquestre*), shall have to demonstrate urgency.
Courts' attitude towards the competence-competence principle?	The principle is widely adopted, recognized and respected by French judges as it is enshrined in the CCP. According to Article 1448 CCP, which applies to both domestic and international arbitration, State judges cannot rule on the jurisdiction of the arbitral tribunal unless *(i)* the arbitral tribunal is not constituted yet and *(ii)* the arbitration agreement is manifestly void or manifestly inapplicable. The judgments where State courts considered that the arbitration agreement was manifestly void or manifestly inapplicable are extremely rare as this concept is construed very narrowly.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	There are no additional grounds for the annulment of international awards. In domestic arbitration, as an additional condition, the award must be signed and state the reasons for the decisions therein, its date, the name(s) of the arbitrators and it must be adopted by a majority vote.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Contrary to the vast majority of other jurisdictions, the annulment of the arbitral award at the seat of arbitration is neither a ground nor even a significant factor to prevent such award from being recognised or enforced in France. Indeed, French arbitration law considers that the award is not attached to the seat of arbitration but rather forms part of an "arbitral legal order" distinct from state jurisdictions' legal orders, and that its annulment at the seat has no impact on its validity.
Other key points to note?	An international arbitral award can only be enforced in France if it is rendered effective by an enforcement order called "*exequatur*". This procedure is non-adversarial and only allows the French judge for a limited control. Indeed, the judge is solely requested to verify if the award that he or she is requested to enforce does exist and whether it is not manifestly contrary to the French definition of international public policy. The cases where French judges refuse to grant an *exequatur* are very rare.

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 The relation between the French arbitration law and the UNCITRAL Model Law

The French arbitration law is not based on the UNCITRAL Model Law.

However, many provisions of French arbitration law comply with the Model Law as both systems adopt a very liberal and arbitration-friendly approach. Yet, French arbitration law is generally considered to be even more liberal than the Model Law as, *inter alia,* it does not require, with regards to international arbitration that the arbitration agreement be in writing. Moreover, the annulment of the award at the seat of arbitration is not a ground, under French arbitration law, for refusing its enforcement or recognition, which is the case under the Model Law.

1.2 The form of the French arbitration law

French arbitration law was initially codified in the decree No 80-354 of 14 May 1980 on domestic arbitration and the decree No 81-500 of 12 May 1981 on international arbitration. Such rules were subsequently revised by the decree No 2011-48 of 13 January 2011, which came into force on 1 May 2011. The currently-applicable rules, as amended by the 2011 decree, are mainly provided in Book IV of the CCP.[1] Articles 1442 to 1503 CCP apply to domestic arbitration while Articles 1504 to 1527 CCP apply to international arbitration. It should, however, be noted that the application of numerous provisions concerning domestic arbitration is extended to international arbitration by virtue of a reference made by Article 1506 CCP.

Rules applicable to domestic arbitration differ from those that apply to international arbitration. Whether an arbitral proceeding is deemed international will carry significant consequences in terms of applicable rules as domestic arbitration is subject to stricter rules than international one.

Pursuant to Article 1504 CCP, an arbitration will be deemed international if it affects the "*interests of international trade*". French courts have consistently applied this definition in an extensive and pragmatic manner and consider that a dispute is international when it concerns the economy of more than one country. This means that any dispute where goods, funds, technologies, services, etc. are exchanged over a national border, at least once, will meet this standard. The international nature of a dispute is not determined on the grounds of the nationality of the parties, or the law governing the merits of the dispute. For instance, an arbitration proceeding involving French parties, with French law applicable to the merits of the case, has been deemed international merely because the dispute was related to a contract which was to be partially performed overseas.[2]

Several specific provisions related to arbitration can be found outside the CCP. By example, Article L. 721-3 of the French Code of Commerce deals with domestic arbitration and provides for the validity of arbitration agreements in disputes related to commercial matters. In addition, Articles 2059 to 2061 of the French Civil Code relate to the question of the arbitrability of disputes. Article 2061, in particular, has recently been amended by the Law No 2016-1547 of 18 November 2016 on the Modernization of Justice (*La loi de modernisation de la Justice du XXIe siècle*) to allow non-professional parties (*e.g.*, workers and consumers), whose contracts include an arbitration agreement, to solve a dispute arising from such agreement through domestic arbitration if they agree so. Previously, such clauses were automatically considered as null and void when applied in domestic arbitration.

Finally, a number of isolated provisions related to the capacity to submit certain specific persons to domestic arbitration or the arbitrability of certain specific matters can be found in other French codes such

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1 A translated version of the French Code of Civil Procedure is available on-line.

2 Paris Court of Appeal, 26 January 1990, RTD Com. 1991 p. 575.

as Article L. 615-17 of the French Intellectual Property Code, which authorizes arbitration of patent disputes, or Article L. 2141-5 of the French Code of Transportation which allows the French national railroad company (*SNCF Mobilités*) to enter into arbitration agreements.

1.3 Last major revision of the French arbitration law

The last major reform of the French arbitration law was brought by the decree No 2011-48 of 13 January 2011, which came into force on 1 May 2011. Furthermore, the recent Law on the Modernization of Justice of 18 November 2016 extended the possibility in domestic arbitration to resort to arbitration by non-professional parties such as employees or consumers. No major reform is currently underway or expected in the near future.

2. The arbitration agreement

2.1 Determination of the law governing the arbitration agreement

In domestic arbitration, the validity of an arbitration agreement is governed by Articles 1442 to 1447 CCP.

In international arbitration, the French *Cour de cassation* (the highest court in the French judiciary) consistently rules that the arbitration agreement is independent from all national laws - including French law - and should only be interpreted in the light of "substantive rules of international arbitration law".

