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DELOS GUIDE TO ARBITRATION PLACES (GAP) – VOL. 1

DELOS
dispute resolution

GUIDE TO ARBITRATION PLACES (GAP)

BELGIUM

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GAP TABLE OF CONTENTS | GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS | FULL GAP ONLINE

EN DELOS MODEL CLAUSES
ES DELOS CLÁUSULAS MODELO
FR DELOS CLAUSES TYPES
PT DELOS CLÁUSULAS MODELO

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

1. Law
   a. Framework
   b. Adherence to international treaties
   c. Limited court intervention
   d. Arbitrator immunity from civil liability
2. Judiciary
3. Legal expertise
4. Rights of representation
5. Accessibility and safety
6. Ethics

Evolution of above compared to previous year =

7. Tech friendliness
8. Compatibility with the Delos Rules

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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 any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Due to its pragmatic, arbitration-friendly legal environment, Belgium is an attractive location for international arbitral proceedings. Belgium is a multilingual country and is home to many EU and international institutions. The Belgian Arbitration Act is based on the UNCITRAL Model Law, which is well known by arbitration practitioners around the world. The leading arbitration institution in Belgium is CEPANI.

Key places of arbitration in the jurisdiction?	Brussels, the capital of Belgium and home to many European Union institutions, has the complete range of facilities needed for arbitral proceedings.
Civil law / Common law environment? (if mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	The Belgian Arbitration Act does not expressly provide for confidentiality obligations. However, hearings are usually held behind closed doors and awards are not published.
Requirement to retain (local) counsel?	This is common practice but not legally required.
Ability to present party employee witness testimony?	The parties may submit employee witness testimony. The arbitral tribunal has discretion to consider such evidence.
Ability to hold meetings and/or hearings outside of the seat?	The parties may choose to hold meetings outside of the seat. Unless the parties have agreed on a specific venue, the arbitral tribunal has discretion to decide where to hold hearings and meetings.
Availability of interest as a remedy?	This depends on the applicable substantive law. The arbitral tribunal may award (compound) interest.
Ability to claim for reasonable costs incurred for the arbitration?	The arbitral tribunal has discretion to determine the allocation of costs. It must decide which party shall bear the costs incurred for the arbitration or in which proportion the costs are to be divided between the parties.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Belgian lawyers may not charge contingency fees. Third-party funding is allowed but not common yet.
Party to the New York Convention?	Yes, with the reservation of reciprocity.
Party to the ICSID Convention?	Yes.
Compatibility with the DELOS Rules?	Yes.
Default time-limitation period for civil actions (including contractual)?	A civil action based on a contractual claim has to be filed within 10 years from the day the obligation is due or the day of the breach of

	the contract.[1] Actions based on rights *in rem* are time-barred after 30 years.[2]
Other key points to note?	The parties can agree to exclude an application to set aside the arbitral award if none of the parties is Belgian. The Belgian Arbitration Act and case law are based on the principle of *favor arbitrandum*. There is a positive attitude towards arbitration. Belgium is often chosen as the seat of arbitration since it is a multilingual country and home to European Union and other international institutions.
World Bank, Enforcing Contracts: *Doing Business* score for 2020, if available?	Belgium ranks 56th with a score of 64.3.[3]
World Justice Project, Rule of Law Index: *Civil Justice* score for 2023, if available?	Belgium ranks 15th with a score of 0.74.[4]

1 Article 2262bis § 1, subpar. 1 of the Old Civil code.

2 Article 2262 of the Old Civil code.

3 Most recent data dates back to May 2019.

4 Most recent data dates back to 2023.

ARBITRATION PRACTITIONER SUMMARY

The Belgian Arbitration Act is closely modeled on the UNCITRAL Model Law, with some specificities drawn from Belgian arbitration practice.

The Belgian Arbitration Act applies to both international and domestic arbitration when the seat of arbitration is in Belgium.

The Belgian Arbitration Act and case law are based on the principle of *favor arbitrandum*. There is a positive attitude towards arbitration.

Date of arbitration law?	Arbitration in Belgium is governed by Part VI of the Judicial Code adopted on 24 June 2013 (the Belgian Arbitration Act), amended on 25 December 2016 and 18 June 2018.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	The Belgian Arbitration Act is mainly based on the UNCITRAL Model Law, with specificities drawn from Belgian arbitration practice.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Only five courts can hear arbitration-related matters (*i.e.*, the Brussels, Liège, Mons, Ghent and Antwerp Courts of First Instance). Moreover, within these courts, arbitration-related cases are usually assigned to a specific division (*chambre/kamer*) to ensure a certain level of knowledge and experience.
Availability of *ex parte* pre-arbitration interim measures?	The courts may grant *ex parte* pre-arbitration interim measures, but not the arbitral tribunal.
Courts' attitude towards the competence-competence principle?	The competence-competence principle is widely accepted in Belgium. The Judicial Code expressly provides that an arbitral tribunal may rule on the question of its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.[5] An arbitral tribunal may rule on its jurisdiction either as a preliminary question or in the final award. The arbitral tribunal's decision that it has jurisdiction may only be contested together with the award on the merits. If, however, the arbitral tribunal decides that it lacks jurisdiction, the court of first instance can rule on the merits of this decision at the request of a party. However, Belgian courts do not recognise what is often referred to as the negative effect of the competence-competence principle. Indeed, should a dispute potentially covered by an arbitration agreement be brought before the courts, and should a party object to the court's jurisdiction because it argues that the dispute must be referred to arbitration, the courts must examine (i) the validity of the arbitration agreement in question, and (ii) whether the dispute falls within its scope. In other words, courts are not

5 Article 1690 § 1 Judicial Code.

	precluded from ruling on the jurisdiction of the arbitral tribunal, even if the arbitral tribunal itself has not yet done so.[6]
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Every award issued by the arbitral tribunal (final or partial) must be reasoned.[7]
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	The grounds for annulment of an award are the same as in the New York Convention. However, having regard to the specificities of Belgian arbitration practice, three additional grounds are included in the Judicial Code: • If a party proves that the award is not reasoned; • If a party proves that the arbitral tribunal exceeded its powers (*e.g.*, by not complying with the timing to render the award); • If the court finds that the award was obtained by fraud[8].
Do annulment proceedings typically suspend enforcement proceedings?	No. An award is enforceable regardless of any ongoing annulment proceedings. However, courts may suspend the enforcement in some cases as a provisional measure, at the request of the party initiating annulment proceedings.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Courts cannot recognize and/or enforce awards which have been annulled at the seat of arbitration.[9]
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	As long as the parties have not agreed otherwise, this would not affect the recognition and enforcement of the award. The arbitral tribunal is free to decide on the procedure for the arbitration in the absence of a prior agreement by the parties.[10] However, the arbitral tribunal must treat the parties with equality and give each party a full opportunity to present its case, pleas in law and arguments in conformity with the right to be heard.[11] The Belgian Arbitration Act should be amended soon in order to expressly provide the possibility to conduct hearings remotely.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	Generally, public bodies can be parties to arbitration agreements. See section 2.6.2 for more details. Enforcement against public entities can be restricted when enforcement is sought against assets owned by the State of

6 Cass., 13 October 1978, *R.W.*, 1978–1979, para. 2811; Antwerp Court of Appeal, 23 September 2002, *R.D.J.P.*, 2002, para. 281., see also C. De Boe, M. Berlingin, "La mission du juge étatique avant l'instance arbitrale et pendant ses prémices" in *L'arbitre et le juge étatique*, Brussels, Bruylant, 2014, paras. 71 *et seq.*

7 Article 1713 §§ 1 and 4 Judicial Code.

8 The starting point of the three-month period for bringing an action to set aside an arbitral award on the basis of an alleged fraud is soon to be amended by the lawmaker, see footnote n°19 below.

9 Article 1721 § 1(a)(vi) Judicial Code.

10 Article 1700 § 2 Judicial Code.

11 Article 1699 Judicial Code.

	Belgium or Belgian state entities.[12] The same can be said of enforcement against assets owned foreign states and foreign state entities in Belgium.[13]
Is the validity of blockchain-based evidence recognised?	It has not been recognised as such. However, the arbitral tribunal freely assesses the admissibility of evidence and its value (save if the parties agree otherwise).[14]
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	An arbitration agreement is not subject to any formal requirement under Belgian law. As long as the validity requirements for any contract can be proven (valid object, valid cause, legal capacity, consent), the arbitration agreement will be valid. Therefore, an arbitration agreement recorded on a blockchain can indeed meet the requirements in order to be considered valid under Belgian law. Arbitral awards on the other hand, are subject to formal requirements. Indeed, in order to be recognised as valid in Belgium, an arbitral award must be in writing and must be signed by the arbitrator(s).[15] An award recorded on a blockchain would not meet these requirements, and would therefore not be recognised as valid under Belgian law.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	When a party seeks enforcement of an arbitral award before the court of first instance, it is no longer required to file an "original" version of the arbitration agreement.[16] Therefore, an arbitration agreement recorded on a blockchain could be enforced in Belgium. However, in order to enforce an arbitral award, the parties need to file its original version (or a certified copy) of the said award with the competent courts.[17] An arbitral award recorded on a blockchain would not be considered an original for the purposes of enforcement.
Other key points to note?	The parties can agree to exclude an application to set aside the award when neither party is Belgian, domiciled or residing in Belgium, or has its offices, principal establishment or branch in Belgium. Partial awards are recognized and enforced in accordance with the New York Convention. Arbitration agreements need not be in writing in order to be valid. Expedited arbitrations as well as emergency arbitrations, when possible, under arbitration rules or if contractually agreed upon by the parties, are accepted under Belgian law.

12 Article 1412bis Judicial Code.

13 Articles 1412ter to 1412quinquies Judicial Code.

14 Article 1700 § 3 Judicial Code.

15 Article 1713 § 3 Judicial Code.

16 The law of 25 December 2016 reformed certain aspects of the Belgian law of arbitration, including this one.

17 Article 1720 § 4 Judicial Code.

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

The Belgian Arbitration Act is largely based on the 2006 UNCITRAL Model law.

The Arbitration Act is found in Part VI of the Judicial Code and applies to both domestic and international arbitrations when the seat of arbitration is in Belgium**.**

As the UNCITRAL Model Law concerns only international commercial arbitration, the Belgian Arbitration Act includes some specificities drawn from Belgian arbitration practice and comparative legal studies.

The Belgian Arbitration Act differs from the UNCITRAL Model Law on a number of minor points, including:[18]

- the parties can opt out of the possibility to set aside the award if neither of them is of Belgian nationality, is domiciled or residing in Belgium, or has its offices, principal establishment or branch in Belgium;
- the arbitral tribunal cannot order *ex parte* interim/preventive measures;
- the arbitral tribunal is not allowed to amend, suspend or terminate the interim measures *ex officio*;
- the parties to an arbitration seated in Belgium may not exempt the arbitral tribunal from providing the reasoning in the award;
- absence of reasons, excess of powers (*e.g.,* by not complying with the timing to render the award) and the existence of fraud[19] are additional grounds to set aside an award rendered in arbitration seated in Belgium and will prevent recognition and enforcement in Belgium.

1.2 When was the arbitration law last revised?

Part VI of the Judicial Code was adopted on 24 June 2013 (the "**Belgian Arbitration Act**") and slightly amended on 25 December 2016 and on 18 June 2018.

There will most likely be a forthcoming revision of Part VI of the Judicial Code, but a draft bill has not yet been submitted for review.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

Belgian law is silent as to the law that applies to the arbitration agreement.

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18 Projet de loi modifiant la sixième partie du Code judiciaire relative à l'arbitrage, *Doc., Ch.,* 2012-2013, n° 2743/001, available at : https://www.lachambre.be/FLWB/pdf/53/2743/53K2743001.pdf.

19 In its decision of 28 January 2021, the Belgian Constitutional Court decided that the difference in treatment between a party to judicial proceedings that can challenge a court decision if it finds out that the judge's decision is tainted with circumstances such as fraud, and a party to an arbitration that discovers that the award was obtained fraudulently is disproportionate. Indeed, the Court found that systematically limiting a party's possibility of setting aside the award to three months from the point of the communication of the award, even when the fraud basing the challenge is discovered later is disproportionate and, consequently, unconstitutional. The lawmaker will be required to amend this unconstitutional provision. Until that is done, a challenge to an award on the basis of fraud will have to be introduced within a "*reasonable timeframe given the circumstances, from the point of the discovery of the fraud*". See O. VAN DER HAEGEN, F. CUVELIER, "Le point de départ du délai pour introduire une action en annulation contre une sentence arbitrale obtenue par fraude", *J.T.*, 2021/26, p. 509.

Generally, it is the law of the main contract that applies to the arbitration agreement, if the parties have not expressly agreed otherwise.[20]

2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

If the parties have not determined the seat for the arbitration, the task will fall on the arbitrators, and not the courts.

Indeed, article 1701 § 1 of the Judicial Code provides that when the parties have failed to designate a seat, the seat will be "*fixed by the arbitrators, taking into consideration the circumstances of the case, including the convenience of the parties*".

This provision also sets out that if neither the parties nor the arbitral tribunal has designated a seat, the place where the award is rendered shall be considered to be the seat of the arbitration.

2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Yes, the principle of severability of arbitration agreements is provided for by Article 1690 § 1 of the Judicial Code pursuant to which an arbitration clause/agreement that forms part of a contract shall be treated as an agreement independent of the other contract terms.

2.4 What are the formal requirements (if any) for an enforceable arbitration agreement?

The Belgian Arbitration Act defines an arbitration agreement as "*an agreement by which the parties submit to arbitration all or certain disputes which have arisen or may arise between them in respect of a legal relationship, whether contractual or not*".[21]

The Belgian Arbitration Act does not impose specific formal requirements for the validity of an arbitration agreement. In particular, an arbitration agreement need not be in writing in order to be valid.[22] Oral agreements are valid under Belgian law, provided they can be proven.

Consequently, an arbitration agreement need only meet the regular validity requirements applicable in Belgium, namely (i) there must be a valid object (ii) and a valid cause, (iii) the parties must have legal capacity to enter into the agreement and (iv) the parties must consent to the agreement.

2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

As stated above, an arbitration agreement requires the consent of the parties in order to be enforceable against them. Hence, a party relying on an arbitration agreement must (be able to) prove the express or implied consent of the parties to the agreement.

However, despite this clear rule, a number of situations are identified in the legal literature where a person who has not expressly consented to an arbitration agreement is deemed bound by the agreement. Examples include inheritance, representation, subrogation, assignment, transfer of a contract, etc.[23]

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20 N. BASSIRI and M. DRAYE (eds.), *Arbitration in Belgium*, Alphen aan den Rijn, Kluwer International, 2016, para. 81.

21 Article 1681 Judicial Code.

22 Under the previous Arbitration Act, a written *instrumentum* was required.

23 M. BERLINGIN, "L'extension de la convention d'arbitrage à des tiers participant à l'exécution du contrat au regard du droit belge", *b-Arbitra 2015/1*, pp. 144-145 ; N. BASSIRI and M. DRAYE (eds.), *op cit.* para. 395 ; PH. DE BOURNONVILLE, *L'arbitrage*, Bruxelles, Larcier, 2016, para. 194.

Regarding the "group of contracts" doctrine or the "group of companies" doctrine, they are not recognised under Belgian law as having the effect of extending the enforceability of the arbitration clause to non-signatories to the arbitration agreement.[24]

2.6 Are there restrictions to arbitrability?

Under Belgian law, as a matter of principle, any pecuniary claim (i.e., a claim involving an economic interest) can be submitted to arbitration whether it be in the context of a domestic arbitration or an international arbitration. For non-pecuniary claims, arbitration is allowed for such claims with regard to which it is possible to conclude a settlement agreement.[25]

However, there are a number of exceptions to the principle according to which any pecuniary claim can be submitted to arbitration. For some matters, a decision to submit the issue to arbitration may only be taken after a dispute has arisen. This is the case, for instance, with disputes arising from employment contracts, certain insurance contracts (*e.g.*, car or fire insurance),[26] and certain lease agreements.[27] In these cases, the parties may validly decide to resolve their dispute through arbitration only once the dispute has arisen.

2.6.1 Do these restrictions relate to specific domains (such as IP, anti-trust, employment etc.)?

In addition to the general principles set out above, Belgian law provides for certain restrictions on arbitrability in specific areas, such as:

- tax matters;
- bankruptcy and judicial reorganisation procedures (*procedure de réorganisation judiciaire/gerechtelijke reorganisatie*);
- labour law disputes;
- certain insurance matters;
- residential lease agreements;
- with respect to intellectual property rights, recourse to arbitration depends on the type of right at stake, *e.g.*, disputes relating to compulsory licences or the expiry of a patent are not arbitrable;
- with respect to agency contracts, the Supreme Court ruled that the parties cannot agree to submit their agency agreement to arbitration before the agency agreement is ended, if the law applicable to said agency agreement does not offer the same protections as Belgian law.[28]

2.6.2 Do these restrictions relate to specific persons (i.e., State entities, consumers etc.)?

There are few restrictions with respect to specific persons. Under Belgian arbitration law, a distinction is made between private and public legal entities (such as the State, municipalities, public services, etc.). Generally, private legal entities have legal capacity to settle a dispute through arbitration.

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24 For the group of contracts doctrine, see M. BERLINGIN, "L'extension de la convention d'arbitrage à des tiers participant à l'exécution du contrat au regard du droit belge", *op cit.*, paras. 144 *et seq.*; For the group of companies doctrine, see G. KEUTGEN, G.-A. DAL, *op cit.*, paras. 485-486; L. LEONARD, O. CAPRASSE, "La place de la convention d'arbitrage", *L'arbitrage et les sociétés*, *Actes du colloque du CEPANI du 14 novembre 2019*, Liège, Wolters Kluwer, 2019, para. 52.