There is therefore no need to proceed to the determination of the law applicable to the arbitration agreement. The courts consider that an arbitration agreement is valid if *(i)* the parties have consented to arbitration and *(ii)* the arbitration agreement is not contrary to the French definition of international public policy. However, parties have full right to decide that a national law will apply to their arbitration agreement.[3]

Furthermore, the French *Cour de cassation* reinforced the effectivity of international arbitration agreements by consistently ruling that pursuant to a "substantive rule of international arbitration law", an arbitration agreement is presumed to be valid.[4]

2.2 Severability of the arbitration agreement

Under French law, the arbitration agreement is considered to be completely autonomous from the underlying contract. As such, the nullity of the underlying contract will not affect the arbitration agreement itself. This principle is applicable in both international as well as domestic arbitration.

The principle of severability of the arbitration agreement was first formally recognized in international arbitration by the French *Cour de cassation* in 1963.[5] It has since been enshrined in Article 1447 CCP, which is applicable to both domestic and international arbitration.

2.3 Form of the arbitration agreement

In domestic arbitration, pursuant to Article 1443 CCP, the arbitration clause must be in writing. Article 1443 CCP provides that the existence of the arbitration agreement can be proven by an exchange of documents or by a reference made in the principal contract to another document containing the agreement.

With regards to international arbitration, Article 1507 CCP provides that "*the arbitration agreement is not subject to any requirements as to its form*". Therefore, the arbitration agreement does not have to be in writing and will be effective as long as the parties' consent to arbitration can be established. In this respect, French law is even more liberal than Article II.1 of the New York Convention, which requires the arbitration

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3 *Cour de cassation*, 1st civil Division, 30 March 2004, n°01-14.311, *Uni-Kod*, Rev. arb. 2005, p. 959, n. Seraglini.

4 *Cour de cassation*, 1st civil Division, 5 January 1999, n°96-21.430, *Zanzi*, Rev. arb. 1999, p. 260, n. Fouchard.

5 *Cour de cassation*, 1st civil Division, 7 May 1963, *Raymond Gosset v/ Société Caprapelli.*

agreement to be in writing. An arbitration agreement can therefore validly result from general terms and conditions to which a party has consented by way of reference.[6] Should the existence of an arbitration agreement be contested before a State court, the party who wants to rely on such agreement bears the burden of proving its existence.[7]

2.4 Extension of the arbitration agreement to third parties to the contract

Article 1199 of the French Civil Code provides the general principle of privity of contracts, according to which contracts are only binding upon their signatories.

However, the French courts have recognized that the application of the arbitration agreement could be extended to third parties where their consent can be found or, at least, inferred from relevant factual circumstances.

First of all, the arbitration clause may apply to non-signatories to the main contract where such non-signatories were validly assigned substantive rights and obligations arising out of the main contract. This can be for example the case in chains of contracts transferring ownership over goods.[8] French courts also generally admit that the transmission of the arbitration agreement can be operated through the assignment of the contract in which it is contained.[9] The courts apply the rule of severability of the arbitration agreement to the assignment of contracts. Indeed, French courts consider that in case of a voluntary assignment the arbitration agreement is transferred.[10] As a consequence, where a contract containing an arbitration agreement is assigned, the validity of the assignment agreement will not affect the transmission of the arbitration agreement to the assignee.[11]

Secondly, non-signatories may be bound by the arbitration agreement in presence of group of contracts. As such, while there are multiple contracts but only one of them contains an arbitration agreement, the application of such agreement may be extended to the signatories of other contracts that form part of one group with the contract containing the arbitration agreement. As such, the arbitration agreement can be extended to third parties that took part in the performance of the main contract provided that it can be, at least, presumed that they knew about the existence of the arbitration agreement.[12]

Thirdly, the arbitration clause may apply to a group of companies. Indeed, in its decision concerning the motion to annul the award in the *Dow Chemical v/ Isover-Saint-Gobain* case rendered under the auspices of the ICC,[13] the Paris Court of Appeal[14] acknowledged that an arbitration agreement entered into by a subsidiary of a group of companies may bind other companies of the same group, provided that it can be proven that such other companies have directly participated in the performance of the contract.

The arbitration clause was also extended to third parties in some other cases. For example, in the *Dallah* case, an arbitration agreement entered into by a trust was extended to the government of Pakistan as the latter had actually created the trust and behaved "*as if the contract had been concluded by itself*".[15]

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6 *Cour de cassation*, 1st civil Division, 9 November 1993, n°91-15.194.

7 *Cour de cassation*, 1st civil Division, 6 November 2013, n°11-18.709.

8 *Cour de cassation*, 1st civil Division, 9 July 2014, n°13-17.402.

9 *Cour de cassation*, 1st civil Division, 27 March 2007, n°04-20.842.

10 *Cour de cassation*, 1st civil Division, 5 January 1999, n°96-20.202.

11 *Cour de cassation*, 1st civil Division, 28 May 2002, n°00-12.144.

12 *Cour de cassation*, 1st civil Division, 7 November 2012, n°11-25.891.

13 ICC award n°4131, 23 September 1982.

14 Paris Court of Appeal, 21 October 1983.

15 Paris Court of Appeal, 17 February 2011, *Dallah,* Rev. arb. 2011, p. 286.

2.5 Restrictions to arbitrability

2.5.1 Restrictions in relation to specific matters

With regards to domestic arbitration, Article 2059 of the French Civil Code provides for the general rule that "*any person may submit to arbitration the rights of which he has full disposition*". As such, Article 2060 of the Civil Code excludes the possibility to submit to arbitration any matter regarding the civil status or capacity of a person, relating to divorce or legal separation, or involving public authorities and public entities and generally concerning certain matters involving public policy.