25 Article 1676 § 1 Judicial Code.

26 Article 1676 § 5 Judicial Code.

27 Article 233(2) of the *Ordonnance* on the Brussels Housing Code, Article 51/1(2) of the Walloon Decree of 15 March 2018 on residential leases and Article 44 of the Flemish Decree on residential leases prohibit the inclusion of an arbitration clause in leases for a main residence. The Constitutional Court received appeals for annulment of the various decrees. It rejected all of them, subject to the partial annulment of the Walloon decree insofar as it was retroactive (on the Flemish decree, see C. const. C. const., 12 November 2020, no. 145/2020; on the Brussels decree, see. C. const., 26 November 2020, n° 156/2020; on the Walloon decree, see C. const. C. const., 4 March 2021, n° 37/2021).

28 Cass., 3 novembre 2011, *Pas.*, 2011, p. 2428, see also O. CAPRASSE, "L'arbitrage" in G. de Leval, *Droit Judiciaire – Tome II Procédure civile*, 2nd edition, Brussels, Larcier, 2021, p. 276.

Unless otherwise provided by law, public legal entities may only enter into an arbitration agreement if the object thereof is to resolve a dispute relating to an agreement. Moreover, public legal entities may enter into an arbitration agreement for all matters determined by law or royal decree, as determined by the Council of Ministers.[29] For example, Article 29 of the articles of association of the National Bank of Belgium authorizes the management committee of the National Bank to settle disputes (through arbitration).

Furthermore, autonomous public companies (such as the postal service, railway company, etc.) are also allowed to settle their disputes through arbitration with the exception, however, that arbitration agreements with natural persons may only be entered into after the dispute has arisen.[30]

When it comes to arbitration agreements entered into with a consumer, the latter benefits from certain protections in accordance with the Belgian Code of Economic Law. Even though this Code does not expressly prohibit arbitration clauses, in practice, courts tend to protect the consumer, by considering that arbitration agreements entered into with consumers before the dispute has arisen are abusive.[31] The consumer will therefore be granted a choice of bringing a dispute before the courts, regardless of any pre-dispute arbitration agreement.[32]

3. Intervention of domestic courts

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

The court before which a dispute that forms the object of an arbitration agreement is brought shall declare itself without jurisdiction at the request of a party made prior to any other plea or defence (*in limine litis*) unless the court finds that the arbitration agreement is null and void with regard to the dispute or has been terminated.[33]

Where such an action is pending before a court, arbitral proceedings may nevertheless be commenced or continued, and an award may be rendered.[34]

If the courts find that the arbitration agreement is valid, the judge dismisses the pending litigation (as opposed to staying the litigation).

It makes no difference whether the seat of the arbitration is within or outside of the jurisdiction.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

Arbitral tribunals are allowed to issue anti-suit injunctions in support of arbitration. As the Court of Justice of the European Union ruled in the *Gazprom* case (C-536/13), such injunctions issued by an arbitral tribunal are compatible with the Brussels I Recast Regulation,[35] which is not the case for anti-suit injunctions issued by the domestic courts.[36]

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29 Article 1676 § 3 Judicial Code.

30 Article 14 of the Act of 21 March 1991 on the reform of certain public economic companies.

31 P. LEFEBVRE, M. SERVAIS, *op cit*. paras. 338-339.

32 N. BASSIRI and M. DRAYE (eds.), *op cit*. para. 124.

33 Article 1682 § 1 of the Judicial Code. See also, M. BERLINGIN, "L'exception de juridiction fondée sur une convention d'arbitrage: un *momentum* à respecter", *b-Arbitra*, 2019/1, p. 207*et seq.*, note on the Brussels Court of Appeal's decision of 25 October 2018, R.G. 2013/AR/1830.

34 Article 1682 § 2 Judicial Code.

35 Regulation (EC) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

36 N. BASSIRI and M. DRAYE (eds.), *op. cit.*, paras. 259-260.

The enforceability of such an injunction falls under the scope of the New York Convention and, as the case may be, under Article 1697 (*recognition and enforcement of interim measures*) and Article 1721 (*recognition and enforcement of awards*) of the Judicial Code.[37]

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions but not only)

In some cases, the Belgian courts may intervene in arbitration regardless of the place of arbitration and notwithstanding any clause to the contrary.[38]

In this respect, the Belgian courts are entitled to grant interim and preventive measures before or during arbitral proceedings even if the seat of the arbitration is located outside Belgium.[39]

In addition, when an arbitral tribunal orders interim and preventive measures, such measures shall have binding effect and be recognized as binding and enforced by the court of first instance regardless of the country in which the measures were issued, subject, of course, to the grounds for the refusal of recognition and enforcement provided for by Article 1697 of the Judicial Code, *i.e.*:[40]

- if the refusal is based on a ground for refusal of the recognition and enforcement of an award (*e.g.*, lack of reasoning); or
- if the potential arbitral tribunal's decision with respect to the provision of security has not been complied with; or
- if the interim and preventive measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under whose law the interim measure was granted; or
- if the court of first instance finds that:
  - the subject matter of the dispute is not arbitrable; or
  - the recognition or enforcement of the measure would be contrary to public policy.

Furthermore, subject to the authorisation of the arbitral tribunal, a party may petition the president of the court of first instance ruling as in summary proceedings (*comme en référé/zoals in kort geding*) to order any measure with respect to the gathering of evidence.[41]

4. The conduct of the proceedings

4.1 Can parties retain foreign counsel or be self-represented?

Both situations are possible. In practice, in most arbitration cases, the parties are assisted by outside counsel, which is highly advisable.

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37 N. BASSIRI and M. DRAYE (eds.), *op. cit.*, paras. 260-261.

38 Article 1676 § 8 Judicial Code.

39 Article 1683 Judicial Code.

40 Article 1696 Judicial Code.

41 Article 1708 Judicial Code; see also M. BERLINGIN, L. ATYEO, "Appui du juge étatique dans l'obtention de mesures d'instruction pendant la procédure arbitrale", *b-arbitra*, 2021/1, note on the President of the Brussels Court of First Instance's decisions of 12 June 2019 (R.G. 2019/28/C) and 4 December 2019 (R.G. n° 2019/2282/A), to be published.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of gravity to justify this outcome?

Arbitrators must be independent and impartial. In this respect, when a person is about to be appointed as an arbitrator, he/she should disclose any circumstances likely to give rise to legitimate doubts regarding his/her independence and/or impartiality.

As from the date of appointment and throughout the arbitral proceedings, arbitrators must disclose any new circumstances likely to be of such a nature without delay.[42]

It is complicated to determine whether the failure to disclose a circumstance giving rise to legitimate doubts as to an arbitrator's independence or impartiality is sufficient to challenge the arbitrator's appointment as much depends on the circumstances of the case. Obviously, failure to disclose a (new) circumstance which raises questions as to an arbitrator's independence or impartiality is a ground for legitimate concern regarding that person's independence or impartiality. Hence, depending on the factual circumstances, this could be sufficient to challenge the arbitrator's appointment.

The number of cases involving a challenge towards the independence or impartiality of an arbitrator are very limited. This is because article 1687 § 1 of the Judicial Code clearly provides that the parties can agree on a the procedure to challenge an arbitrator. Consequently, parties generally opt for the internal challenge procedure provided by arbitral institutions.[43]

Regarding the IBA Guidelines on Conflicts of Interest in Arbitration, there is also very little case law referencing them.[44]

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

In the event of a difficulty when constituting an arbitral tribunal, the president of the court of first instance ruling as in summary proceedings (*comme en référé/zoals in kort geding*) shall appoint one or more arbitrators at the request of the most diligent party.[45]

The parties may have agreed on a procedure to appoint the arbitrators. In this case, the president of the court of first instance, ruling as in summary proceedings, will only intervene, at the request of either party, if every agreed upon method to constitute the arbitral tribunal fails or gets blocked.[46]

When appointing an arbitrator, the president of the court of first instance shall consider any qualifications required by the agreement as well as considerations likely to ensure the appointment of independent and impartial arbitrators.[47]

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42 Article 1708 Judicial Code

43 K. Cox, "Based on true events: CEPANI's practice and Belgian case law on conflicts of interest" in *Opening the Black Box of Conflicts of Interest*, 1st edition, Brussels, Bruylant, 2016, para. 25.

44 The Brussels Court of Appeal rendered a decision on 6 December 2011 referencing the IBA Guidelines. In this decision, the chairman of the tribunal had been appointed once in the past by a company from the same group as one of the parties to the arbitration. The Court of Appeal held that this was not one of the situations described in the Orange list of the IBA Guidelines. Furthermore, the Court of Appeal held that the IBA Guidelines were not a regulation, but only guidelines.

45 Article 1685 § 3 Judicial Code; see also, C. De Boe and M. Berlingin, "La mission du juge étatique avant l'instance arbitrale et pendant ses prémices", in *L'arbitre et le juge étatique, Etudes de droit comparé à la mémoire de Giuseppe Tarzia*, Brussels, Bruylant, 2014, paras. 53 *et seq.*

46 Article 1685 § 4 Judicial Code.

47 Article 1685 § 5 Judicial Code.

4.4 Do courts have the power to issue interim measures in connection with arbitrations?

Yes, the courts are allowed to grant interim measures before or during arbitration, and they may do so on the basis of an *ex parte* request. A request for interim measures is not incompatible with an arbitration agreement and does not imply the waiver by either party of the recourse to arbitration.[48] This being said, some legal scholars argued that one must consider that, once the arbitral tribunal is constituted,[49] in order not to violate the formal choice made by the parties through their arbitration agreement, claims for interim measures must be decided as a matter of priority by arbitral tribunals.[50] This position has been rejected by the Brussels Court of Appeal, which held that the court competent to order provisional measures retains its power to hear applications in summary proceedings, regardless of the fact that the parties may be bound by an arbitration agreement or that recourse to an emergency arbitrator was possible.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

Pursuant to Article 1699 of the Judicial Code, notwithstanding any agreement to the contrary, the parties must be treated equally and each party shall be given a full opportunity to present its case, pleas in law and arguments in accordance with the principle of adversarial proceedings. The arbitral tribunal shall hence ensure that this requirement and the principle of a fair trial are respected.[51]

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The Belgian Arbitration Act does not expressly provide for the confidentiality of arbitration proceedings. However, the traditional approach in Belgium is that confidentiality in arbitration proceedings is implied and hearings are usually not public.[52] Arbitration institutions often provide in their rules for the confidentiality of arbitration proceedings.

Despite the fact that arbitration proceedings are typically confidential, it is recommended to include a confidentiality clause in the arbitration agreement or in other documents governing the proceedings (*e.g.*, the terms of reference).

4.5.2 Does it regulate the length of arbitration proceedings?

The Belgian Arbitration Act provides that the parties may determine the time limit within which the arbitral tribunal must render an award. In the absence of a provision to this effect, if the arbitral tribunal does not render an award six months after appointment of the last arbitrator, the president of the court of first instance may impose a deadline on the arbitral tribunal, at the request of a party.[53]

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48 Article 1683 Judicial Code.

49 Before the arbitral tribunal is constituted, only the courts can grant the requested interim measures – except if the parties have the possibility of requesting these measures before an emergency arbitrator.

50 O. CAPRASSE, "Mesures provisoires et conservatoires en présence d'une convention d'arbitrage: conditions de l'intervention du juge des référés", *b-arbitra*, 2015/2, paras. 343 *et seq*.

51 Article 1699 Judicial Code.

52 J.-F. TOSSENS, "La confidentialité dans l'arbitrage: valeur cardinale ou poncif ?", in M. FLAMEE & D. MATRAY (eds.), *Arbitrage et confidentialité/Arbitrage en vertrouwelijkheid,* Brussels, Bruylant, 2014, para. 25; M. BERLINGIN, J-F TOSSENS, "Le conflit étudié sous le prisme de l'arbitrage", in *dir.* A. DEJOLLIER, C. DELFORGE, J.-F. VAN DROOGHENBROECK, *Le conflit : quelles approches?*, Limal, Anthemis, 2020, para. 163.

53 Article 1713 § 2 Judicial Code.

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

The parties are free to agree on the place of arbitration. In the absence of an agreement, the place of arbitration will be determined by the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties.[54]

Unless the parties agree otherwise, the arbitral tribunal may, after consulting the parties, hold hearings and meetings at any place it deems appropriate.[55]

The Belgian Arbitration Act should be amended soon in order to expressly provide the possibility to conduct hearings remotely.

4.5.4 Does it allow for arbitrators to issue interim measures and, if so, under what conditions?

Without prejudice to the court's authority to issue interim measures (see Section 4.4 above) and unless otherwise agreed by the parties (*i.e.* if the arbitration agreement does not exclude the power of the arbitral tribunal to order interim or preventive measures), the arbitral tribunal may, at the request of a party, order interim or preventive measures "*it deems necessary*" in respect of the subject-matter of the dispute.

However, the arbitral tribunal may neither authorise attachment orders,[56] nor *ex parte* interim or preventive measures.[57]

The arbitral tribunal may require the party requesting an interim or preventive measure to provide an appropriate guarantee.

As mentioned above (see Section 3.3), interim or preventive measures ordered by an arbitral tribunal may be enforced by the Belgian courts at the request of a party.[58]

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence, for example as regards the presentation of testimony by a party employee?

Unless otherwise agreed by the parties, the arbitral tribunal is entitled to determine the admissibility of evidence and to assess its evidentiary value.[59]

There are no restrictions on the presentation of testimony by a party employee. The arbitral tribunal may hear any person, without an oath.[60]

4.5.6 Does it make it mandatory to hold a hearing?

Unless the parties agree that there will be no hearing(s), the arbitral tribunal must hold hearings at an appropriate stage of the proceedings if so requested by a party.[61]

4.5.7 Does it prescribe principles governing the awarding of interest?

The Belgian Arbitration Act does not prescribe principles governing the awarding of interest.

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54 Article 1701 § 1 Judicial Code.

55 Article 1701 § 2 Judicial Code.

56 Article 1691 Judicial Code.

57 The Belgian lawmaker made the choice not to include articles 17B and 17C of the UNCITRAL Model Law, which provided the possibility for an arbitrator to order *ex parte* measures, O. CAPRASSE, "L'arbitrage", *op cit.*, para. 297.

58 Article 1696 Judicial Code.

59 Article 1700 § 3 Judicial Code.

60 Article 1700 § 4 Judicial Code.

61 Article 1705 § 1 Judicial Code.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

The Belgian Arbitration Act provides that the arbitral award must allocate the arbitration costs and decide which of the parties shall bear the costs or – as the case may be – in which proportion they shall be borne by the parties.[62]

Unless the parties agree otherwise, the costs include (i) the fees and expenses of the arbitrators, (ii) the fees and expenses of the parties' counsel and representatives, (iii) the costs of services rendered by the institution in charge of administering the arbitration and any other costs arising from the arbitral proceedings.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

Belgian law does not provide for the immunity of arbitrators. Consequently, under certain circumstances, arbitrators may be held liable for faults committed that are of a procedural nature.[63] However, it has been found that arbitrators cannot be held liable for an error in judgment in the context of the arbitrator's judicial function, thereby guaranteeing its independence and freedom to decide on an issue.[64] This protection does not extend to the arbitrators' intentional fault, fraud or gross negligence.

Arbitration institutions often provide for a limitation of liability in favour of arbitrators. For example, article 40 of the CEPANI Rules of arbitration provides that arbitrators cannot be held liable for actions or omissions in connection with their jurisdictional activity, save in case of fraud.

Parties are free to exclude their contractual liability, again with the exception of intentional fault, fraud or gross negligence.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

The arbitrator may be held criminally liable in case of corruption (passive corruption), as well as any person corrupting an arbitrator (active corruption).[65]

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

No. Under Belgian arbitration law, all awards must be reasoned.[66] Awards governed by foreign rules of law requiring reasoning must also be reasoned to be recognized and enforced in Belgium.

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62 Article 1713 § 6 Judicial Code.

63 PH. DE BOURNONVILLE, *op. cit.*, 136; N. BASSIRI and M. DRAYE (eds.), *op. cit.*, paras. 131 *et seq.*; G. KEUTGEN, G.-A. DAL, *op cit.*, paras. 324-325

64 Brussels Court of Appeal, 8 January 2002, *J.T.*, 2002, para. 792; Brussels Dutch speaking Court of First Instance, 13 November 2014 (unpublished), "*The arbitrator must be able to decide freely and independently on the dispute submitted to it. This independence and freedom would be jeopardised if the arbitrator would run the risk to be held personally liable for possible mistake conducted in the performance of his function. Consequently, his personal liability must be restricted to exceptional circumstances and to be submitted to limitations that relate to his judicial function. The immunity of the arbitrator is therefore 'certainly' not absolute.*", informal translation cited in N. BASSIRI and M. DRAYE (eds.), *op. cit.*, para. 131, note n°30

65 Article 246 *iuncto* article 249 Penal Code. The draft articles 614 to 617 of the new Books 1 and 2 of the Penal Code also provide criminal repercussions in case of corruption of an arbitrator. In addition, the draft article 615, 4° provides a heavier fine for bribing an international arbitrator, as the latter is equated to a "*person holding a public office in a foreign State or in a public international organisation*", see M. DRAYE, "Abrahammetje spelen in de arbitrage? Bezint eer ge begint! - Over procedurele fraude in internationale arbitrage", in M. Draye, E. Van Campenhoudt (eds.), *L'Arbitrage & la Fraude. Actes du colloque du CEPANI du 26 novembre 2020 / Arbitrage & Fraude. Bijdragen aan het colloquium van CEPANI van 26 november 2020*, Wolters Kluwer Belgium, Liège, 2020, paras. 104-105.

66 Article 1713 § 4 Judicial Code; this differs from the UNCITRAL Model Law.

5.2 Can parties waive the right to seek the annulment of the award?

Parties can only waive their right to seek annulment of an award rendered in Belgium or abroad by expressly including such a waiver in the arbitration agreement and provided no party is (i) a Belgian national (or an individual domiciled or having his/her principal residence in Belgium) or (ii) a legal entity with its registered office, principal establishment or a branch located in Belgium.[67] In other words, this option is only available when all parties to the arbitration are non-Belgian (or not established in Belgium).

It is important to note that the parties must expressly waive the right to seek annulment of the award in their arbitration agreement (or any further agreement). As a consequence, a provision contained in the chosen arbitration rules providing such a waiver is not sufficient.[68]

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

Awards rendered by an arbitral tribunal in accordance with Belgian arbitration law must be in writing and state the reasons on which they are based (be justified). The award must be signed by the arbitrators. The signature of a majority of the arbitrators is sufficient provided, however, that the reason for the absence of a signature is stated in the award.

In addition, an award must contain various items of information such as the name and address of the parties and the arbitrators, the object of the dispute and the date and place of arbitration.[69]

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

If this possibility has been provided for in the arbitration agreement, it is possible to appeal an arbitral award. Unless agreed otherwise, an appeal must be filed within one month from communication of the award.[70]

An arbitral tribunal constituted of different arbitrators hears the appeal. If no specific rules were agreed upon by the parties for the constitution of the appeal tribunal, the rules for the constitution of the first tribunal apply.[71] Belgian law does not stipulate specific grounds for appeal.

In practice, the possibility to appeal an award is rarely provided for in arbitration agreements governed by Belgian law. As arbitration proceedings are preferred for reasons of time and cost efficiency, providing for such a possibility would undermine two important benefits of arbitration.[72]

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

There is no distinction between domestic and foreign awards. However, if there is a treaty between Belgium and the country in which the award was rendered, the treaty shall prevail.[73] It should be noted that Belgium has ratified the New York Convention, with a reservation of reciprocity, meaning that Belgium will apply the New York Convention provided the award has been issued in a contracting State to the Convention. Even though they are less relied upon than the New York Convention, other treaties that have been ratified by Belgium include:

- A bilateral treaty with France dated 8 July 1899;
- A bilateral treaty with The Netherlands dated 28 March 1925;

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67 Article 1718 Judicial Code; this differs from the UNCITRAL Model Law.

68 PH. DE BOURNONVILLE, *op. cit.*, 199.

69 Article 1713 Judicial Code.

70 Article 1716 Judicial Code.

71 G. KEUTGEN, G-A DAL, *op. cit.*, para. 530.

72 G. KEUTGEN, G-A DAL, *op. cit.*, para. 42.

73 Article 1721 § 3 Judicial Code.

- A bilateral treaty with Germany dated 30 June 1958;
- A bilateral treaty with Switzerland dated 29 April 1959;
- A bilateral treaty with Austria dated 16 June 1959;
- The Convention for the Settlement of Investment Disputes between States and Nationals of Other States dated 18 March 1965.

It is admitted that the petitioner can choose to submit the enforcement proceedings to any of the applicable treaties or to the provisions of the Belgian Arbitration Act where these are more favourable.[74]

An arbitral award rendered in Belgium or abroad may only be enforced in Belgium after the court of first instance has ordered enforcement (*exequatur*) in whole or in part, which it can only do if the award can no longer be contested before the arbitrator(s) (*i.e.*, application for enforcement is inadmissible as long as the award may still be appealed) or if the arbitrator(s) have declared it to be provisionally enforceable notwithstanding the possibility of appeal.[75]

An application for the recognition and enforcement of an arbitral award is made by filing an *ex parte* petition with the court of first instance in the appellate judicial district where the person against whom enforcement is requested is domiciled or, in the absence of a domicile, habitually resides or, where applicable, has its registered office or, failing this, a place of business or branch office.

If a person has no domicile, residence, registered office, place of business or branch in Belgium, the application must be filed with the court of first instance in the appellate judicial district where the award is to be enforced (*e.g.*, where the assets are located).[76]

The Belgian Arbitration Act provides for a limited number of circumstances justifying the refusal of recognition or enforcement of an award, *i.e.*:[77]

- if a party against which recognition or enforcement is sought establishes that:
  - a party to the arbitration agreement was under some incapacity or the agreement is invalid under its governing law or – failing any such indication – under the law of the country where the award was rendered; or
  - it was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case; in this case, recognition or enforcement of the arbitral award may not be refused if it is established that the irregularity had no effect on the arbitral award; or
  - the award deals with a dispute not contemplated by, or not falling within, the terms of the arbitration agreement, or it contains decisions on matters beyond the scope of the arbitration agreement, provided that, if the provisions of the award on matters submitted to arbitration can be separated from those not so submitted, only that portion of the award which contains decisions on matters submitted to arbitration may be recognised or enforced; or
  - the award is not reasoned whereas reasoning is required by the rules of law applicable to the arbitral proceedings under which the award was rendered; or
  - the composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties or, in the absence of such an agreement, was not in accordance with the law of the country where the arbitration took place; with the exception of an irregularity affecting the composition of the arbitral tribunal, such irregularities may however

74 N. BASSIRI and M. DRAYE (eds.), *op. cit.*, para. 517

75 Article 1719 § 2 Judicial Code.

76 Article 1720 §§ 1-2 *juncto* Article 1680 § 6 Judicial Code.

77 Article 1721 Judicial Code.

not give rise to a refusal to recognise or enforce the arbitral award if it is established that they had no effect on the award; or

- the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the laws of which, the award was made; or
- the arbitral tribunal has exceeded its powers; or

- if the court of first instance finds (*ex officio*) that:
  - the subject-matter of the dispute is not capable of being settled by arbitration; or
  - the recognition or enforcement of the award would be contrary to public policy.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

No, annulment proceedings do not suspend the enforcement of an arbitral award in Belgium unless the parties agree otherwise.[78]

Awards capable of being appealed may be enforced if the arbitral tribunal orders provisional enforcement notwithstanding the possibility of appeal.[79] When such provisional enforcement has not been ordered in the award, the tribunal of first instance handling the request of *exequatur* cannot recognize and enforce an award appealed or still capable of being appealed.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

Yes, when an award rendered abroad has been annulled, it can no longer be recognized and enforced by Belgian courts.[80]

5.8 Are foreign awards readily enforceable in practice?

Yes.

6. Funding arrangements: are there laws or regulations relating to, or restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

Yes. Belgian lawyers may not charge contingency fees.[81] Success fees are however permitted.[82]

Third-party funding is authorized but rarely used in Belgium.

78 PH. DE BOURNONVILLE, *op. cit.*, 2016, para. 194.

79 Article 1719 § 2 Judicial Code.

80 Article 1721 § 1(a)(vi) Judicial Code.

81 Article 446 § 3 Judicial Code.

82 Contingency fees are fees that depend solely on the outcome of the case. On the other hand, success fees are additional fees earned in case a certain result is obtained.

7. Arbitration and blockchain technology

7.1 Is the validity of blockchain-based evidence recognised?

The validity of blockchain evidence has been recognised by certain commentators.[83]

In any case, under the Belgian Arbitration Act the arbitral tribunal freely assesses the admissibility of evidence and its value (save if the parties agree otherwise).[84]

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

An arbitration agreement is not subject to any formal requirement under Belgian law. As long as the validity requirements for any contract can be proven (valid object, valid cause, legal capacity, consent), the arbitration agreement will be valid. Therefore, an arbitration agreement recorded on a blockchain can indeed meet the requirements in order to be considered valid under Belgian law.

Arbitral awards on the other hand, are subject to formal requirements. Indeed, in order to be recognised as valid in Belgium, an arbitral award must be in writing and must be signed by the arbitrator(s).[85]

An award recorded on a blockchain would not meet these requirements, and would therefore not be recognised as valid under Belgian law.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

When a party seeks enforcement of an arbitral award before the court of first instance, it is no longer required to file an "original" version of the arbitration agreement.[86] Therefore, an arbitration agreement recorded on a blockchain can be enforced in Belgium.

However, in order to enforce an arbitral award, the parties need to file its original version (or a certified copy) with the competent courts.[87]

An arbitral award recorded on a blockchain would not be considered an original for the purposes of enforcement.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

For the purposes of enforcement, Belgian law provides that the petitioner must file the original award or a certified copy.

The original version of the award must be "*signed by the arbitrator*" in order to be recognised as valid.[88]

This means that the arbitrator must provide his/her handwritten signature on the document.

Inserting the image of a signature would not comply with this requirement, nor would a digital signature.

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83 J.-B. HUBIN, "La preuve par la blockchain" in Cotiga-Raccah, A. (dir.), *Les blockchains et les smart contracts à l'épreuve du droit*, Bruxelles, Larcier, 2020, paras. 197 *et seq.*

84 Article 1700 § 3 Judicial Code

85 Article 1713 § 3 Judicial Code.

86 The law of 25 December 2016 reformed certain aspects of the Belgian law of arbitration, including this one.

87 Article 1720 § 4 Judicial Code.

88 Article 1713 § 3 Judicial Code.

8. Is there likely to be any significant reform of the arbitration law in the near future?

Amendments to the Belgian Arbitration Act are expected in the near future to take into account issues that appeared during the COVID-19 sanitary crisis – as including virtual hearings. Upcoming amendments should also modify certain provisions, for which practice showed a need for improvement.

While talks are being held in order to discuss the extent of the revision of Part VI of the Belgian Judicial Code, no official draft bill has been submitted for legislative review at the time of the drafting of this report.

9. Compatibility of the Delos Rules with local arbitration law

Belgian Arbitration law is compatible with the Delos Rules of arbitration.

10. Further reading

- G. KEUTGEN, G.-A. DAL, *L'arbitrage en droit belge et international*, 3rd edition, Bruxelles, Bruylant, 2015;
- N. BASSIRI, M. DRAYE (eds.), *Arbitration in Belgium*, Alphen aan den Rijn, Kluwer International, 2016;
- PH. DE BOURNONVILLE, *L'arbitrage*, Bruxelles, Larcier, 2016;
- O. CAPRASSE, "L'arbitrage" in G. de Leval, *Droit Judiciaire – Tome II Procédure civile*, 2nd edition, Brussels, Larcier, 2021.

ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, *i.e.* with offices and a case team?	The Belgian Centre for Arbitration and Mediation (CEPANI) was founded in 1969 and is the leading arbitral institution in Belgium. On 1 July 2020 entered into force the updated CEPANI arbitration Rules, thus maintaining the institution at the forefront of arbitration trends.
Main arbitration hearing facilities for in-person hearings?	Bearing in mind the parties' freedom to choose any place to hold a hearing and the arbitral tribunal's discretion to hold the hearing(s) in accordance with the parties' will, hearing(s) can take place in law firms' or hotels' meeting rooms. With the European Union institutions based in Brussels, the city offers a range of facilities available.
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	There are a range of reprographic facilities across Brussels.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	Briault Reporting DTI Global The Court Reporter (Trevor McGowan) ARBITRATION Court Reporting (Robyn Nott) Diana Burden
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Acolad
Other leading arbitral bodies with offices in the jurisdiction?	The International Chamber of Commerce has a Brussels-based office (ICC Belgium).

DELOS
dispute resolution

GUIDE TO ARBITRATION PLACES (GAP)

BULGARIA

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FOR FURTHER INFORMATION

GAP TABLE OF CONTENTS | GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS | FULL GAP ONLINE

EN DELOS MODEL CLAUSES
ES DELOS CLÁUSULAS MODELO
FR DELOS CLAUSES TYPES
PT DELOS CLÁUSULAS MODELO

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

1. Law
   a. Framework
   b. Adherence to international treaties
   c. Limited court intervention
   d. Arbitrator immunity from civil liability
2. Judiciary
3. Legal expertise
4. Rights of representation
5. Accessibility and safety
6. Ethics

Evolution of above compared to previous year =

7. Tech friendliness
8. Compatibility with the Delos Rules

VERSION: 12 FEBRUARY 2024 (v01.03)

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 any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

A jurisdiction with a strong tradition in commercial arbitration, Bulgaria was among the first to implement the 1985 Model Law. Although it has not implemented the 2006 revision of the Model Law, the Bulgarian legislator consistently develops the local environment in a pro-arbitration direction. The recent demonstration of such development is the 2017 reform which reduced the grounds for annulment of awards and partially decentralised jurisdiction among regional courts.

Easy access to *ex parte* pre-arbitration interim measures issued by local courts, respect by local judges of the *competence-competence* doctrine, readily granted assistance by state courts in support of arbitration and a large set of remedies (including interest) available to arbitral tribunals make Bulgaria an appropriate venue for resolution by arbitration of a large variety of disputes.

Key places of arbitration in the jurisdiction?	Currently featuring more than 25 institutions, the leading institutional arbitrations are based in the capital, Sofia. The Arbitration court with the Bulgarian Chamber of Commerce and Industry is the most frequently used institution. There are also institutions active in Varna and Bourgas (the seaport towns) and in Plovdiv (the second largest city), which, however, have limited impact on the arbitration climate in the country.
Civil law / Common law environment? (if mixed or other, specify)	Civil law. Sharing common features with all Eastern-Europe countries. Bulgaria is also a Member State of the European Union.
Confidentiality of arbitrations?	The Arbitration Act is silent on confidentiality; yet it is commonly accepted as a key distinguishing feature of arbitration. The rules of the leading arbitration institutions provide for confidentiality of the proceedings.
Requirement to retain (local) counsel?	There are no restrictions on representation in arbitral proceedings. In arbitration related court proceedings (*e.g.,* annulment, recognition and enforcement, interim measures and gathering of evidence), the parties may choose to defend themselves or to be represented, in which case they need to be represented by a lawyer or in-house counsel engaged on employment contract and having a law degree.[1] In proceedings before the Supreme Court of Cassation, the lawyer shall have at least 5 years of experience.[2] A lawyer admitted to the bar in a foreign non-EU country may appear before Bulgarian courts only upon receiving special authorization, subject to specific conditions and only together with a Bulgarian lawyer.[3] A lawyer from an EU country may appear before local courts without specific authorization, but only together with a Bulgarian lawyer.[4]

1 Article 32 of the Civil Proceedings Act.

2 Article 24(2) of the Advocacy Act.

3 Article 10 of the Advocacy Act.

4 Articles 11 and 12 of the Advocacy Act.

Ability to present party employee witness testimony?	Party employees may give witness testimony; arbitral tribunals may take the witnesses' relations with the parties into consideration when determining the probative value of their statements.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	The parties may agree on the place of the hearing, including outside of the seat. Absent such agreement, the tribunal will determine the place of the hearing considering all circumstances of the case and the convenience of the parties.[5] The position on remote hearings is less settled, and depends notably on whether the arbitration is institutional and the rules of the institution permit remote hearings.
Availability of interest as a remedy?	Bulgarian law explicitly recognizes interest as an available remedy.
Ability to claim for reasonable costs incurred for the arbitration?	The leading principle in the allocation of costs is "the costs follow the event", save for excessive lawyers' fees, which the tribunal or the court may refuse to allocate entirely to the losing party.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Contingency fee arrangements are permitted and frequently used in practice. The only restriction in court proceedings is that the court would refuse to award costs that the parties did not incur prior to the closing of the proceedings. Third party funding is not regulated, and is yet rarely used.
Party to the New York Convention?	The New York Convention has been in force in Bulgaria since 1965. Bulgaria adheres to the New York Convention under the reservations that: (i) it applies the Convention to awards made in the territory of other contracting states; and (ii) regarding awards made in the territory of non-contracting states, Bulgaria applies the Convention subject to strict reciprocity.
Party to the ICSID Convention?	Bulgaria is a contracting state to the ICSID Convention as of 21 March 2000, ratified by act of the Parliament on 4 October 2000, entry into force on 13 May 2001
Compatibility with the Delos Rules?	Fully compatible with the Delos Rules; Note that Bulgarian law does not permit waiver of the available recourse against the award (clause 10.2 Delos Rules)
Default time-limitation period for civil actions (including contractual)?	The default time-limitation period under Bulgarian law is five /5/ years as from the moment the obligation becomes due. A shorter three /3/-year period applies to certain heads of claims, such as for compensation or liquidated damages for breach of contract, lease, interests or other periodic payments. The period of limitation may be terminated or stayed on grounds enumerated in the Obligations and Contracts Act. There exists an absolute ten /10/-year limitation period applicable to natural persons, which however does not apply to certain groups of claims, such as for compensation for damages resulting from tort, alimony etc.