However, the courts interpret "*matters involving public policy*" very restrictively and, consequently, they consider that the mere fact that a dispute involves public-policy substantive provisions of French Law does not, *per se*, preclude arbitration. As such, arbitral tribunals can apply the provisions of public policy and they can also sanction their violation. This is for example the case of the vast part of disputes related to competition law. Such disputes may be resolved through arbitration even though French provisions governing this matter are considered to be of public policy. However, the jurisdiction of an arbitral tribunal is limited to the civil law aspects of competition law: while an arbitral tribunal may characterize certain breaches of competition law and, as a consequence, annul a contract or award damages,[16] it may not impose administrative fines or injunctions on parties. Such sanctions are of an administrative nature, and can only be imposed by State/European authorities.

The number of restricted matters seems to be even more limited in international arbitration as the only limit to arbitrability here is "French international public policy" and this notion has been construed very narrowly. As such, parties are for example free to submit intellectual property matters to arbitration.

2.5.2 Restrictions in relation to specific persons

As regards domestic arbitration, before the entry into force of the Law on the Modernization of Justice in November 2016, the arbitration clause had to be concluded in the context of a professional activity. As such, arbitration clauses stipulated in contracts concluded by consumers or employees were considered null and void.

In international arbitration, French courts followed a solution adopted in 1999 by the Employment Section of the *Cour de cassation* which held that an arbitration clause contained in an international employment contract was not automatically void and that the employee had a choice to solve his dispute against the employer either before the arbitral tribunal or before the state employment court.[17]

This rule is now extended to domestic arbitration as the recently-amended Article 2061 of the Civil Code provides that where a party did not contract in the context of its professional activity, it cannot be forced to resort to arbitration but it can nevertheless choose to do so.

As regards more specifically public State entities, the rule in domestic arbitration provided for in Article 2060 of the Civil Code is that a public entity cannot validly agree to arbitration. However, the same provision adds that some categories of public institutions of an industrial or commercial nature may be authorized to enter into arbitration agreements by a State decree.

The French *Cour de cassation* considers that Article 2060 does not apply to international arbitration[18] and rules that States are not prohibited from concluding arbitration agreements in international matters. This solution has also been extended by French courts to encompass foreign State entities, meaning that no

16 Paris Court of Appeal, 19 May 1993, *Labinal,* Rev. arb. 1993, p. 645.

17 *Cour de cassation*, Employment Section, 16 February 1999, n°96-40.643.

18 *Cour de cassation*, 1st civil Division, 2 May 1966, *Galakis*, Rev. Crit. DIP 1967, p. 553 n. Goldman.

foreign State entity can rely on a provision of its own national law in order to walk away from an arbitration agreement to which it has validly consented.[19]

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

French arbitration law gives full effect to the so-called "*kompetenz-kompetenz*" principle, according to which an arbitral tribunal should be given priority to rule on its own jurisdiction.[20]

Article 1448 CCP (applicable to domestic arbitration and extended to international arbitration by virtue of Article 1506 CCP) provides that when a challenge to an arbitration agreement is brought before French courts, they must decline their jurisdiction unless *(i)* the arbitral tribunal has not yet been constituted and *(ii)* the arbitration agreement is "*manifestly null or manifestly inapplicable*".

In any event, the State court cannot rule on the jurisdiction of an arbitral tribunal where such tribunal has already been constituted. Indeed, Article 1465 CCP, applicable to both domestic and international arbitration, specifies that the arbitral tribunal has exclusive jurisdiction to rule over any challenge to its jurisdiction except if the arbitration agreement is "*manifestly null or manifestly inapplicable*".

The notion of "*manifestly null or manifestly inapplicable*" is construed extremely narrowly and the cases where State judges refuse to give priority to arbitral tribunals to rule on their own jurisdiction are extremely rare. Indeed, a French court may only rule on the alleged nullity or inapplicability on a *prima facie* basis.[21] Challenging an arbitration clause would be even more difficult in international arbitration where arbitration agreements are, pursuant to established case law, presumed to be valid *(principe de validité)*.

However, State judges have denied the jurisdiction of an arbitral tribunal where the party challenging the jurisdiction of the State judge could not prove the very existence of the arbitration clause[22] or where a dispute was manifestly outside the scope of the contract containing the arbitration agreement.[23]

Where it is not established that the arbitration agreement is manifestly null or manifestly inapplicable, French courts will systematically decline their jurisdiction and allow the arbitral tribunal to rule on its own jurisdiction.[24] However, a party who wants to rely on an arbitration agreement must raise before the State court a motion to dismiss for lack of jurisdiction before any defence on the merits.[25]

3.2 Anti-suit injunctions

The concept of anti-suit injunctions does not exist under French law. As such, French judges do not grant injunctions preventing the parties from commencing or continuing State court proceedings if an arbitration is under way.

The question also arose as to whether an anti-suit injunction granted abroad could produce effects in France. In a decision rendered on 14 October 2009, the *Cour de cassation* acknowledged that anti-suit

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19 Paris Court of Appeal, 17 December 1991, *Sté Gatoil v/ NIOC*, Rev. arb. 1993, p.281, n. Synvet.

20 *Cour de cassation*, 1st civil Division, 18 May 1971, n°69-14130, *Impex v/ P.A.Z.*

21 *Cour de cassation*, 1st civil Division, 9 July 2008, n°07-18.623.

22 *Cour de cassation*, 1st civil Division, 6 November 2013, n°11-18.709.