5 Article 25 of the Arbitration Act.

Other key points to note?	The Arbitration Act limits the freedom of the parties in domestic arbitration to choose foreign law applicable to their arbitration agreement. Thus, in domestic arbitration only the Arbitration Act governs the arbitration agreement. The Arbitration Act requires that an arbitrator sitting in Bulgaria shall be a citizen of full age, not convicted for deliberate capital offence, has university degree, at least 8 years of professional experience and high morals. The Act, however, does not require qualification in law. Further, a foreign citizen may not sit as arbitrator in domestic arbitration, but only in international arbitration.[6] The consolidation and/or joinder of arbitral proceedings are subject to very strict interpretation as the Bulgarian legal tradition pays significant tribute to the importance of the right of the parties to participate in the appointment of the tribunal. Consequently, unless the parties clearly agree on the provisions and rules beforehand, consolidation and/or joinder would be possible only upon explicit consent of all parties.
World Bank, Enforcing Contracts: *Doing Business* score for2020, if available?	Enforcing Contracts rank – 42; Enforcing Contracts score – 67.
World Justice Project, Rule of Law Index: *Civil Justice* score for 2023, if available?	0.54

[6] Article 11(2) in conjunction with para.3 of the Transitory and conclusive provisions of the Arbitration Act.

ARBITRATION PRACTITIONER SUMMARY

With very few exceptions, Bulgarian arbitration law mirrors the Model Law (1985) and follows the New York convention, which makes the local arbitration climate familiar and predictable to foreign practitioners. The local courts consistently demonstrate pro-arbitration attitude and a recent reform of the arbitration law even reduced the grounds for setting aside of domestic awards.

Notably, the local law makes non-arbitrable certain categories of disputes, some of which are traditionally arbitrable in other jurisdictions, such as alimony and labour disputes.

Date of arbitration law?	The International Commercial Arbitration Act was promulgated in 1988, the latest revision being of January 2017.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	Bulgaria has implemented the 1985 version of the Model Law, but not the 2006 amended version. In 2017, Bulgaria excluded the contradiction to public policy as a ground for the setting aside of domestic awards. The Arbitration Act also restricts foreigners from sitting as arbitrators in domestic arbitrations and provides special requirements and qualifications to arbitrators.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Until January 2017, almost all arbitration related matters fell within the exclusive jurisdiction of the Sofia City Court (and upon appeal – within the jurisdiction of the Sofia Court of Appeal and the Supreme Court of Cassation). As of January 2017, some functions were decentralized. Now, the regional court at the domicile of the debtor issues the writs of execution for domestic awards; regional courts (not only in Sofia) further have jurisdiction to assist in the gathering of evidence and issuance of injunctive measures in support of arbitration. However, even after the 2017 reform, the Sofia City Court still has exclusive jurisdiction to act as a court of the first instance in proceedings for recognition and enforcement of foreign arbitral awards. The Supreme Court of Cassation retains its exclusive role as the only court instance that can hear motions for annulment of domestic awards. The concentration of jurisdiction in these courts leads to de facto specialization of the judges who repeatedly sit in arbitration-related matters.
Availability of *ex parte* pre-arbitration interim measures?	The Arbitration Act explicitly provides that at any time before or after instituting the arbitration proceedings, a party thereto may request from the state courts interim or injunctive measures. As a matter of principle, these are heard exclusively on an *ex parte* basis. The respondent may appeal only after the measure is imposed and notified to him.
Courts' attitude towards the competence-competence principle?	The competence-competence doctrine is well established in Bulgarian arbitration law and doctrine. Apart from being enshrined

	in an explicit legal provision,[7] in a recent decision,[8] the Supreme Court of Cassation held that a claim before the state courts for establishing the nullity of an arbitration clause is inadmissible if the dispute was already submitted to arbitration and while the arbitration is pending. Thus, the Supreme Court partially adopted the doctrine that the arbitrators shall be the first to rule on the validity of the agreement. It is only partially adopted as in the same judgment the Supreme Court held that if the dispute has not been submitted to arbitration yet, the party may have legitimate interest to seize directly the state courts. It is yet to be seen to what extent this judgment will be followed.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	An award (or other ruling) shall contain reasons, unless the parties agree otherwise (Article 41 (1) Arbitration Act). Consequently, the parties by agreement may provide for power of the tribunal to issue rulings with reasons to follow in a subsequent award. Lacking such agreement, all acts of the tribunal shall be reasoned.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Until January 2017, the grounds for annulment mirrored Article 34 of the Model Law (1985 version) and the New York Convention governed the recognition and enforcement of foreign awards. The 2017 reform of the arbitration law excluded the violation of public policy from the list of grounds for the setting aside of domestic awards, which by operation of Article VII(1) of the New York Convention may also apply to recognition and enforcement of foreign awards. Consequently, compared to the Model Law and the New York Convention, the local law restricts the grounds on which an award may be set aside.
Do annulment proceedings typically suspend enforcement proceedings?	The commencement of annulment proceedings does not suspend the enforcement of the award. The party seeking annulment may request from the Supreme Court the suspend the enforcement, which is admissible only upon presentation of a monetary cross-undertaking in amount equal to the amount awarded by the challenged award.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	By virtue of Article V.1(d) of the New York convention in conjunction with Article 51 of the Arbitration Act, Bulgarian courts would not enforce foreign awards annulled by the courts in the country of origin.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	Provided the tribunal guarantees the equal opportunity of each party to present its case in adequate manner, and if the technical requirements do not make it objectively impossible for a party to attend the remote hearing, it should not affect the enforceability of the award. Notably, there are no reported cases yet.

7 Article 19 (1) of the Arbitration Act.

8 Decision No 40 of 29.06.2017 in commercial case No 2448 2015 of the Supreme Court of Cassation, First Commercial Division.

Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	The state bodies enjoy limited immunity from enforcement of pecuniary obligations – the payment of the respective amount shall be made from its budget; the enforcement of non-pecuniary obligations follows the general rules. The municipalities enjoy narrower immunity from enforcement of pecuniary obligations – the immunity applies only to funds received as subsidy from the State budget, from EU or other international programs.
Is the validity of blockchain-based evidence recognised?	Blockchain-based evidence is not explicitly recognised and where needed, arbitral tribunal and courts should apply *accordingly* the respective rules on evidence.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	Under Bulgarian law, an arbitration agreement must be *in writing,* which is defined as "contained in signed documents or exchanged letters, telexes, telegrams or other means of communication". Theoretically, an arbitration agreement recorded in blockchain might fit the requirements, yet the hurdle would be to prove that both parties' expressed consent to be bound by it.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	In theory, the courts may recognize a blockchain arbitration agreement as valid. However, Bulgarian law contains specific requirement that awards shall be signed, therefore most probably the courts would not consider a blockchain award as original. Notably, there are no recorded cases.
Other key points to note?	ϕ

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

The International Commercial Arbitration Act[9] ("Arbitration Act" or the "Act") regulates both international[10] and domestic arbitration in Bulgaria. The Arbitration Act applies to international arbitration by virtue of Article 1 thereof. With the exception of certain specific provisions, the Arbitration Act applies to domestic arbitration by virtue of Paragraph 3 of the transitory and conclusive provisions thereof.

Bulgarian Private International Law Code and the New York Convention apply to the recognition and enforcement of foreign arbitral awards in Bulgaria.

The Civil Procedure Code defines the arbitrability and regulates arbitration-related proceedings before courts.

The Arbitration Act implements the 1985 revision of the UNCITRAL Model Law. Bulgaria has not yet implemented the 2006 revision of the Model Law.

Following a modification of the Arbitration Act in 2017,[11] violation of public policy no longer constitutes a ground for setting aside of a domestic award, which is the first substantial deviation of Bulgarian arbitration law from the Model Law. This was intended to apply to domestic arbitration only,[12] whereas the public policy exception should apply to the recognition and enforcement of foreign awards. However, it may be argued that, pursuant to Article VII (1) of the New York Convention,[13] the abolishment of the public policy exception should apply to foreign awards as well. There are no reported cases yet.

Another feature of the recent reform of the arbitration law is the intensified control of the courts over the validity of awards and a stricter monitoring by the State of the activity of arbitral institutions and arbitrators in Bulgaria. Further, the reform narrowed the scope of arbitration as it made consumer disputes non-arbitrable.

1.2 When was the arbitration law last revised?

The Arbitration Act was last modified in January 2017.

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9 Promulgated, State Gazette No. 60/5.08.1988, amended and supplemented, SG No. 93/2.11.1993, amended, SG No. 59/26.05.1998, amended and supplemented, SG No. 38/17.04.2001, SG No. 46/7.05.2002; Judgment No. 9/24.10.2002 of the Constitutional Court of the Republic of Bulgaria - SG No. 102/1.11.2002; amended, SG No. 59/20.07.2007, effective 1.03.2008, amended and supplemented, SG No. 8/24.01.2017.

10 Arbitration is international when at least one of the parties is registered or domiciled abroad, or if the predominant part of its registered capital is owned by a foreign entity/person.

11 SG issue 8 of 24 January 2017.

12 In the sense that it was introduced as modification of the grounds for setting aside a domestic award – Article 47 of the International Commercial Arbitration Act.

13 Article VII (1) of the New York Convention reads:

"The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of in arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon." (emphasis added). Consequently, a party seeking to enforce foreign award in Bulgaria may ascertain that the public policy exception (Article V,2(b) of the New York Convention) does not apply as the local law provides a more favourable treatment.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

As regards international arbitration with seat in Bulgaria, Article 47(1)(2) of the Arbitration Act binds the courts to consider the conclusion and validity of the arbitration agreement in light of the "*law chosen by the parties, or absent such choice – according to this Act*".

The Arbitration Act limits the freedom of the parties in domestic arbitration to choose a foreign law applicable to their arbitration agreement.[14] As a result, arbitration agreements in domestic arbitrations are governed by the Arbitration Act.

As regards foreign awards (which may come before Bulgarian courts in the context of their exequatur in Bulgaria), the courts would apply the conflicts of law rules it considers appropriate to determine the law applicable to the arbitration agreement (almost in all reported cases it was the law of the underlying contract). The courts would also consider the mandatory laws of the seat. The courts in principle shall establish the contents of the foreign applicable law *ex officio* (Article 43 (1) Private International Law Code). As a matter of practice, the courts often rely on the activity of the parties to establish the contents of the foreign law on which they base their respective requests/objections.

2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

Under Bulgarian jurisprudence and legal doctrine, a reference to a 'venue' or 'place' of arbitration is determination of a 'seat'. Clear distinguishment also exists between 'please of hearing', on the one hand, and 'seat'/'venue'/'place' of the arbitration, on the other.

2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Article 19(2) of the Arbitration Act mirrors the Model Law and explicitly states that the arbitration agreement is independent from the rest of the contract. Both state courts and arbitrators consistently apply this provision.

2.4 What are the formal requirements (if any) for an enforceable arbitration agreement?

An arbitration agreement must refer to one or more *defined legal relationships*, regardless of whether contractual or not.

It must be *in writing*. An agreement is "in writing" if it is contained in signed documents or exchanged letters, telexes, telegrams or other means of communication. An implied agreement exists if the respondent – either in writing or by statement recorded in the transcript of a hearing – accepts for the dispute to be resolved through arbitration or participates in arbitral proceedings without objecting to the competence of the tribunal. Recently the law[15] defined the forms of participation in arbitral proceedings that amount to implied acceptance. It is, however, unclear if the list is exhaustive.

Several groups of non-arbitrable disputes (discussed below) further limit the enforceability of an arbitration agreement.

Another requirement for validity, which is not included in the Arbitration Act but follows from the case law, is that the arbitration agreement must not be *unilateral*. The Supreme Court of Cassation considered as *unilateral* clauses that grant only one of the parties with a choice between arbitration and recourse before

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14 Para. 3 of the Transitory and conclusive provisions of the Arbitration Act.

15 Article 7(3) of the Arbitration Act, indicating as forms of implied consent the submission of statement of reply, presentation of evidence, submission of counterclaim or appearance at the hearing without making on objection to the jurisdiction of the tribunal.

state courts.[16] However, few reported awards take the view that if an arbitration clause grants equal choice to both parties, the clause was not unilateral and consequently – valid.[17]

Two more issues deriving from case law merit attention.

For many years commercial or civil contracts incorporating arbitration clauses were concluded by agents acting upon general or specific powers of attorney. In a judgment of 2017, however, the Supreme Court, relying again on the separability doctrine, opined that a power of attorney for conclusion of a given commercial or civil contract does not *per se* incorporate the powers to agree to an arbitration clause contained therein;[18] instead an explicit power of attorney for conclusion of an arbitration agreement is needed.

Second, in the above-mentioned judgment of 2017,[19] as well as in a few others,[20] the Supreme Court, relying again on the separability doctrine, opined that the implicit confirmation of the validity of a commercial contract concluded by an ostensible agent does not extend to an arbitration clause contained in the same contract.

2.5 To what extent, if at all, can a third-party to the contract containing the arbitration agreement be bound by said arbitration agreement?

Generally, an arbitration agreement binds only its signatories. It also binds the universal legal successors of the parties (*e.g.*, in case of a merger of companies).

The question whether assignment of contract also assigns the arbitration agreement contained therein underwent substantial development in recent years.

Initially, the position in arbitration case law was that the assignment of a contract automatically makes the assignee a party to the arbitration agreement contained therein. The arbitrators listed with the BCCI have even rendered a (then – mandatory for arbitrations administered by the BCCI, and after 2017 - only provisionally binding) decision[21] confirming this practice. In few (not very recent) cases tribunals sitting withing the Arbitration court with the BIA have taken the same approach.

At the same time, upon a strict interpretation of an arbitration clause as an independent agreement, the Supreme Court of Cassation rules that the assignment of a contract does not make the assignee a party to the arbitration clause. Consequently, the Supreme Court annuls awards based on "assigned" arbitration agreements for lack of consent. In line with this practice, it is probable that the state courts would refuse recognition of foreign awards in Bulgaria (although there are no reported cases exploring this issue).[22]

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16 Decision № 71 of 2.09.2011 of the Supreme Court of Cassation, commercial case № 1193/2010, II-nd commercial chamber.

17 See, for instance, Procedural Order in ICC Case № 3/2016.

18 Judgment № 8 of 8/2/2017 of the Supreme Court of Cassation in case № 1706 of 2016, 2nd commercial division

19 Ibid

20 Judgment № 157 of 11/1/2013 in case № 611 of 2012 of the Supreme Court of Cassation, 1st commercial division; Judgment № 66 of 7/7/2014 in case № 4036 of 2013 of the Supreme Court of Cassation, 1st commercial division

21 Decision of 18 March 2009; Until 2017 the decisions of the College of Arbitrators were unconditionally binding and tribunals sitting with the Arbitration Court at the BCCI were bound to disregard the opinion of the Supreme Court and to assume jurisdiction based on arbitration clauses incorporated in assigned contracts. In January 2017, the Arbitration Court modified its statutes and the decisions of the College of Arbitrators are no longer unconditionally binding. Now the tribunals may disregard decisions of the College of Arbitrators that contradict judgments of the Supreme Court issued in proceedings for setting aside of awards

22 In the words of the Supreme Court of Cassation, "…the assignment of receivables under a contract does not make the assignee a party to the arbitration clause included in the contract …" Decision №71 of 9 July 2015 of the Supreme Court of Cassation, commercial case № 3506/2014 , II commercial division. Similarly, Decision № 70 of 15.06.2012, commercial case № 112/2012, I commercial division; Decision № 122 of 18 June 2013, commercial case 920/2012 of the II commercial division.

Recently, under the influence of the Supreme Court's position and under penalty of annulment of awards, the domestic arbitration practice has changed and now panels constituted under the Rules of the BCCI terminate claims based on assigned contract for lack of arbitration agreement.

Agency could in theory lead to extension of arbitration agreement concluded by an agent to the principle. Article 292 (2) of the Obligations and contracts act contains specific rules on the effect of the dealings of a non-disclosed agent with regards to the principle, as follows*: "If the agent acts from its own name, the rights and obligations from dealings with third parties arise for it. However, in the relations between the agent and the principle, as well as with regards to third parties that are not acting good faith, these rights are considered rights of the principle. ...."* Notably, there are no reported cases dealing with the application of these rules with regards to the arbitration agreement.

No other grounds exist for the extension of arbitration agreements to non-signatories. Bulgarian law does not recognize *veil-piercing, alter ego* or the *group of companies* doctrines. Incorporation by reference, which other legal systems may consider as a ground for the extension of an arbitration agreement, is permissible in Bulgaria as an ordinary method for concluding an arbitration agreement.

Similarly to court judgments, the award is binding on the universal and private successors of the parties; however, under no circumstances it may have effect towards everyone (*i.e.*, it cannot have an *erga omnes* effect).

2.6 Are there restrictions to arbitrability? In the affirmative: do these restrictions relate to specific domains (such as anti-trust, employment law etc.) and/or to specific persons (*i.e.*, State entities, consumers etc.)?

Bulgarian law contains restrictions on arbitrability based both on the subject matter of the dispute and the parties involved, as follows.

Under Article 19(1) of the Civil Procedure Code, only disputes involving pecuniary rights are arbitrable. This excludes disputes concerning non-disposable rights (*e.g.*, family disputes). Antitrust and competition matters are also considered as non-arbitrable. However, where the existence of unfair competition is established, the parties concerned may conclude an arbitration (submission) agreement to deal with compensation issues (although there have been no reported cases of this type). The same applies to IP rights, including patents.

The Civil Procedure Code further explicitly excludes the following types of dispute from arbitration:

- disputes concerning rights *in rem* or possession of immovable assets;
- disputes concerning alimony;
- employment disputes; and
- since January 2017, disputes involving consumers are also non-arbitrable.[23] All cases pending at the time of the legislative change shall be terminated forthwith. Further, awards concerning consumers become null and void and therefore – unenforceable, and the state courts refuse to issue writs of execution based on such awards.

Arbitrability is further limited in cases of insolvency. According to Article 637(6) of the Commerce Act, after initiation of insolvency proceedings, new arbitration proceedings cannot be initiated; regardless of the existence of an arbitration agreement, all claims against the debtor must be filed before the insolvency court.

All arbitral proceedings pending at the time of the initiation of insolvency proceedings must be suspended. If the respective claim is subsequently included in the list of accepted claims, the arbitration will be

[23] Unlike other jurisdiction, under Bulgarian law even submission agreements concluded by consumers after the dispute has arisen are null and void.

terminated; if the claim is not accepted, the suspended proceedings will continue with the participation of the insolvency trustee.

The respondent may challenge the arbitrability of the dispute as a part of its jurisdictional defence. As the non-arbitrability of a dispute is non-waivable,[24] the objection may be made later on in the proceedings or used as a ground for challenging the award; failure to challenge the arbitrability in due time does not deprive the respondent of the opportunity to do so later.

3. Intervention of domestic courts

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

The court shall stay litigation upon objection of a party for the existence of an arbitration agreement covering the dispute. Under penalty of implied waiver, the objection for existence of arbitration agreement shall be made not later than with the statement of response. The court may only refuse to stay the litigation if it finds the arbitration agreement "*null and void, inoperative or incapable of being performed*".[25] The court should not distinguish between seat of arbitration in Bulgaria or abroad, as far as the arbitration clause is valid and the objection is made in due time.

Bulgarian courts generally tend to enforce arbitration agreements, even imperfect ones.

Unlike other jurisdictions, Bulgarian courts would refuse to enforce a unilateral arbitration clause that grants only one of the parties a choice between arbitration and state courts (notably, if such clauses provide equal rights to both parties, the courts would enforce them).

Bulgarian courts would further refuse to enforce arbitration agreement between assignor and assignee, and also agreements concluded by a representative acting upon a general (a not explicit) power of attorney (see above).

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

Under Bulgarian law, the arbitrators have no powers to bind others but the parties to the arbitration agreement. Consequently, a judge would disregard an injunction issued by an arbitral tribunal ordering a stay of litigation. Further, unless it follows otherwise from the circumstances, the court would not consider such an injunction as a substitute of objection by a party for a stay of litigation; as specified above, the only explicit objection made by a party in due time that the dispute is covered by arbitration agreement would suffice for a stay of the litigation.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

In principle, the courts may intervene in arbitral proceedings only as far as permitted by the Arbitration Act.[26] Yet, in few cases courts have intervened in arbitral proceedings on the basis of the general principles of civil litigation and the general right to seek redress from state courts. For example, in one instance the Sofia City Court has issued injunctive relief and ordered suspension of arbitral proceeding based on arbitration clause, the validity of which clause was disputed in court.[27] However, upon appeal the Sofia Court of Appeal took the

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24 This follows from the mandatory character of the arbitrability rules; it is further implied in Article 5 of the Arbitration Act, according to which a "[p]*arty that is aware of incompliance with a non-imperative provision of this Act, or with a requirement provided in the arbitration agreement, but nevertheless continues to participate in the proceeding without raising immediate objections … cannot rely on the incompliance."* Consequently, if the incompliance or breach affects mandatory provision, the party may raise objection at a later stage, including at the stage of challenging the award before the Supreme Court of Cassation.

25 Article 8(1) of the Arbitration Act.

26 Article 6 of the Arbitration Act, mirroring Article 5 of the Model Law (1985).

27 Ruling of 8 March 2012, Civil Case No.2610/2012, Sofia City Court, Civil division, 4th panel.

opposite view and ruled that it is inadmissible for the courts to suspend arbitration proceedings as an injunctive relief and that the eventual shortcomings of the arbitral proceedings may be invoked only in the procedure for setting aside the ensuing award.[28]

In theory, courts may intervene in similar manner with regard to arbitral proceedings pending outside of the jurisdiction, provided they consider that there is international element that substantiates their jurisdiction. Notably, there are no reported cases allowing such intervention abroad and, taking into consideration the opinion of the Sofia Court of Appeal, most probably Bulgarian courts would be slow to intervene in arbitration proceedings conducted outside of their jurisdiction.

On the other hand, courts may intervene in support of the arbitration or in order to preserve the integrity of the process. Thus, courts may issue interim or conservatory measures for preservation of assets or *status quo* and they may assist in collecting of evidence that cannot be collected by the tribunal (usually because of the lack of coercive powers).[29] As regards the maintenance of the integrity of the process, the courts have certain powers with regard to challenges of arbitrators[30] and setting aside of awards (for domestic arbitration)[31] and controlling the enforcement stage (regarding foreign awards).[32]

4. The conduct of the proceedings

Arbitrators must ensure equal treatment of the parties and provide them with equal opportunities to present their cases.[33]

The parties are free to agree on the procedure for the arbitrators to follow. In the absence of such agreement, the arbitrators will apply the procedure that they consider appropriate, subject always to the duty to ensure equal opportunities for the parties to present their cases. The law also provides basic procedural rules aimed at ensuring the successful completion of the procedure, including a rule for exchange of written statements of claim and defence, rules on counterclaims, the open-hearing principle and documents-only arbitration by exception etc.

4.1 Can parties retain foreign counsel or be self-represented?

Parties to arbitral proceedings in Bulgaria may be represented by outside counsel, in-houses, or self-represented. Absent specific agreement of the parties, there are no restrictions as to the qualifications of the representatives, in particular, those not necessarily be lawyers, but may be persons with other qualification the party deems appropriate. In practice, representation by non-lawyers is rare, except for DAB procedures and ensuing arbitrations where it is common for engineers to attend as party-appointed representatives.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?

An arbitrator may be challenged if:

- the circumstances raise reasonable doubts regarding his or her impartiality or independence; or
- he or she is not eligible or does not possess the qualifications required by the arbitration agreement.

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28 Ruling of 18 April 2013, Civil Case 2032/2012, Sofia Court of Appeal, Civil division, 7th panel.

29 Article 9 of the Arbitration Act: "Each of the parties to an arbitration may request from a state court, prior or while arbitration proceedings are pending, issuance of conservatory measures or conservation of evidence".

30 Article 16 of the Arbitration Act: if the arbitral tribunal dismisses a challenge to an arbitrator the challenging party may challenge the arbitrator before the Sofia City Court.

31 Article 47 of the Arbitration Act: the party may challenge the award before the Supreme Court of Cassation on limited ground, among which improper constitution of the arbitral tribunal or incompliance of the procedure with the agreement of the parties, as well as on certain procedural violations.

32 Article 51 of the Arbitration Act in conjunction with Article V of the New York Convention.

33 Article 22 of the Arbitration Act.

A party may challenge its own appointed arbitrator only on account of circumstances of which it was not aware at the time of making the appointment.

Further, the appointment may be terminated if the arbitrator becomes incapable of performing his or her functions or fails to act without a reasonable excuse (however, the Sofia City Court has ruled that delayed issuance of an award does not constitute grounds for termination).

Unless the parties agree otherwise, the challenge must be made within 15 days after the challenging party becoming aware of the formation of the tribunal or the circumstances giving rise to the challenge. Notably, some institutional rules provide for shorter terms for the challenge.

Where the arbitral tribunal refuses to accept the challenge, the refusal may be appealed to the Sofia City Court.[34] This provision is mandatory and cannot be derogated from by an agreement between the parties. The tribunal may continue the proceedings and render an award while the challenge and appeal are pending. The decision of the Sofia City Court is final.

In practice, the Sofia City Court has applied a strict interpretation of the "reasonable doubt" test, accepting the challenge only where the circumstances objectively lead to partiality or lack of independence. Consequently, a mere failure of an arbitration to disclose should not suffice for a challenge, unless it follows from the undisclosed circumstances that the arbitrator's impartiality or independence are tainted.

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

The Arbitration Act provides for a default procedure for the appointment of arbitrators, which allows for intervention by state courts only with respect to disputes arising from non-commercial relations.

In *ad hoc* arbitration, unless otherwise agreed, the tribunal is comprised of three arbitrators: each party appoints one arbitrator, and together the party-appointed arbitrators choose the chairperson.

If the respondent fails to nominate an arbitrator within 30 days of receiving the claimant's notice of arbitration, or if the two party-appointed arbitrators fail to choose the chairperson within 30 days, and if the dispute arises from a commercial relationship, the chairperson of the Bulgarian Chamber of Commerce and Industry ("BCCI"), on request of one of the parties, will act as the appointing authority. The chairperson of the BCCI will consider the qualification requirements contained in the arbitration agreement (and all other relevant circumstances) with a view to appointing an independent and impartial arbitrator.[35] Thus, for disputes arising from commercial relations, the chairperson of the BCCI shall act as appointing authority.

For disputes that do not arise from commercial relations, the Sofia City Court shall act as appointing authority.[36]

The institutional rules provide for a separate default procedure, which is very similar to the above, except for who acts as an appointing authority.[37]

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34 Article 16 of the Arbitration Act.

35 Article 12 of the Arbitration Act.

36 Para. 3(2) of the Transitory and conclusive provisions of the Arbitration Act.

37 For example, the Rules of arbitration of the Arbitration court with the Bulgarian Chamber of Commerce and Industry (the most commonly used institution) provides the same procedure (each party appoints an arbitrator from a closed list and the two party-appointed arbitrators appoint a chairperson from the same list); however, upon a failure of the respondent to nominate an arbitrator or if the two party-appointed arbitrators cannot agree a about the chairperson, the chairperson of the BCCI Court of Arbitration (and not the chairperson of the BCCI) will act as appointing authority.

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

The Arbitration Act explicitly provides that, upon request of a party, either before initiation of the arbitration or while the proceedings are pending, the state courts may order interim measures to:

- protect a party's rights that are the subject matter of the arbitration; or
- guarantee effective enforcement of an eventual favourable award.[38]

The courts may issue identical measures to those issued in relation to pending litigation, including attachment of movable or immovable assets or receivables (including freezing bank accounts) or other appropriate measures. These are immediately enforceable by bailiffs.

Requests to courts for the issuance of interim measures are always heard on an *ex parte* basis. The court may grant the measure if it finds that the claim in support of which the interim measure is sought is admissible and if the claimant has a *prima facie* case on the merits. As further conditions, the interim measure should be appropriate, proportionate and necessary.

Even where the applicant does not have a *prima facie* case on the merits, the courts may issue interim measures upon presentation of a counter guarantee. As a matter of practice, the guarantee is up to 10% of the value of the claim (in some rear instances going up to 15%); the guarantee remains with the court until the dispute is pending and is used to cover eventual damages of respondent from meritless injunctions (the damages need be established in a separate adversarial process). Judges have discretion do request presentation of counter guarantee even where the claimant has a *prima facie* case on the merits.

The counterparty may appeal against the interim measure in 7 /seven/ days from service of a notice that it was imposed.[39]

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

The Arbitration Act contains a set of provisions, some of which are mandatory and determine the minimum standard of due process,[40] but most of them are default provisions that aim to supplement the missing agreement of the parties on the constitution of the tribunal and the conduct of the arbitration.

The Arbitration Act underlines that the parties are free to shape the proceedings,[41] and in the absence of such agreement, the tribunal shall conduct the proceedings in a manner it finds appropriate under the circumstances,[42] but always subject to the duty to guarantee to both parties equal opportunity to present their case.[43]

In *ad hoc* arbitration, unless otherwise agreed, the proceeding is considered commenced for all purposes when the respondent receives a request to refer a dispute to arbitration. The aim of this provision was for a simple notice of intention to arbitrate to suffice for the institution of proceedings. This is consistent with Article 33 of the Arbitration Act, which provides for the termination of proceedings if the claimant fails to submit a statement of claim in the timeframe agreed by the parties or determined by the tribunal.

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38 Article 9 of the Arbitration Act.

39 Article 396 of the Civil Procedure Code.

40 Under Bulgarian law and legal doctrine, the "due process" principle encompasses the equal treatment of the parties and the opportunity to present their case (Article 22 of the Arbitration Act); those of the provisions of the Act that have mandatory character aim to safeguard the due process.

41 Article 24, sentence 1 of the Arbitration Act.

42 Article 24, sentence 2 of the Arbitration Act.

43 Article 24, sentence 3 of the Arbitration Act.

In practice, even in *ad hoc* arbitration, it is relatively rare for the claimant to send a simple request for arbitration; in most cases, the claimant sends a detailed statement of claim containing its grounds and request for relief. This approach is recommended, as the potential insufficiencies of a simple request (most often, insufficient individualisation of the cause of action) may cause uncertainty regarding whether and when the arbitration was properly commenced (with ensuing uncertainty regarding the legal effects of proper commencement – the most important of which being the termination of the limitation period).

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The Arbitration Act is silent on confidentiality. The doctrine highlights the confidentiality and privacy as distinguishing features of arbitration, as is also reflected in certain institutional rules.[44] However, unless the arbitration clause refers to institutional rules that contain explicit confidentiality provisions, the parties should be prudent to incorporate specific provisions on confidentiality in their arbitration agreement.

The Bulgarian Criminal Code qualifies it as a punishable offence if an expert witness or an interpreter discloses information which constitutes a *secret* and which has become known to them during their participation in the arbitral proceedings.[45] However, the provision does not indicate that the information is considered as secret because it was disclosed in a pending arbitration. Rather the secrecy follows from factors that are external to the arbitral proceedings, such as the nature of the information in question (trade secrets, patents) etc.

Related to the issue of confidentiality is the question whether information obtained in arbitral proceedings may be disclosed in subsequent proceedings. As the Arbitration Act is silent on this question, the answer depends on how the information is obtained and the nature of the subsequent proceedings.

If the information is obtained in proceedings under arbitration rules that do not contain explicit confidentiality provisions, the disclosing party can seldom prevent disclosure in subsequent proceedings.

If the information is obtained under an obligation of confidentiality, the receiving party most probably cannot use it in subsequent proceedings before the same institution or another institution that observes similar rules.

If the information is used before state courts, the judges will determine the matter by reference to the rules of evidence contained in the Civil Procedure Code. As the litigants have a duty to submit to the courts only the truth, a judge would most probably admit a relevant document on record regardless of the fact that it was produced in breach of confidentiality provisions contained in arbitration rules/agreement. [46]

A party disclosing confidential information may also avail of the new *Trade Secrets Protection Act* (enacted in 2019)

4.5.2 Does it regulate the length of arbitration proceedings?

The Arbitration Act contains no specific provisions on the length of the arbitration proceedings, therefore, it is left to the parties to include appropriate provisions in their arbitration agreement. Absent such agreement,

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44 Article 24(5) of the Rules of Arbitration of the BCCI provides that "[t]he proceedings before the Arbitration court with the BCCI are confidential."

Article 8 (1) of the Rules of arbitration of the KRIB Arbitration Court reads as follows: "The arbitrators, the members of the Arbitration Council, the Supervisory Board and the Commissions of the Arbitration Panel, the employees of the Secretariat of the KRIB Court of Arbitration, and all the experts appointed by the Arbitral Tribunal shall be obliged to ensure confidentiality of all documents and information in the arbitration cases of the KRIB Court of Arbitration, which may come to their knowledge. The internal documentation of the KRIB Court of Arbitration and the correspondence between its bodies, the Secretariat and the arbitrators is confidential and shall not be revealed to the parties or third parties.".

45 Article 284 of the Criminal Code.

46 In theory, a party that breaches contractually undertaken confidentiality obligations is liable for damages resulting from breach of contract. There is no reported Bulgarian case dealing with such situation.

the arbitrators shall organize the conduct of the arbitration in a concise manner as to guarantee resolution of the dispute in reasonable terms.

There are no specific rules in the Arbitration Act addressing whether the tribunal would become *functus officio*, upon expiration of the term agreed by the parties. The Act only provides that the powers of the tribunal seize to exist upon conclusion of the arbitration proceedings (which is meant to be the delivery of the award), except for cases where the award needs to be interpreted or supplemented.[47] This is an indication that the concept of *functus officio* is not inconsistent with the principles of the Act, yet, notably, the Supreme Court has never dealt with such an issue.

However, as the parties may agree on a time limit either for rendering the award or for the closure of proceedings, an award rendered after the expiration of the agreed time limits may be set aside because the proceedings were not conducted pursuant to the agreement of the parties (Article 47, Item 6 of the Arbitration Act).

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

The Arbitration Act contains default provision that, absent agreement of the parties, the tribunal will determine the venue of the hearing considering all circumstances of the case and the convenience of the parties.[48]

The Arbitration Act endorses the principle that there shall be an oral hearing, unless the parties explicitly agree on *documents-only* proceedings.[49] The act is silent on remote hearings.

Notably, the Bulgarian Parliament enacted a special *Act on the Measures and Actions during the State of Emergency Declared by a Resolution of the National Assembly of 13 March 2020 and on Addressing the Consequences* (SG 28/2020, last amended SG 98/2020) (this is the period of the lockdown that lasted from 13 March until 13 May 2020, and was followed by a period of *State of extraordinary epidemic situation,* which still continues).

The Act contains a number of measures in almost all spheres of social and political life, while other measures with more limited scope and effect were enacted by Ordinances of the Government or Orders of the Minister of health.

As one of these measures, the Act explicitly permitted online court hearings (subject to certain restrictions and provided all procedural requirements for due process be observed). Notably, the Act mentioned "court", but not "arbitration" hearings, yet the organization of the arbitration proceedings followed the trend. Until this Act, online or distance hearings, including by video conference, were applied predominantly in international cases, and almost never in domestic arbitrations. In response to practical needs and rising demand, some institutional rules (such as those of the BCCI in its 2019 revision, which was further elaborated in the december-2020 edition) included provisions on remote hearing.