23 *Cour de cassation, 1st civil Division, 1 April 2015,* n°14-11.587.

24 *Cour de cassation*, 1st civil Division, 30 March 2004, n°01-17.800 ; *Cour de cassation* , 1st civil Division, 23 February 2011, n°10-16.120 ; *Cour de cassation*, 1st civil Division, 25 March 2015, n°13-17.372.

25 *Cour de cassation*, 1st civil Division, 07 June 1989, *Anhydro v/ Caso Pillet and others.*

injunctions ordered in the United States were not contrary to public-policy substantive provisions of French Law and thus refused to annul an arbitral award on such ground.[26]

3.3 State-court intervention in arbitrations seated outside of the jurisdiction

Pursuant to Article 1505 CCP applicable to international arbitration, a party to an international *ad hoc* arbitration faced with difficulties related to arbitral proceedings may also resort to the French *juge d'appui* even if such proceedings are seated outside his jurisdiction provided that *(i)* the parties chose to have their arbitration agreement governed by French procedural law or *(ii)* the parties expressly gave jurisdiction to the French State courts for disputes related to the arbitral procedure or *(iii)* one of the parties incurs the risk of a denial of justice.

4. The conduct of the proceedings

4.1 Legal counselling

French law does not require the parties to an arbitration to be represented by legal counsel. If they wish so, parties may choose to be represented by French or foreign lawyers or non-lawyers.

4.2 Independence of the arbitrators

Pursuant to Article 1456 CCP, applicable to both domestic and international arbitration, an arbitrator has a duty to disclose all "*circumstances which may affect its independence or impartiality*" before it accepts its appointment. Article 1456 CCP provides that such duty does not end with the appointment but also applies if any such circumstance arises in the course of arbitral proceedings.

Once an arbitrator has been appointed, any challenge to this arbitrator has to be addressed to the arbitral institution or, in case of an *ad hoc* arbitration, to the French *juge d'appui*. In the latter case, parties are subject to a one-month limitation period to bring the challenge proceedings before the judge, which is triggered from the moment a party has effective knowledge of the ground for challenge. A party that fails to challenge a conflicted arbitrator within this time limit (or in the case of institutional arbitration, the timeframe set by the arbitration rules) will be deemed to have waived its right to challenge the arbitrator and will be barred from seeking annulment of the award on the same ground.[27]

The scope of the arbitrators' duty to disclose has been clarified by case law. It has been held, for example, that arbitrators have a duty to disclose the fact that they have been regularly and systematically appointed by the same party over a long period of time, thus creating a "flow of business".[28] It has also been held that arbitrators have a duty to disclose the professional relationships they have with the legal counsel of one the parties, or its firm.[29] However, it has been held that the fact that an arbitrator attended a symposium in which one of the parties took part,[30] or the political opinions of an arbitrator[31] do not constitute circumstances which need to be disclosed. Arbitrators are in a general manner dispensed from disclosing circumstances deemed notorious.[32] A French court will only annul an award if it determines that the undisclosed circumstance could have created a reasonable doubt as to the impartiality of the arbitrator.[33]

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26 *Cour de cassation*, 1st civil Division, 14 October 2009, n°08-16.369; 08-16.549.

27 *Cour de cassation*, 1st civil Division, 25 June 2014, n°11-26.529.

28 *Cour de cassation*, 1st civil Division, 20 October 2010, n°09-68.131 and n°09-68.997.

29 Paris Court of Appeal, 9 September 2010, Rev. arb. 2011, pp. 970-976.

30 Paris Court of Appeal, 14 October 2014, Rev. arb. 2014, p. 1028.

31 *Cour de cassation*, 1st civil Division, 29 June 2011, n°09-17.346, Rev. arb, 2011. p. 959.

32 Paris Court of Appeal, 16 February 2010, *SAS Nidera France*, D. 2011, p. 3023.

33 *Cour de cassation*, 1st civil Division, 10 October 2012, n°11-20.299.

4.3 Court intervention for the constitution of the tribunal

As regards international arbitration, Article 1508 CCP provides that the parties to an arbitration can either *(i)* expressly appoint the arbitrators in their arbitration agreement, or *(ii)* provide for a procedure of appointment either expressly or by way of reference to arbitration rules. If the arbitration procedure is silent on this matter or should the parties choose the French procedural law to apply, the arbitral tribunal will be appointed in accordance with Articles 1452 *et seq.* CCP.

Pursuant to Article 1452 CCP, applicable to both domestic and international arbitration, any difficulties in the appointment of the tribunal should be referred to the arbitral institution chosen by the parties in the arbitration agreement.

When the parties have agreed to an *ad hoc* arbitration seated in France, and unless otherwise provided by the parties, any difficulty in the appointment of the arbitral tribunal can be referred to a dedicated judge supervising arbitration proceedings (*juge d'appui*). In domestic arbitration, under Article 1459 CCP, the *juge d'appui* is the President of the Paris Regional Court (*Président du Tribunal de grande instance*), which has territorial jurisdiction over the place where the arbitral tribunal is seated (or the President of the Commercial Court were expressly provided by the parties). In international arbitration, pursuant to Article 1505 CCP, the *juge d'appui* is always the President of the Paris Regional Court (*Président du Tribunal de grande instance de Paris*).