Consequently, in proceedings subject to institutional rules that permit distance hearing, the tribunal may order/permit it even in case one of the parties objects. In other cases that are subject only to the Arbitration Act and are not covered by similar institutional rules, upon objection of a party the tribunal should not order remote hearing.

Notably, the Parliament now works on a bill for amendment of the Civil Procedure Act, with the purpose further to clarify and facilitate the online hearings, to regulate the online serving of process and summons,

47 Article 46 of the Arbitration Act.

48 Article 25 of the Arbitration Act.

49 Article 30 of the Arbitration Act

etc. As the bill is still under preparation, it is not clear how far the reform would reach, yet it is expected that it may also modify the Arbitration Act rules.

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

The Arbitration Act expressly provides the arbitral tribunal, upon request by one of the parties, with the power to order the other party to take appropriate measures for the protection of the rights of the requesting party.[50] The Act further states that the tribunal may require the requesting party to present security.

The only condition provided by the Act is that the measures shall be *appropriate*. Following the constant practice developed in proceedings before state courts, most Bulgarian practitioners are likely to consider as preconditions for such measures the admissibility of the claim, the existence of a *prima facie* case on the merits for the requesting party and the proportionality and necessity of the requited measures.

The powers of the arbitrators are limited to the parties; by law, they have no coercive powers that could permit them to issue orders with effect to third parties. Further, the orders are not enforceable through the courts of law and the only liability for failure of the addressee to comply with the order is the liability for damages caused to the counterparty by the failure to comply. As a result, the parties rarely apply for such measures and in most cases, they prefer to apply to state courts to issue injunctive measures.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

The only explicit provision of the Arbitration Act concerning the collecting of evidence provides for the powers of the tribunal to appoint one or more expert witness who shall prepare a report on points in issue that require special or technical knowledge.[51] Further, the tribunal may order the parties to present the expert witness/es with the necessary information or to procure access to documents, goods or premises as far as necessary for the preparation of the report.

As evident from the above, and by contrast to many other jurisdictions, the tribunal has a proactive role in the appointment of an expert witness. Most commonly in practice, the parties request from the tribunal to permit preparation of a report by expert witness(es) on specific issues and the tribunal, upon consideration of the relevance, admissibility, and necessity of the report, appoints one or more experts with appropriate qualification to prepare the report on specific issues.

In addition, the tribunal may request from the state courts, or upon request by a party – may authorize it to make the application directly, for the collection of evidence.[52] Such a request concerns evidence that the tribunal, due to lack of coercive powers, cannot collect itself, such as collecting witness testimony of third parties who refuse to appear before the tribunal voluntarily, and alike.

As regards the other types of evidence, the tribunal has discretion to determine appropriate rules and procedure on admissibility and collecting of evidence,[53] but most often, it is guided by the rules contained in the Civil Procedure Code.[54] Thus, the arbitrators would permit testimony of a fact witness if the testimony were relevant and necessary; allow the parties and their statutory representatives (managers or directors) to give *explanations,* and not *testimony;* permit parties' employees to present evidence, etc. This approach is

50 Article 21 of the Arbitration Act.

51 Article 36 of the Arbitration Act.

52 Article 37 of the Arbitration Act.

53 Article 24 of the Arbitration Act.

54 It is a common practice for arbitrators sitting under the auspices of the BCCI to issue procedural order where it is specified that the tribunal will apply rules similar to those contained in the CPC, save for the preclusion periods.

consistent with the perception that the rules on evidence contained in the Civil Procedure Code reflect most parties' legitimate expectations.

Tribunals usually would allocate the burden of proof as applicable in civil litigation, which is that each party shall prove the facts upon which it relies.

The Arbitration Act is silent on whether the tribunal may draw adverse inference from the conduct of a party, and in particular, if the party has created obstacles to the collection of evidence.

4.5.6 Does it make it mandatory to hold a hearing?

The Arbitration Act permits the parties to agree on documents-only arbitration, in which case the tribunal needs not hold a hearing.[55] However, the very same provision provides that the tribunal may nevertheless summon the parties for a hearing if it determines that this is necessary for the "*correct resolving of the dispute*". This limitation of parties' autonomy reflects the prevailing principles of due process and equality of the parties, expressly provided for in the Act.[56]

As mentioned above, the 2020 revision of the BCCI Rules permitted the tribunal to have a distance hearing even if case one of the parties objects, as far as the circumstances warrant it.

4.5.7 Does it prescribe principles governing the awarding of interest?

Bulgarian law distinguishes between interest as a charge for borrowing money and interest as compensation for a delay in payment. Tribunals sitting in Bulgaria may award both types of interest.

Bulgarian legal tradition considers the issues of interest as part of the substantive law; therefore, tribunals may award interest as determined in the applicable substantive law and the contract of the parties.

Regarding interest as a charge for borrowing money, the tribunal will award at the rate agreed between the parties.

Regarding interest as compensation (*i.e.*, late payment interest), where Bulgarian law applies and if the parties have not agreed on liquidated damages, the tribunal shall award statutory interest from the date of delay at the annual rate of the basic interest rate of the Bulgarian National Bank plus 10 points.[57]

Notably, the arbitrators listed with the Bulgarian Chamber of Commerce and Industry (BCCI) have rendered a mandatory decision[58] on the conflict between statutory interest for delay and contractually agreed liquidated damages. According to the decision, if the contract provides for liquidated damages due for delay of payment, the tribunal shall apply it both for the period of delay and for the period from submissions of the statement of claim until final payment of all awarded amounts. This decision is conditionally mandatory only for the arbitrators sitting with the BCCI. In civil litigation, it is common that the judgment grants liquidated damages for the period of delay occurring prior to the initiation of the litigation, and statutory interest for the period from the submission of the statement of claim until final payment of all awarded amounts.

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55 Article 30 of the Arbitration Act.

56 Article 22 of the Arbitration Act: "The parties to the proceedings are equal. The arbitral tribunal shall grant each of them equal opportunity to protect its rights." (free translation)

57 Article 86 of the Bulgarian Obligations and Contracts act in conjunction with Ordinance № 426 of the Council of Ministers of 18.12.2014 for determination of the amount of statutory interest on overdue pecuniary obligations.

58 Decision №2/1 March 2010.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

The Arbitration Act is silent on the allocation of arbitration costs. Each arbitration institution applies its own rules on costs; however, all institutions in Bulgaria structure the costs on an ad valorem basis (*i.e.*, in proportion to the estimated value of the transaction concerned).

Under Bulgarian legal tradition, legal costs are allocated on the "costs follow the event" principle. This rule is explicitly stipulated in the Civil Procedure Code (applicable to litigations, but followed as an *appropriate rule* in domestic arbitration as well). However, the parties may agree on a different allocation of costs.

Lawyers' fees are negotiated with the client and are generally borne by the losing party. If the lawyers' fees are excessive (based on the amount in dispute and complexity of the case), the arbitrators may reduce the proportion allocated to the losing party.

State courts do not order security for costs, as both the Civil Procedure Code and the International Commercial Arbitration Act contain no specific provision on this matter.

The institutional rules will empower the tribunal to order appropriate conservatory and provisional measures, which may also include security for costs. In practice, there has been no reported case of security for costs being ordered by arbitral tribunals; further, such orders would have very little practical effect, given the lack of coercive powers.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

The Arbitration Act is silent on arbitrator liability, but Bulgarian jurisprudence considers them to be liable for wilful misconduct, gross negligence and crimes committed in connection with the rendering of the award. Such liability is based on Tort law.

Arbitrators do not benefit from judicial immunity. However, it is commonly accepted that they should not be held liable for a *wrong* decision that is not a result of a wilful misconduct, gross negligence or crime.

There has been only one court decision dealing with arbitrator liability for rendering an unenforceable award. A tribunal sitting with the Bulgarian Chamber of Commerce and Industry (BCCI) rendered an award that was subsequently denied enforcement by Italian courts. In this case the claimant filed a claim for damages against the BCCI, not the arbitrators. The Supreme Court of Cassation eventually dismissed the claim, finding that the institutional court of arbitration merely administers cases and is not liable for the alleged misconduct of the arbitrators. However, the Supreme Court of Cassation mentioned in passing that arbitrators would not be liable for rendering an unenforceable award only as far as it was not a result of wilful misconduct.

As mentioned, an important exception concerning the non-arbitrable cases involving consumers was created in January 2017. As a result, a new rule in the Arbitration Act provides that an arbitrator who renders an award in a dispute involving a consumer is personally liable and the Minister of Justice may impose a fine between BGN 500 and BGN 2,500 and for a second offence – a fine of up to BNG 5,000.[59]

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

The participants in arbitration proceedings in Bulgaria fall within the scope of application of the Bulgarian Criminal Code.

[59] Article 53 (new) of the Arbitration Act; the exchange rate EUR-BGN is fixed by law at EUR 1 = BGN s1.95583.

Arbitrators are liable for bribery.[60] The same applies to expert witnesses and for counsel of the parties.[61]

Further, the expert witnesses and interpreters are explicitly held liable for disclosure of information which constitutes a secret and which has become known to them during their participation in the arbitral proceedings.[62]

In addition, the expert witnesses are also liable for deliberately or negligently giving an untrue expert witness statement.[63]

Finally, the witnesses of fact as well as interpreters may be held liable for perjury.[64] Further, there is a liability for giving untrue written declarations in court.[65] There exists an alternative theory that these two cases do not apply to arbitration proceedings as the *arbitrators* are not *court* in the sense of a *state court,* yet the majority of scholars support the applicability of the criminal liability for perjury to arbitration proceedings and as a matter of practice, the arbitrators always warn fact witnesses that they are subject to criminal liability for perjury.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

The award must be in writing and contain reasons. The arbitrators may not reason their award, provided that the parties so agree or if the award is an award by consent. [66]

The award must state the date on which it was rendered and the place of arbitration.[67]

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60 Article 305 of the Criminal Code (Amended, SG No. 92/2002): "(1) The punishments for bribery under the preceding paragraphs shall also be imposed to an arbiter or expert, appointed by a court, institution, enterprise or organisation where they perpetrate such acts in connection with the tasks entrusted to them, as well as on the person who proposes, promises, or gives such a bribe.

(2) Punishments for bribery under the preceding articles shall be imposed to a defence counsel of any party in judicial proceedings where he/she commits an act, as stated above, to help adjudicate to the benefit of the adversary or to the detriment of their client pending criminal or civil proceedings at stake, as well to the individual who proposes, promises or gives such bribe".

61 Article 305 of the Criminal Code (Amended, SG No. 92/2002), paragraph 2.

62 Article 284 (Amended, SG No. 26/2004): "(1) An official who, to the detriment of the state, of an enterprise, an organisation or private person, informs another or publishes information which has been entrusted or accessible to him officially and of which he knows it constitutes an official secret, shall be punished by imprisonment for up to two years or by probation.

(2) The punishment for an act under paragraph 1 shall be also imposed on a person who is not an official, who works in a state institution, enterprise or public organisation, to the knowledge of who information has come, in connection with his work, constituting an official secret.

(3) If the act under paragraph (1) has been committed by an expert witness, translator or interpreter with respect to information which has become known to him in connection with a task assigned thereto, and which such a person has been obliged to keep in secret, the punishment shall be deprivation liberty for up to two years or probation."

63 Article 291: **"**(1) Persons who in their capacity of expert before the court or another respective body of authority orally or in writing consciously give untrue conclusion, shall be punished by imprisonment for one to five years and by deprivation of the right under Article 37 (1), sub-paragraph 7.

(2) Where the act under the preceding paragraph has been committed through negligence, the punishment shall be imprisonment for up to one year or probation. The court may also rule deprivation of the right under Article 37 (1), sub paragraph 7."

64 Article 290 : "(1) Persons who, in their capacity of witness before the court or before another respective body of authority, orally or in writing consciously assert untrue statement or hold back the truth, shall be punished for perjury by imprisonment for up to five years.

(2) The same punishment shall also be imposed on a translator or interpreter who before the court or another respective body of authority, orally or in writing consciously renders untrue translation or interpretation."

65 Article 290a (New, SG No. 28/1982): "Persons who assert untrue statement or hold back the truth in an affidavit presented in court, shall be punished by imprisonment for up to three years."

66 Article 41 (1) of the Arbitration Act.

67 Article 41 (1) of the Arbitration Act.

The award must be signed by the arbitrators. If it has been rendered by the majority of the arbitrators, the award need be signed only by the majority of the members; however, in such case the award must state the reasons for the missing signature(s).[68]

The award must be notified to the parties. It is considered notified on the date it is delivered to at least one of the parties. From this moment, the award becomes final, binding and enforceable. Further, the term for filing a request for setting aside runs for the respective party from the date of its notification.

The Arbitration Act does not provide for scrutiny of awards, yet some institutional rules provide for it.

Awards are not subject to registration with the state courts, but with the secretariats of the institutions under the rules of which they have been rendered. A recent legislative change obliged the institutions to keep the files for at least 10 years and the awards, reasoning thereto and the approved settlements – for an indefinite period. Theoretically, the same requirement would apply *by analogy* to the chairperson of an *ad hoc* tribunal.

The arbitral tribunal may award the same remedies as state courts, including specific performance, liquidated damages, interest, declaratory relief and refrain orders.

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

Under Bulgarian law, the possibility for recourse before the Supreme Court of Cassation for setting aside of awards is considered fundamental guarantee of due process and cannot be waived.

As a result, even where the parties have waived the requirement for the award to contain reasons, the control of the Supreme Court of Cassation would be limited to an extent, yet it cannot be waived completely.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

No atypical requirements apply to rendering a valid award.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

Awards rendered under the Arbitration Act are final and binding upon notice to the parties and are not subject to appeal,[69] such awards are subject only to requests for annulment.[70]

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

On notification to the parties, domestic awards are enforceable as court judgments without limitations. In order to obtain a writ of execution, the party needs to produce to the regional court (for Sofia – the Sofia City Court) a copy of the award and evidence that it was served upon the debtor. The procedure is *ex parte* and the debtor may invoke irregularities of the procedure only by appeal against the order permitting issuance of the writ.

A legislative change in January 2017 extended the control of the state courts. Before the reform, the only available recourse was a request to Supreme Court of Cassation (the highest court instance in Bulgaria) for setting aside the award. Now a regional court seized with a request for issuance of writ of execution on the basis of domestic award shall dismiss the request if the award is *null and void*, i.e. if it resolves non-arbitrable dispute or if one of the parties was a consumer. Thus, not only the Supreme Court of Cassation in annulment

68 Article 41 (2) of the Arbitration Act.

69 Article 38 (4) of the Arbitration Act.

70 Article 47 of the Arbitration Act, mirroring Article 34 of the Model Law (1985).

proceedings, but also all regional courts in proceedings for issuance of writs, may control the validity of the domestic awards.

Foreign awards are enforceable only after state courts grant recognition and permit their enforcement pursuant to the New York Convention. The creditor must file a statement of claim before the Sofia City Court, the decision of which is subject to appeal before the Sofia Court of Appeal, thence to appeal before the Supreme Court of Cassation.

As regards time limits to enforce, as a matter of Bulgarian law and under penalty of statutory preclusion, the party to whom the award is favourable should commence enforcement within 5 years from notification of the award.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

The initiation of annulment proceedings does not by itself suspend the enforcement. The time limit to apply for annulment of an award is 3 (three) months from the notification of the award to the respective party.[71] In case of requests for supplement or interpretation of the award, the term runs from the date of receipt of the supplement award/interpretation. The Supreme Court may suspend enforcement only if the party has submitted a request for annulment that is *prima facie* admissible and filed within the statutory 3-month period from the notification of the award, and further, only if the party presents a guarantee in the form of monetary deposit covering the entire amount of the award whose annulment is sought.[72]

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

An award set aside by the courts in the country of origin would be refused recognition and enforcement on the grounds of Article V1(e) of the New York Convention. In two recent court proceedings[73] for recognition and enforcement of ICC partial awards, two different judges suspended the proceedings pending annulment procedure in Austria (the seat of the arbitration). In doing so, the judges opined that, should the awards be annulled before the courts at the seat of arbitration, recognition and enforcement in Bulgaria would not be possible.

5.8 Are foreign awards readily enforceable in practice?

The Bulgarian courts have a pro-enforcement attitude and foreign awards are generally recognized and enforced in Bulgaria. There are very few instances when foreign awards were refused recognition in Bulgaria.

6. Funding arrangements

6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

There are no restrictions to contingency or alternative fee arrangements, and in fact these are often used in practice. Third party funding is not contradictory to the local law, but is not very common in practice yet – there have been very few reported cases involving third party funding.

However, as a result of an interpretative decision of the Supreme Court of Cassation (which is mandatory to all state courts) the courts award only costs that are actually incurred and proven prior to the close of the respective proceedings. Consequently, a court seized with a request for annulment or for recognition of

71 Article 48(1) of the Arbitration Act.

72 Article 48 (2) of the Arbitration Act.

73 Case № 1535/2011 Sofia City Court, Commercial Division, VI-5 panel; Case № 2248/2011 Sofia city Court, Commercial Division, VI-8 panel.

foreign award would not award contingency fees as these would not be paid (and proven) prior to the close of the proceedings.

Further, courts may refuse to order the losing party to participate in the legal costs of the winning party if those costs are excessive. This may affect the third party – funder.

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

Bulgarian law and institutional rules do not contain rules on it. However, as the tribunals enjoy freedom to determine appropriate procedure to be applied,[74] they may also permit feeding and managing digital evidence, provided however that they shall always guarantee both parties "*equal opportunity to present its case*".[75]

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

Article 7 (2) of the Arbitration Act recognises as valid an arbitration agreement contained in "*other means of communication".* Therefore, theoretically, an agreement recorded in a blockchain may qualify as properly recorded by *other means* and consequently – valid. Notably, there are no reported cases on this matter.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

On the basis of the arguments in item 7.2 above, such an agreement appears to be, and in the view of the author - it should be, considered valid. However, there are no reported cases on this matter yet.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

Under Bulgarian law, a document may be signed either by a handwritten signature, or electronically.

A 'signature' is the handwritten name of the author of the document affixed to it. A copied or stamped signature, for the purpose of Bulgarian civil procedure, does not constitute a 'signature', but a picture thereof. Consequently, an award signed by inserting the image of a signature is not 'signed' pursuant to the requirements of Bulgarian law. As a result, an award that bears an image of a signature of the arbitrators may not qualify as 'signed' according to the requirements of Article 41 of the Arbitration Act and cannot be enforced.

As regards 'electronic signature', Bulgarian law contains explicit regulation thereof in the Electronic Document and Electronic Certification Services Act, and its validity is further endorsed in the Civil Procedure Code. The 'electronic signature' is defined as an "*electronic signature within the meaning of Article 3, Item 10 of Regulation (EU) No. 910/2014*".[76] Consequently, any award signed by electronic signature that qualifies under the Regulation (EU) No. 910/2014 shall for all purposes be considered a 'signed' document. Therefore, it fulfils the formal requirements for validity of Bulgarian law and shall be enforceable. Notably, there are no reported cases dealing with this issue yet.

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74 Article 24 of the Arbitration Act

75 Article 22 of the Arbitration Act

76 Article 13 of the Electronic Document and Electronic Certification Services Act

8. Is there likely to be any significant reform of the arbitration law in the near future?

After the reform in January 2017, there are no imminent plans for reform of the arbitration law. There is a bill for amendment of the Civil Procedure Act, which shall clarify and facilitate online hearings, online serving of process and summons, etc., yet it will only circumstantially affect the arbitration law.

9. Compatibility of the Delos Rules with local arbitration law

The Delos Rules are compatible with the mandatory provisions of the Arbitration Act and other relevant laws, as well as with the Bulgarian legal theory and tradition.

10. Further reading

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ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, *i.e.* with offices and a case team?	ϕ
Main arbitration hearing facilities for in-person hearings?	The Bulgarian Chamber of Commerce and Industry offers hearing facilities and services (https://www.bcci.bg/bcci-services.html)
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	https://www.e-arc.com/printing-solutions/reprographics/
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	The Bulgarian Chamber of Commerce and Industry offers hearing facilities and services (https://www.bcci.bg/bcci-services.html)
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	http://www.sofita.com/en/ http://lozanova48.com/en/
Other leading arbitral bodies with offices in the jurisdiction?	ϕ

DELOS
dispute resolution

GUIDE TO ARBITRATION PLACES (GAP)

CANADA

CHAPTER PREPARED BY

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FOR FURTHER INFORMATION

GAP TABLE OF CONTENTS | GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS | FULL GAP ONLINE

EN DELOS MODEL CLAUSES
ES DELOS CLÁUSULAS MODELO
FR DELOS CLAUSES TYPES
PT DELOS CLÁUSULAS MODELO

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

1. Law
   a. Framework
   b. Adherence to international treaties
   c. Limited court intervention
   d. Arbitrator immunity from civil liability
2. Judiciary
3. Legal expertise
4. Rights of representation
5. Accessibility and safety
6. Ethics

Evolution of above compared to previous year =

7. Tech friendliness
8. Compatibility with the Delos Rules

VERSION: 12 FEBRUARY 2024 (v01.03)

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 any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Canada is consistently recognised as an arbitration-friendly jurisdiction, and for good reason. First, the legislative framework governing international commercial arbitration and the enforcement of foreign arbitral awards closely mirrors the UNCITRAL Model Law on International Commercial Arbitration (1985) ("**Model Law**") and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**"), and severely limits the ability of courts to intervene with decisions made by arbitrators. Secondly, Canadian courts are supportive of arbitration, and continue to uphold the integrity of the arbitral process by affording broad deference to tribunals on issues of jurisdiction, findings of fact and law, and with respect to relief granted in partial and final arbitral awards. The approach of the Canadian judiciary to complex issues in international commercial arbitration should instill confidence in practitioners that Canada will remain a leader in the field of international commercial arbitration policy and jurisprudence. Finally, Canada has developed excellent arbitration-related infrastructure, which includes Arbitration Place (currently located in Toronto and Ottawa) and the newly-named Vancouver International Arbitration Centre ("**VanIAC**") (formerly the British Columbia International Commercial Arbitration Centre ("**BCICAC**") established in 1986.

Key places of arbitration in the jurisdiction?	Toronto, Vancouver, Montreal.
Civil law / Common law environment?	Common law, except the Province of Quebec which is a civil law jurisdiction.
Confidentiality of arbitrations?	Other than in Quebec and British Columbia, confidentiality is not addressed in the legislation. In the other Canadian jurisdictions, arbitral confidentiality is presumed through the "implied undertaking" rule from court practice. Moreover, confidentiality obligations flow from the arbitration rules adopted by the parties or express confidentiality agreements entered into by the parties. That said, the open-court principle applied in Canada means that the ability to maintain confidentiality if a party resorts to court to challenge an award or otherwise seek assistance is limited. A recent Quebec court decision upheld confidentiality by ordering that the arbitral award be filed under seal and that the documents supporting the award be withdrawn from the court record.
Requirement to retain (local) counsel?	No.
Ability to present party employee witness testimony?	There is no bar to evidence from parties or party officers in the legislation.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Yes.
Availability of interest as a remedy?	Yes, generally.
Ability to claim for reasonable costs incurred for the arbitration?	Yes, which generally includes: • The fees and expenses of the arbitration includes those of the arbitrator and any administering institution;

	• The parties' reasonable legal fees and expenses, including witnesses and experts; and • More broadly, any other expenses incurred in connection with the proceedings.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Contingency fee arrangements have long been accepted in Canada. Third-party funding is widely used but the jurisprudence on its acceptability is limited.
Party to the New York Convention?	Yes, the New York Convention entered into force in Canada on 10 August 1986. Canada declared that it would apply the convention only to differences arising out of legal relationships, whether contractual or not, which are considered commercial under the laws of Canada, except in the case of the province of Quebec, where the law did not provide for such limitation.
Party to the ICSID Convention?	Yes.
Compatibility with the Delos Rules?	Yes.
Default time-limitation period for civil actions (including contractual)?	Varies by jurisdiction. Generally, 2, 6, or 10 years.
Other key points to note?	ϕ
World Bank Enforcing Contracts: *Doing Business* score for 2020, if available?	57.1 (100th)
World Justice Project, Rule of Law Index: *Civil Justice* score for 2023, if available?	0.69 (24th)

ARBITRATION PRACTITIONER SUMMARY

Canada is a federal state with ten provinces and three territories. Legislative power for commercial arbitration falls primarily within provincial and territorial jurisdictions. Canada and its provinces and territories have adopted the UNCITRAL Model Law on International Commercial Arbitration (1985) ("**Model Law**")[1] and the New York Convention,[2] although with slight variations in the manner in which they were adopted.[3]

A number of provinces and territories, namely, British Columbia, Yukon Territory and Saskatchewan, have adopted the New York Convention under separate legislation specifically addressing the enforcement of foreign arbitral awards.[4] Those provinces and territories have also adopted the Model Law in their respective International Commercial Arbitration Acts ("**ICAA**").[5] Quebec, the sole civil law jurisdiction in Canada, incorporated the New York Convention and key aspects of the Model Law through amendments to the Civil Code of Quebec and the Code of Civil Procedure. The remaining provinces and territories have adopted the Model Law and the New York Convention into their ICAAs.[6]

Date of arbitration law?	International arbitration legislation was first introduced by the provinces in 1985/86. Domestic arbitration legislation goes further back in time. The dates of the current legislation across the provinces vary with British Columbia having most recently amended its international arbitration legislation in May 2018 to adopt the work of the Uniform Law Conference of Canada, which Ontario did in March 2017. Other provinces are considering similar amendments. British Columbia has also most recently repealed and replaced its domestic arbitration legislation in September 2020.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	Yes. Canada and its provinces were among the first jurisdictions in the world to enact legislation expressly implementing the Model Law. It is incorporated into provincial legislation governing arbitration, in some cases in modified form.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	No.

1 *UNCITRAL Model Law on International Commercial Arbitration*, UN Doc. A/40/17 (1985) Annex 1.

2 *Convention on the Recognition and Enforcement of Foreign Arbitral Awards,* June 10, 1958, 330 UNTS 3, 21 UST 2517, TIA No. 6997. The Federal Government of Canada has also enacted federal legislation pertaining to arbitration, the *Commercial Arbitration Act*, RSC 1985, c 17 (2nd Supp) [Federal *CAA*], but it does not deal with international commercial arbitration.

3 The Uniform Law Conference of Canada has approved its working group's final report, which included a proposed new uniform International Commercial Arbitration Act for implementation throughout Canada. The proposed Act takes into account the 2006 revisions to the Model Law and aims to clarify inconsistencies in current legislation.

4 *Foreign Arbitral Awards Act,* RSBC 1996, c 154; *Foreign Arbitral Awards Act,* RSY 2002, c 93; *Enforcement of Foreign Arbitral Awards Act,* SS 1996, c E-9.12; *United Nations Foreign Arbitral Awards Convention Act,* RSC 1985, c 16 (2nd Supp) [UNFAACA].

5 *International Commercial Arbitration Act*, RSBC 1996, c 233; *International Commercial Arbitration Act,* RSA 2000, c I-5; *International Commercial Arbitration Act,* RSY 2002, c 123; *International Commercial Arbitration Act,* SS 1988-198, c I-10.2.

6 *International Commercial Arbitration Act,* RSA 2000, c I-5; *International Commercial Arbitration Act,* RSNL 1990, c 1-15; *International Commercial Arbitration Act, RSPEI* 1988, c I-5; *International Commercial Arbitration Act,* RSNS 1989, c 234; *International Commercial Arbitration Act, 2017*, SO 2017, c 2, Schedule 5, s 15; *International Commercial arbitration Act,* RSNB 2011, c 176; *International Commercial Arbitration Act,* RSNWT (Nu) 1988, c 1-6; *International Commercial Arbitration Act,* CCSM, c C151.

Availability of *ex parte* pre-arbitration interim measures?	Yes.
Courts' attitude towards the competence-competence principle?	Highly respected.
May an arbitral tribunal render a ruling on jurisdiction (or other issue) with reasons to follow in a subsequent award?	Yes.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	None.
Do annulment proceedings typically suspend enforcement proceedings?	Yes.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Courts will approach this issue on a case-by-case basis. Courts in the past have recognised the permissive nature of this issue under the New York Convention and, in certain circumstances, may enforce an award that has been set aside at the seat. However, Canadian courts will certainly consider the status of an award at the seat, including whether a challenge to it has not yet been determined.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of the ensuing award in the jurisdiction?	Risk is low, assuming the party had an opportunity to be heard at a meaningful time and in a meaningful manner. Before conducting a virtual hearing, the arbitral tribunal must be satisfied that the technical arrangements will not compromise the integrity of the proceeding.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	The Federal Court has jurisdiction over commercial arbitration awards that fall within the purview of applicable federal legislation where one of the parties is a Crown or federal government agency or the subject matter is within exclusive federal jurisdiction such as maritime law and patent law. The New York Convention was incorporated into the federal United Nations Foreign Arbitral Awards Act, which functions to govern foreign awards that are within the jurisdiction of the federal government.
Is the validity of blockchain-based evidence recognized?	Canadian courts have not yet opined on blockchain evidence.
Where an arbitration agreement and/or award is recorded on a	Canadian courts have not yet opined on blockchain arbitration agreements. However, a blockchain agreement may be valid if it

blockchain, is it recognized as valid?	conforms with the respective provincial laws regarding formal requirements.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	Canadian courts have not yet opined on blockchain arbitration agreements or awards. Canadian laws on enforcement of arbitral decisions do not enumerate the media on which an award may be recorded.
Other key points to note?	ϕ

JURISDICTION DETAILED ANALYSIS

1. The Legal Framework of the Jurisdiction

Canada is a federation composed of ten provincial governments and a federal government. The federal government also delegates powers to the governments of Canada's three territories. Legislative powers are divided under sections 91 and 92 of Canada's Constitution Act, 1867; federal jurisdiction is generally reserved only for matters of national concern such as banking, insolvency, and telecommunications.

Arbitration legislation exists in each of the provinces and territories of Canada, and at the federal level. British Columbia, Alberta, Manitoba, Saskatchewan, Ontario, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Yukon, the Northwest Territories and Nunavut have separate statutes for both domestic arbitration (Arbitration Act or Commercial Arbitration Act) and international arbitration (International Commercial Arbitration Acts ("**ICAA**")). The New York Convention and Model Law are incorporated into international legislation either wholesale or in modified forms as set out in the respective statutes. Domestic provincial legislation is also generally based on the Model Law. In Quebec, Canada's only civil law jurisdiction, arbitration is governed by the Civil Code of Quebec (relevant sections in Books 5 and 10) and the Quebec Code of Civil Procedure (Book 7). Federal legislation governs only domestic arbitration with limited scope (Federal Commercial Arbitration Act), also based on the Model Law. Federal legislation governs arbitrations involving a department of the federal government, a Crown corporation, and issues of maritime or admiralty law. In general, per section 93(13) of the Constitution Act, 1867, commercial disputes are within provincial jurisdiction.

UNCITRAL adopted the Model Law in 1985, and Canada and its provinces were the first jurisdictions in the world to enact legislation expressly implementing the Model Law. At the time, there was broad acceptance of international commercial arbitration as a valid alternative to the judicial process and a high-level of predictability for parties to international arbitrations in Canada and those seeking to enforce international awards in Canada.

In late 2011, a working group of the Uniform Law Conference of Canada ("**ULCC**") commenced a review of the existing model ICAA, which established the framework for the provinces' respective ICAAs. In its 2011 review, the ULCC aimed to develop reform recommendations for a new model statute based on the 2006 Model Law amendments. The process also sought to reflect changes to international arbitration law and practice in the past three decades and to enhance the uniformity and predictability with which international commercial arbitral awards may be enforced in Canada. In 2014, the ULCC approved the working group's final report, which included a proposed new uniform ICAA.

Among other things, the new statute establishes a 10-year limitation period to commence proceedings seeking recognition and enforcement in Canada of foreign international commercial arbitral awards. The new model statute would become law as it is enacted by the various Canadian federal, provincial and territorial legislatures. A number of provincial governments across Canada have begun consultations with a view, hopefully, to implementing legislation in the near future. In March 2017, the Province of Ontario adopted a new ICAA, adopting most of the ULCC's recommendations in the proposed uniform act. British Columbia also amended its ICAA in May 2018, establishing the 10-year limitation period through its Limitations Act.

Widespread support for international commercial arbitration in Canada has also led to the establishment of a number of arbitration groups and institutions, including the Western Canada Commercial Arbitration Society, the Toronto Commercial Arbitration Society, the Vancouver Centre for Dispute Resolution and Vancouver Arbitration Chambers, the Vancouver International Arbitration Centre ("**VanIAC**"), Arbitration Place, ICC Canada's Arbitration Committee, the ADR Institute of Canada ("**ADRIC**"), the International Centre for Dispute Resolution Canada ("**ICDR Canada**") and the Canadian Commercial Arbitration Centre ("**CCAC**").

These organisations provide parties with a variety of useful resources and services, including sets of procedural rules, contact information for qualified arbitrators and meeting facilities.

ADRIC (1 January 2014) and ICDR Canada (1 January 2015) have recently introduced arbitration rules in line with international best practices, with the ICDR Canada opening its doors at the same time.

2. The Arbitration Agreement

2.1 Governing law

Arbitral tribunals apply the law chosen by the parties. If the parties have not expressly selected an applicable law, then the proper law of the contract must be determined in light of their agreement, considered as a whole, and any surrounding circumstances. In general, the law with which the agreement appears to have the closest and most substantial connection ought to prevail.

In Canada, courts will generally respect parties' express choice of law as to what law should govern the enforceability of an arbitration agreement where there is a question of whether the scope of matters in dispute are arbitrable.

In *Schreter v Gasmac Inc,* the parties' arbitration agreement seated the arbitration in Atlanta in the state of Georgia in the United States. An award was issued and confirmed at the seat. However, Gasmac, the losing party, failed to make the required payments to Schreter, which led to Schreter applying to enforce the award in an Ontario court. The Ontario court looked at the question of arbitrability and respected the parties' agreement – by seating their arbitration in Atlanta the law of the state of Georgia applied:

> *Because it is Georgia law which governs, the respondent must provide to this court evidence of Georgia law if it wishes to demonstrate that the award dealt with matters not properly within the submission.*[7]

2.2 Formal requirements for an enforceable agreement

In Canada, arbitration agreements are often included in main contracts, although they can also be set out in a separate document. Per Article 16 of the Model Law, an arbitration agreement contained within a contract is subject to the doctrine of separability – it is separable and therefore must be treated as an independent agreement even though part of a main contract.

Formal requirements for arbitration agreements are found in provincial legislation, which differ slightly from province to province. In most provinces, the agreement must be in writing but in Ontario this is not required.[8] Like in the Model Law, it is possible for an arbitration agreement to be found in multiple written documents or through electronic communications. In Quebec and British Columbia, a written arbitration agreement may also be found if one party alleges such an agreement in writing and the alleged counterparty does not object.