As stated in paragraph 3.3 above, Article 1505 CCP provides that a party to an international *ad hoc* arbitration faced with difficulties related to the constitution of the arbitral tribunal may also resort to the *juge d'appui* when the arbitration is seated outside France provided that *(i)* parties chose to have their arbitration agreement governed by French procedural law or *(ii)* the parties expressly gave jurisdiction to the French State courts for disputes related to the arbitral procedure or *(iii)* one of the parties incurs the risk of a denial of justice. This last criterion concerns situations where the obstacle experienced by a party in the appointment of the tribunal can be referred to no other State court or arbitral institution throughout the world.[34]

Article 1460 CCP applicable to both domestic and international arbitration provides that the decisions of the *juge d'appui* have *res judicata* effect and may only be appealed when the *juge d'appui* refuses to appoint an arbitrator on the ground that an arbitration agreement is manifestly null or manifestly inapplicable.

Pursuant to Article 1452 CCP applicable to both domestic and international arbitration, the *juge d'appui* may intervene to appoint a sole arbitrator in cases where the parties fail to agree on one. When the parties agreed to a three-person tribunal, the *juge d'appui* may intervene to resolve situations where one party refuses to appoint its arbitrator, or when the two arbitrators appointed by the parties fail to agree on a third one.

According to Article 1454 CCP equally applicable to both domestic and international arbitration, apart from assisting the parties in the constitution of the arbitral tribunal, any other difficulty regarding the performance of the arbitration agreement can be referred to the *juge d'appui* as a last resort. The *juge d'appui* may thus rule on disputes related to pathological clauses or regarding the removal of an arbitrator (Article 1458 CCP).

4.4 Interim measures granted by State courts including ex parte measures

In both domestic and international arbitration, the existence of an arbitration clause does not prevent the State courts from ordering interim measures as long as the arbitral tribunal has not been constituted. Indeed, pursuant to Article 1449 CCP, *ex parte* interim measures may be ordered by State courts even in presence of an arbitration agreement in order to *(i)* gather evidence on an *ex-parte* or adversarial basis under Article 145 CCP or *(ii)* grant conservatory measures in case of urgency.

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34 *Cour de cassation*, 1st civil Division, 1 February 2005, n°02-15.237.

Once the tribunal has been constituted, the State courts have no more jurisdiction to order any urgent interim measures. Indeed, unless otherwise provided by the parties, Article 1468 CCP, applicable to both domestic and international arbitration, grants the arbitral tribunal general jurisdiction to order interim or provisional measures, with the penalties it may deem necessary. However, provisional seizures (*saisies conservatoires*) and the registration of a judicial mortgage (*sûretés judiciaires*) can only be ordered by French State courts, which have exclusive jurisdiction to order such measures, and can be requested by a party at any stage of the arbitral proceedings.

4.5 The proceedings

The parties are generally free to organise their arbitral proceedings. However, some provisions of the French arbitration law set certain basic limits on the conduct of the proceedings. As a general rule, parties to domestic and international arbitration should act with promptness and loyalty in the proceedings (Article 1464 CCP). In addition, Article 1510 CCP applicable to international arbitration provides that irrespective of the procedural rules chosen by the parties, the arbitral tribunal must grant them equal treatment and due process. As in many other jurisdictions, the lack of such procedural guarantees is one of the possible grounds for the annulment of the award.

4.5.1 Confidentiality

While French arbitration law specifically provides for the confidentiality of domestic arbitration proceedings unless otherwise agreed by the parties (Article 1464 CCP), no similar rule applies to international arbitration. Indeed, a French court required from a party to an international arbitration to first demonstrate that an obligation of confidentiality actually existed before bringing its claims, which shows that the confidentiality should not be taken for granted.[35] As such, parties to international arbitrations seated in France wishing to ensure confidentiality of their proceedings should include relevant provisions in their agreement, either by way of an express provision, or through the choice of appropriate arbitration rules.

4.5.2 Length of arbitration proceedings

As regards domestic arbitration, Article 1463 CCP provides that in the absence of any timeframe specified in the arbitration agreement, the arbitral tribunal shall cease its mission after 6 months from its constitution. Such time limit for rendering an award can be extended by the agreement of the parties or, failing such agreement, by the *juge d'appui*. The French arbitration law does not set any time limit for rendering an award in international arbitration.

4.5.3 Hearings and meetings

The parties are free to determine if the hearings will actually take place and if so, what will be the place of such hearings. Meetings, hearings and even deliberations of the arbitral tribunal can take place outside the seat of the arbitration.[36]

4.5.4 Interim measures granted by arbitrators

Once the arbitral tribunal has been constituted, Article 1468 CCP, applicable to both domestic and international arbitration, grants the arbitral tribunal general jurisdiction to order interim or provisional measures. As stated in paragraph 4.4. above, provisional seizures (*saisies conservatoires*) and the registration of a judicial mortgage (*sûretés judiciaires*) can only be ordered by French State courts, which have exclusive jurisdiction in this matter.

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35 Paris Court of Appeal, 22 January 2004, *Foster Wheeler*, Rev. arb. 2004, p. 647.

36 *Cour de cassation*, 2nd civil Division, 9 February 1994, n°92-17.645.

4.5.5 Evidence and testimonies

Pursuant to Article 1467 CCP, applicable to both domestic and international arbitration, the arbitral tribunal may order all the measures it deems necessary to collect evidence. The arbitrators can order a party to disclose a document but the parties, in international arbitration, can agree otherwise. With regards to witnesses, Article 1467 CCP provides that an arbitral tribunal may hear witness evidence from any person, without the need for the witness to take an oath. French arbitration law has no further provisions regarding any restriction on witness evidence. Case law on this matter authorizes parties to an international arbitration and their representatives to be heard as witnesses.[37] A question has been raised as to whether French legal counsel were breaching their professional rules of conduct by preparing witnesses prior to their hearing. Through a resolution adopted on 26 February 2008, the Paris Bar Council clarified its position by stating that a preparation of witnesses in the context of international arbitral proceedings does not breach any principle of professional conduct of French lawyer. The resolution does not address the point whether preparing witnesses by French lawyers in the context of domestic arbitral proceedings would constitute any breach of the professional code of conduct.

4.5.6 Existence of a duty to hold hearings?

There is no requirement under the French rules applicable to domestic or international arbitration to hold hearings. For the sake of efficiency, arbitrations with a small amount in dispute are often conducted without holding hearings. However, in international arbitration, arbitrators have a general duty to ensure that the equality of the parties and due process are respected (1510 CCP).

4.5.7 Principles on the awarding of interest

Arbitrators may award interest on any monetary claim, which will be added to the principal upon enforcement in France. Furthermore, pursuant to Article 1231-7 of the French Civil Code and established case law, interest at the French statutory rate will automatically apply and be added to the principal when the enforcement of an international award is sought in France, unless moratory interest has already been granted under the award.

4.5.8 Principles on the allocation of arbitration costs

Arbitrators have wide discretion to order the parties to pay arbitration costs partially or in full.

It is a general rule under Article 700 CCP that the unsuccessful party should be condemned to pay the winning party its legal costs. Yet, the unsuccessful party is not automatically bound to bear the entirety of its opponent's fees and costs as the judge has full discretion to determine their amount. Pursuant to Article 700 CCP, the judge shall base its decision on equity and financial situation of the succumbing party. The judge can also decide not to award the winning party with any costs at all.

4.6 Arbitrators' liability

4.6.1 Immunity from arbitrators' civil liability

Arbitrators benefit from wide immunity from civil liability for matters strictly related to the fulfilment of their mission and the award they render. As such, arbitrators' liability is generally excluded where an award contains a simple error or where it is considered not to be fair. However, such immunity is not absolute and arbitrators can be held liable in case of fraudulent misrepresentation, gross negligence or denial of justice.[38] In domestic arbitration, absent an agreement of the parties on the time limit to render the award, an arbitrator can be held liable if he or she fails to render the award within the default 6-month time limit set forth in Article 1463 CCP without having sought an extension of this time-limit from the "*juge d'appui*"

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37 Paris Court of Appeal, 17 December 2009 ; Paris Court of Appeal, 10 January 2012, Rev. arb. 2012, p. 409.

38 *Cour de cassation*, 1st civil Division, 15 January 2014, n°11-17.196.

where the parties had neither agreed upon such extension, nor requested for one and if the award has been annulled as a result of this failure.[39] In addition, by accepting their appointment, arbitrators conclude a contract with the parties and can therefore be held liable for its defective performance. Indeed, arbitrators have been held liable for breaching said "*contrat d'arbitre*" in a case where they failed to render an award within the agreed timeframe[40] or to disclose a relevant circumstance regarding their impartiality.[41]

4.6.2 Criminal liability of arbitrators

Arbitrators may also be held criminally liable for actions they have committed in the course of arbitration proceedings, provided that they qualify as criminal offenses pursuant to French criminal law. In particular, several articles of the French Criminal Code expressly refer to arbitrators, namely Articles 435-7 and 435-9, which both relate to corruption. An arbitrator may also be held criminally liable if he contributes to a money laundering scheme by way of an arbitral award.

5. The award

5.1 Possibility to waive the requirement for an award to provide reasons

In both domestic and international arbitration, the arbitral award has to provide for a minimum of reasons supporting the decision rendered (Article 1482 CCP). The only difference between domestic and international arbitration is that in domestic proceedings this provision is mandatory, which means that the parties cannot waive this requirement. As such, the lack of reasons is one of the grounds for annulment of a domestic award (Article 1492 CCP). Accordingly, an award which does not provide the reasoning of the arbitrators can be annulled even when the lack of reasoning causes no harm to the other party.[42] In international arbitration, the parties can waive the requirement for an award to provide reasons (Article 1506 CCP). The lack of reasons is not a ground for annulment of the award under Article 1520 CCP.

5.2 Possibility to waive the right to seek the annulment of the award

The waiver is not possible in domestic arbitration. Article 1491 CCP provides that any provision to the contrary is deemed null and void. In international arbitration, Article 1522 CCP specifically provides that parties to an international arbitration may waive their right to seek annulment of the award at any moment. Such a waiver needs to be expressly stipulated in a separate agreement specifically dedicated to this matter. However, parties which have waived their rights to challenge the award will still be able, pursuant to Article 1522 CCP, to appeal any enforcement order granted by the French judge (*exequatur*).

5.3 Atypical mandatory requirements to the rendering of a valid award at a seat in the jurisdiction?

An arbitral award rendered in France or abroad in both domestic or international arbitration will be recognised as valid in France if *(i)* the tribunal had jurisdiction to hear the dispute, *(ii)* the tribunal was regularly constituted, *(iii)* the tribunal did not exceed its authority, *(iv)* the principle of due process was respected and *(v)* the award is not contrary to the French definition of international public policy.

Under Article 1481 CCP, applicable to both domestic and international arbitration, the arbitral award shall mention *(i)* the names, first names or corporate name of the parties, as well as the address of their residency or headquarters; *(ii)* the name(s) of the legal counsel as well as all other person having represented or assisted the parties; *(iii)* the name(s) of the arbitrators; *(iv)* the date of the award; *(v)* the seat of arbitration. In addition, Article 1482 CCP provides that the award must at the minimum briefly state the

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39 *Cour de cassation*, 1st civil Division, 6 December 2005, n°03-13.116.

40 *Cour de cassation*, 1st civil Division, 6 December 2005, n°03-13.116.

41 Reims Court of Appeal, 31 January 2012, Rev. arb. 2012, p. 209.

42 Paris Court of Appeal, 11 December 2012.

parties' claims and counterclaims and their legal grounds as well as the reasons for the award. In international arbitration, the parties may waive the application of Articles 1481 and 1482 in their arbitration agreement whereas they are mandatory in domestic arbitration. In domestic arbitration, Article 1480 CCP provides in addition that the award must be signed by the arbitrators. Such requirement does not exist in international proceedings.

In domestic arbitration, some of the aforementioned requirements can constitute grounds for the annulment of the award. Indeed, Article 1492 CCP provides that the award may be set aside if it does not state *(i)* reasons, *(ii)* date, *(iii)* names of the arbitrators, but also when *(iv)* it is not signed or *(v)* it was not rendered by at least a majority of arbitrators. These grounds for annulment do not apply to foreign awards.

5.4 Possibility to appeal the award

In domestic arbitration, Article 1489 CCP provides that the appeal is not possible unless the parties agreed otherwise. The appeal allows the State judge to rule once again on the entirety of the case that was submitted to the arbitral tribunal both on law and facts. When the appeal of an award is possible, the parties cannot initiate annulment proceedings relating to the same award (Article 1491 CCP). In international arbitration, the award cannot be appealed but it can be, nevertheless, set aside.

5.5 Recognition and enforcement of domestic and foreign awards

Both domestic and foreign awards must be first recognized as effective in the French legal order in order to be enforced. They become effective when they are granted enforcement through an order called "*exequatur*". Once such order is granted, they are enforceable in the French territory. The proceedings are *ex parte* and the application for *exequatur* must be filed with the registry of the adequate Regional Court (*Tribunal de grande instance*). In domestic arbitration, the application must be filed with the Regional Court that has territorial jurisdiction over the seat of the arbitration (Article 1487 CCP). In international arbitration, the application must necessarily be filed with the Paris Regional Court (Article 1516 CCP).

The *exequatur* will be granted if the two following conditions are met on a *prima facie* basis:

(i) the existence of the award is established by production of the original copy of the award (a certified copy is allowed for international awards) and a copy of the underlying arbitration agreement (Article 1487 applicable to domestic arbitration and Articles 1514 and 1515 CCP applicable to international arbitration). If the award and/or the arbitration agreement is not in French, it must be translated into French and the court may request a certified translation (Article 1515 CCP);

(ii) the recognition or enforcement of the award is not manifestly contrary to the French definition of international public policy (Article 1488 CCP applicable to domestic arbitration and Article 1514 CCP applicable to international arbitration).

Exequatur proceedings are rather fast and an *exequatur* order for a foreign award is normally granted within a month from the application. The decisions refusing to grant the *exequatur* are rare. However, should the judge refuse the *exequatur*, the decision can be appealed within one month from its service. The appeal is possible in both domestic (Article 1500 CCP) and international arbitration, no matter if the award was rendered in France (Article 1523 CCP) or abroad (Article 1525 CCP).

An order granting the *exequatur* can only be appealed if it concerns a foreign award in an international arbitration, as the annulment proceedings are not possible in this case (Article 1525 CCP). In case of appeal against the order granting *exequatur*, the Court of Appeal will rule on the same grounds as those which are applicable to setting aside proceedings (Article 1520 CCP). As regards awards rendered in France in an international arbitration, an appeal is only possible when the parties have waived their rights to ask for the setting aside of the award, which is extremely rare (Articles 1522 and 1524 CCP). In domestic arbitration, an appeal against the order granting the *exequatur* is not possible but an appeal or annulment proceedings against the award rendered in France will automatically result in challenging the *exequatur* order (1499 CCP).

5.6 Suspension of the enforcement in case of annulment or appeal proceedings

Pursuant to Article 1526 CCP, applicable to awards rendered in France or abroad in an international arbitration, the enforcement measures are not suspended when the setting aside proceedings are lodged or an appeal is introduced against an *exequatur* order. The second paragraph of Article 1526 CCP provides for an exception to this general rule and allows an award debtor to apply to the First President of the Court of Appeal (or the Judge in charge of the case management of the annulment proceedings as the case may be – "*conseiller de la mise en état*") for suspending or setting conditions for enforcement of the award if the rights of any of the parties to the arbitration could be severely prejudiced by such an automatic enforcement. The courts construe this condition very narrowly and a stay of enforcement is granted only in exceptional circumstances.

In domestic arbitration, enforcement is only possible after the expiry of the one-month time limit to lodge the appeal or the setting aside proceedings. If such proceedings are brought, the enforcement is further suspended unless the arbitrators decided that the award be granted immediate provisional enforcement (Article 1496 CCP). Parties can apply to the First President of the Court of Appeal (or the *conseiller de la mise en état*) for granting the award immediate enforcement or suspending it if such an immediate enforcement was granted by the arbitral tribunal (Article 1497 CCP).

5.7 Enforcement of an award annulled at the seat of the arbitration

French courts are extremely favourable to the recognition of foreign awards as they consider that a foreign award, which was annulled at the seat of arbitration, may still be enforced in France, provided that such enforcement is not contrary to the French definition of international public policy. This rule was first recognised in the *OTV v/ Hilmarton*[43] case and confirmed in the *Putrabali*[44] case. Both rulings considered that an international arbitral award was independent from any national legal system and held that its validity should only be assessed with regards to the rules applicable within the country where enforcement is sought. As a recent illustration, the former shareholders of the Russian company Yukos could carry on the enforcement of their award in France in spite of its annulment at the seat of the arbitration (the Hague).

5.8 Are foreign awards readily enforceable in practice?

As stated before, foreign awards must be granted an *exequatur* order of the French judge in order to be enforced. However, this procedure is fast and the judge does not conduct any in-depth analysis of the award. Once an award is granted the *exequatur*, it is considered a valid enforcement title under Article L. 113-3 of the Code of Civil Enforcement Proceedings and the award creditor can carry out various enforcement measures such as seizures and/or attachments or liens.

5.9 Additional point: general rules on the annulment proceedings

Annulment proceedings can only be initiated against an award which was rendered in France, be it in domestic (Article 1494 CCP) or international (Article 1519 CCP) arbitration. It has to be initiated within a month of the date where a party is officially served with the award, and presented to the adequate Court of Appeal, which has jurisdiction over the seat of arbitration. The aforementioned one-month period is extended for two months if the party bringing the annulment proceedings is not established in France (Article 643 CCP).

As regards the awards rendered in France in international arbitral proceedings, the annulment of the award can only be obtained on one of the following five grounds listed by Article 1520 CCP: *(i)* the arbitral tribunal wrongly declined or confirmed its jurisdiction; *(ii)* the tribunal was irregularly appointed; *(iii)* the tribunal exceeded or did not conform to the authority granted by the parties; *(iv)* due process was violated or *(v)* the award is contrary to the French definition of international public policy. The legal standard for

43 *Cour de cassation*, 1st civil Division, 23 March 1994, n°92-15.137.

44 *Cour de cassation*, 1st civil Division, 29 June 2007, n° 05-18.053.

setting aside the award is very high and any of the five aforementioned violations must be manifest so that the judge decides to annul an award.

In domestic arbitration, in addition to the five aforementioned grounds applicable to awards rendered in international arbitration, an award can also be annulled, pursuant to Article 1492 CCP, if the award does not state the *(i)* reasons, *(ii)* date, *(iii)* names of the arbitrators, but also when *(iv)* it is not signed or *(v)* it was not rendered by the majority of arbitrators.

In international arbitration where one party is a French State entity, the French Tribunal of Conflicts, which is a dedicated tribunal to rule over jurisdiction conflicts between civil and administrative courts, held that as a default rule, the annulment and enforcement proceedings against the award fall under the jurisdiction of the French civil courts. However, the administrative courts retain their jurisdiction if the three cumulative conditions are met: *(i)* the agreement containing the arbitration clause was performed in the French territory, *(ii)* the award was rendered in France and *(iii)* the award involves the issue of compliance with public policy rules of French public law relating to public property occupancy, public procurement, to public partnerships or to the delegation of public services.[45]

5.10 Additional point: other available challenges of the award

In both domestic and international arbitration, a party may seek, pursuant to Article 1502 CCP, the review of an award on the basis of the *recours en révision*. This is an exceptional procedure which seeks to review the merits of the case when one of the parties discovers after the rendering of the award that *(i)* the arbitral tribunal was misled by fraud, or *(ii)* that the other party produced forged witness statements or documents, or *(iii)* that such party retained some key documents. In domestic arbitration, such challenge shall be brought before the arbitral tribunal or before the relevant Court of Appeal if the tribunal cannot be reunited. In international arbitration, it can only be brought before the arbitral tribunal.

6. Funding arrangements

6.1 Contingency or alternative fee arrangements

Under French ethic rules applicable to French lawyers, fee arrangements solely based on success fees are prohibited (the so-called "*quota litis* pacts").[46] However, the Paris Court of Appeal held that such contingency fee arrangements are valid in the context of an international arbitration, as they are not contrary to the French definition of international public policy.[47] The National Council of the French Bars recently published a status report reflecting on the evolution of the *quota litis* pact and the possible lifting of its prohibition.[48]

6.2 Third-party funding arrangements

Third-party funding is not prohibited under French law and it has recently gained importance in France. However, there are no specific legal provisions or case law regarding this issue. While ruling on an award rendered in an arbitration funded by a third party, the Versailles Court of Appeal did not address the question of the validity of such arrangement.[49] On 21 February 2017, the Paris Bar Council adopted a resolution confirming that the use of third-party funding in international arbitration is a positive

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45 Tribunal of Conflicts, 17 May 2010, n°3754; Tribunal of Conflicts, 11 April 2016, n°4043; Tribunal of Conflicts, 24 April 2017, n°4075.

46 Article 10 of law n°71-1130 of 31 July 1971.

47 Paris Court of Appeal, 10 July 1992, D. 1992, p. 459.

48 Resolution of the National Council of the French Bars dated 6-7 October 2017.

49 Versailles Court of Appeal, 1 June 2006, n°05/01038.

development for access to justice and does not contravene French Law.[50] Disclosure of the third-party funding is recommended but not compulsory. The resolution of 21 February 2017 states that legal counsel should encourage their clients to disclose the existence of any third-party funding arrangement.

However, any legal counsel of a party using a third-party funding still has to abide by its professional rules of conduct. This means in practice that legal counsel have to uphold their obligation of confidentiality towards their clients and will be barred from communicating privileged information directly to the third party funder. This also means that a legal counsel cannot place the interests of the third-party funder over those of its clients, and can only receive instructions from the latter.

7. Likelihood of future legislative reform

It seems unlikely that there will be any significant reform in French arbitration law in the next couple of years as it has already been subject to revisions and modifications twice over the last six years. The most recent change to date occurred in 2016 with the coming into force of the aforementioned Law n°2016-1547 of 18 November 2016 on the Modernization of Justice

50 Available at: http://www.avocatparis.org/system/files/publications/resolution_financement_de_larbitrage_par_les_tiers.pdf.