Canadian courts take a broad approach to the enforceability of arbitration agreements and are deferential to parties' agreements to arbitrate. Unless it is clear that the arbitration agreement is void, inoperative or incapable of being performed, Canadian courts are likely to defer to the arbitrator the initial task of determining the existence and scope of the arbitration agreement, in accordance with the *competence-competence* principle.[9] For example, Canadian courts will uphold the identification of the "seat" if the term "place" is used (as with many arbitration rules, and if a "venue" is identified, *i.e.*, if only one possible "seat" is mentioned it likely will be upheld regardless of the language used to identify it unless that language specifically excludes the location as being the legal seat).

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7 *Schreter v Gasmac Inc* (1992), 7 OR (3d) 608 at 623 (Ont Ct J (Gen Div)) [*Schreter*].

8 *Arbitration Act, 1991*, SO 1991, c 17, s 5(3).

9 *Dell Computer Corp v Union des Consommateurs,* [2007] 2 SCR 801 [Dell].

2.3 Ability to bind third parties

Generally, neither an arbitral tribunal nor a court can compel a third party who is not subject to the arbitration agreement to join in the arbitral proceedings. That said, Canadian courts have recognised a number of international principles with regard to the binding of non-signatories, including:

- where the contractual agreement between a party and the non-party incorporates the arbitration clause by reference;
- where there is an agency relationship between a party and a non-party;
- where the corporate veil is pierced as a result of a sufficiently close relationship between a parent and subsidiary to hold one corporation legally accountable for the other; or
- by estoppel.

The overriding principle of consent to arbitrate is often considered by courts, including findings of implied consent of a non-signatory to be bound to an arbitration agreement.

2.4 Restrictions to arbitrability

In Canada, arbitrability is generally considered a requirement for jurisdiction as opposed to a condition of validity of the arbitration agreement (with the possible exception of arbitration agreements in the consumer protection context where a lack of arbitrability of such disputes may lead to invalidity).

In considering arbitrability, Canadian courts tend to respect the *competence-competence* principle, leaving the initial determination to the arbitrator.[10] For example, in *Dell Computer Corp v Union des Consommateurs*,[11] the Supreme Court of Canada ("SCC") held, consistently with Articles 8 and 16 of the Model Law, that a challenge to an arbitrator's jurisdiction or the arbitrability of a dispute should first be addressed by the arbitrator before a court could consider the issue. In Canada, if a challenge to the arbitrator's jurisdiction or the scope of the arbitration agreement is brought to court, the court "*is required to limit itself to a prima facie analysis and to refer the parties to arbitration unless the arbitration agreement is manifestly tainted by a defect rendering it invalid or inapplicable*".[12]

In *Gulf Canada Resources v Arochem International*, a leading international arbitration-related case in Canada, the Court of Appeal for British Columbia addressed the *competence-competence* principle:

> Considering s. 8(1) in relation to the provisions of s. 16 [of the Model Law] and the jurisdiction conferred on the arbitral tribunal, in my opinion, *it is not for the court on an application for a stay of proceedings to reach any final determination as to the scope of the arbitration agreement or whether a particular party to the legal proceedings is a party to the arbitration agreement* because those are matters within the jurisdiction of the arbitral tribunal. *Only where it is clear that the dispute is outside the terms of the arbitration agreement or that a party is not a party to the arbitration agreement* or that the application is out of time should the court reach any final determination in respect of such matters on an application for a stay of proceedings.[13] [Emphasis added.]

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10 John AE Pottow, Jacob Brege & Tara J Hawley, "A Presumptively Better Approach to Arbitrability" (2013) 53:3 Can Bus LJ 323 at 341.

11 *Dell*, *supra* note 9.

12 *Seidel v TELUS Communications Inc,* [2011] 1 SCR 531 at para 29 [Seidel].

13 *Gulf Canada Resources v Arochem International*, [1992] BCJ No 500, para 43 (CA) [Gulf Canada].

Courts in Canada will also be wary of entertaining any challenge to an arbitrator's jurisdiction where it appears merely to be a delaying tactic on the basis of it being a potential abuse of process that would "*unduly impair the conduct of the arbitration proceeding*."[14]

In *Dell*, the SCC was clear that the *competence-competence* principle should not be undermined stating that "the fact that art. II(3) of the New York Convention provides that the court can rule on whether an agreement is null and void, inoperative or incapable of being performed does not mean that it is required to do so before the arbitrator does."[15] The SCC noted that the "arbitrator first" approach is often referred to as the *prima facie* analysis test,[16] which as noted above was set out in *Gulf Canada*.

Generally, in Canada, the analysis of whether a particular issue or dispute is arbitrable – in the sense that it is within the scope of the applicable arbitration agreement – involves a broad approach.[17] For example, in *Quintette Coal Ltd v Nippon Steel Corp*, the Supreme Court for British Columbia considered whether an arbitral award, which included calculations that were not explicitly contemplated in the arbitration agreement, was enforceable in light of the Respondent's objection that the issue was not arbitrable.[18] The court took a broad approach, supporting the arbitrator's interpretation of the scope of the arbitration agreement. This broad approach was consistent with that taken by other judicial authorities, which, together, has been referred to as indicative of a "powerful presumption" in favour of a broad approach in light of international comity and a global marketplace.[19]

Thus, there are very few matters that cannot be arbitrated under the laws applicable in the Provinces of Canada. Applicable provincial legislation provides guidance on whether particular matters are arbitrable. For example, criminal matters cannot be resolved by arbitration. In certain areas, such as patent rights, copyrights, trademarks, bankruptcy, employment and consumer contracts, and competition law matters, some jurisdictions have statutory restrictions with respect to arbitration. In Quebec, for instance, any stipulation that obliges the consumer to refer a dispute to arbitration that restricts the consumer's right to go before a court, in particular by prohibiting the consumer from bringing a class action, or that deprives the consumer of the right to be a member of a group bringing a class action is prohibited.[20] The status and capacity of persons, family matters, and other matters of public order are also non-arbitrable.

In the context of a consumer protection related case, the SCC, however, has suggested that recourse to the court may be had in the first instance where the jurisdiction issue is solely a question of law.[21]

However, this exception should not be applied if the issue involves questions of fact, or mixed fact and law.[22]

3. Intervention of Domestic Courts

The Model Law and the New York Convention provide narrow grounds for judicial intervention in international commercial disputes that are subject to arbitration agreements. As outlined above, Canadian courts have consistently expressed their approval of these principles and frequently defer to arbitral tribunals for determinations regarding the tribunal's own jurisdiction and complex issues of fact and law. For example, in discussing the governing principles of the Model Law, one Canadian court stated that:

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14 *Dell*, *supra* note 9, para 86.

15 *Dell*, *ibid,* para 73.

16 *Dell*, *ibid*, para 75.

17 Henri C Alvarez, QC, "The Implementation of the New York Convention in Canada" (2008) 25:6 J Intl Arb 669 at 674.

18 *Quintette Coal Ltd v Nippon Steel Corp*, [1990] BCJ No 2241 (CA).

19 *Mexico v Cargill, Incorporated,* 2011 ONCA 622, para 19.

20 *Consumer Protection Act*, RSQ, c P-40.1, art 11.1.

21 *Dell*, *supra* note 9*,* para 84.

22 *Dell*, *ibid,* para 85.

> [T]he purpose of the United Nations Conventions and the legislation adopting them is to ensure that the method of resolving disputes in the forum and according to the rules chosen by parties, is respected. Canadian courts have recognized that predictability in the enforcement of dispute resolution provisions is an indispensable precondition to any international business transaction and facilitates and encourages the pursuit of freer trade on an international scale.[23]

Courts across Canada have echoed these views; Canadian legislation provides for, and courts respect, the *competence-competence* principle, which leaves initial determinations of jurisdiction and arbitrability to the arbitrator. Indeed, the fact that the New York Convention provides that the court may rule on whether an agreement is null and void, inoperative or incapable of being performed does not mean that it is required to do so before the arbitrator does.

In May 2020, the SCC issued its decision in *Uber Technologies Inc. v Heller*,[24] in which it determined – in the narrow facts of that case – that a court may rule on the validity of the arbitration agreement before the arbitral tribunal. In *Uber v Heller*, an UberEats delivery driver sought to challenge the enforceability of a standard ICC arbitration provision seated in Amsterdam and under the substantive law of the Netherlands, complaining, among other things, that the ICC commencement fee was equal to over half of the driver's salary. Although the issue was couched as an employment law issue before the Supreme Court, the reality was that the issue arose in the context of the Plaintiff's counsel trying to certify a class action. The Supreme Court held that while *competence-competence* is an important and respected principle, the court could determine the issue based on the allegation that the arbitration agreement was "unconscionable" and its view that the plaintiff was substantially prevented from accessing recourse under the arbitration agreement. The agreement was found invalid, with two of the nine presiding justices dissenting, one of them referring to international jurisprudence that would have supported reading down the "unconscionable" aspects of the arbitration agreement and enforcing the bare commitment to arbitrate.

The *Uber v Heller* decision has been widely criticized for potentially having eroded the *competence-competence* principle, among other things. The class-action bar on the other hand has praised the decision for holding parties like Uber accountable for crafting arbitration agreements that appear to be directed at preventing access to a meaningful dispute resolution process. The *Uber v Heller* decision is fact-specific exception to the historically well-respected principle of *competence-competence* that should not affect the vast majority of arbitral parties in Canada. Other than in *Uber v Heller*, the Supreme Court (and most Canadian courts) have consistently respected Articles 8 and 16 of the Model Law holding that any challenge to an arbitrator's jurisdiction or the arbitrability of a dispute should first be addressed by the arbitrator before a court can consider the issue.[25]

A court may also make a final determination in respect of a dispute where it is clear that the dispute is outside the terms of the arbitration agreement, a party is not a party to the arbitration agreement, or the application is out of time.

3.1 Anti-suit injunctions

Canadian courts can, and do, issue anti-suit injunctions to restrain parties from proceeding with litigation in court. To enjoin a court proceeding, the parties seeking the injunction must demonstrate that:

- A valid arbitration agreement exists;

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23 *Automatic Systems Inc v Bracknell Corp* (1994), 18 OR (3d) 257 at 264 (CA), cited with approval in Seidel, supra note 12 and *Desputeaux v Editions Chouette (1987) Inc*, 2003 SCC 17.

24 *Uber Technologies Inc. v Heller*, 2020 SCC 16.

25 See, *e.g.*, *Dell*, *supra* note 9.

- The arbitral forum acquired by the agreement is more appropriate than the judicial forum that is the subject of the injunction based on the principles of *forum non conveniens*; and
- Granting the injunction would not unjustly cause a party to lose a legal right or advantage in the judicial forum.

Canadian courts have also issued anti-suit injunctions against foreign arbitrations. In *Li v Rao*, the applicant sought an injunction to prevent the respondent from continuing its arbitral proceedings in China pending the resolution of a dispute in the British Columbia courts. The British Columbia Court of Appeal held that an international anti-suit injunction may be suitable in exceptional circumstances. In this case, the parties had agreed to await the resolution of the court proceedings before continuing the arbitration. The Court of Appeal's decision to grant the injunction was therefore not predicated upon principles of justice, but upon principles of contract law.[26] There is little, if any, case law on whether a Canadian court would enforce an injunction to stay Canadian court proceedings in favour of a foreign arbitration. The existence of such an injunction would likely be a material fact in support of granting the stay in Canada, but the applicant would likely still need to satisfy the requirements of the applicable Provincial International Arbitration legislation.

4. The Conduct of the Proceedings

4.1 View on outside counsel or self-representation

Although all provinces in Canada have rules restricting the appearance of lawyers from other jurisdictions in legal matters, these restrictions do not apply to arbitration proceedings seated in Canada.

4.2 Arbitrators' independence and impartiality

The usual requirements of independence and impartiality apply. Otherwise, arbitrators are not required to be certified in any way and parties are free to agree to the appointment of non-lawyers as arbitrators if they so wish. Parties sometimes specify required qualifications in their arbitration agreements.

In accordance with the Model Law, an arbitrator may be replaced where:

- his or her qualifications are not satisfactory to the parties;
- there are justifiable doubts as to his or her impartiality or independence;
- he or she becomes unable to perform his or her functions; or
- he or she fails to act without undue delay.

Different and additional default rules apply to domestic arbitration under the relevant provincial legislation. By way of illustration, under the domestic legislation of Ontario, Alberta, Manitoba, New Brunswick, Nova Scotia and Saskatchewan, the court may remove an arbitrator on a party's application where the arbitrator becomes unable to perform his or her functions, or delays unduly in conducting the arbitration, but also if they commit a corrupt or fraudulent act, or do not conduct the arbitration in accordance with the legislation. Under British Columbia's Arbitration Act, the court may remove an arbitrator who commits an "arbitral error" (which includes bias) or unduly delays in proceeding with the arbitration or in making an award. In Newfoundland and Labrador, Prince Edward Island, the Northwest Territories, the Yukon and Nunavut, the court may remove an arbitrator where he or she has misconducted himself or herself, which is rare.

4.3 Court intervention to assist in the constitution of the arbitral tribunal

Under the Model Law (so in the international legislation in the provinces and territories of Canada), if a party fails to appoint an arbitrator or co-arbitrators fail to appoint a chair within the required time periods, a party

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26 *Li v Rao*, 2019 BCCA 264.

may request that the court make the appointment. In the case of a single arbitrator, if the parties cannot agree, a party may request that the court make the appointment.

Under domestic arbitration legislation, the court may appoint the arbitral tribunal on a party's application, if the arbitration agreement is silent on the appointment procedure or if the person with the power to appoint the arbitral tribunal has not done so within the time provided for in the agreement or after a party has given the person seven days' notice to do so.

4.4 Ability of courts to issue interim measures in connection with arbitrations

In Canada, as with other Model Law jurisdictions, it is not incompatible with an arbitration agreement for a party to request from a court, before or during arbitral proceedings, an interim measure of protection and for a court to grant that measure. Typically, this is done for the preservation of property and evidence, to bind others who are not party to the arbitration, or to enforce an order made by the arbitral tribunal.

If a party makes an *ex parte* application in Canada, it has a duty to disclose all the relevant facts and circumstances to the court. In hearing an *ex parte* motion, the court's first question is whether the circumstances justify granting the order without hearing the other party. To that end, the moving party needs to satisfy the court that there is some urgent need, and failing to act immediately will result in irreparable harm. The relief sought must be proportional to the prejudice suffered if the relief is not granted. Also, a party must be prepared to compensate the other parties in case the *ex parte* order is obtained improperly or results in unjustified prejudice or loss to the other parties.

4.5 Legal regulation of the conduct of the arbitration

Arbitration legislation in Canada is not overly prescriptive as to procedure, other than general provisions relating to the availability of particular procedures and the court's ability to assist arbitration proceedings. Generally, the legislation provides the parties and the tribunal with the power and flexibility to shape their own procedure; tribunals are required to conduct the arbitration in the manner they consider appropriate, subject to the parties' rights of procedural fairness and goals of efficiency and reduced costs. Institutional rules are often more prescriptive and will be respected by the courts.

Where parties have not agreed on the number of arbitrators, the Model Law, as adopted in the relevant province's international legislation, defaults to a panel of three arbitrators. Beyond the arbitrators' independence and impartiality, the default provisions do not require any default qualifications or characteristics.

Domestic legislation across all provinces and territories – with the exception of Quebec – indicates that where an arbitration agreement does not specify the number of arbitrators who are to form the arbitral tribunal, it shall be composed of a single arbitrator. Under the Quebec Code of Civil Procedure, three arbitrators is the default.

Per the Model Law at article 19, absent an agreement by the parties, the tribunal may conduct the arbitration in any manner it finds appropriate. Accordingly, an arbitration may proceed virtually despite objections by one party. The tribunal must be cognizant of the parties' legal rights and interests, however. The integrity of the arbitration may be compromised by a virtual hearing where the technical arrangements have a prejudicial impact. For example, the fairness of a hearing may be called into question where a key witness does not have a webcam.

4.6 Confidentiality of arbitration proceedings

Confidentiality is generally not addressed in the legislation other than in Quebec and British Columbia. The British Columbia ICAA's confidentiality provisions came into force as of 17 May 2018. In the other Canadian jurisdictions, arbitral confidentiality is presumed through the "implied undertaking" rule from court practice. Moreover, confidentiality obligations flow from the arbitration rules adopted by the parties or express confidentiality agreements entered into by the parties. That said, the open-court principle applied in Canada

means that the ability to maintain confidentiality if a party resorts to court to challenge an award or otherwise seek assistance is limited; the principle requires that court proceedings presumptively be open an accessible to the public and to the media Parties may apply to maintain confidentiality but the jurisprudence limits the circumstances in which a court will grant such protection.

A recent Quebec court decision favoured confidentiality of arbitration over the open-court principle by ordering that the arbitral award be filed under seal and that the documents supporting the award be withdrawn from the court record. The court noted that (i) doing so encourages the use of arbitration as a dispute resolution mechanism; and (ii) the public interest favours confidentiality orders to promote arbitrations and protect the expectations of the parties to the arbitration.[27] While it remains to be seen whether other Canadian courts will do the same, this case demonstrates the mindfulness of courts that they must strive to accommodate arbitration's confidentiality with the court's public hearings because doing so supports a public policy of encouraging alternative dispute resolution.

As a practical matter, information regarding the existence of the arbitration may also be inadvertently disclosed by persons involved in the proceedings but who would not normally be bound by any confidentiality agreement, including couriers and third-party witnesses.

4.7 Length of arbitration proceedings

International arbitration legislation of the provinces and territories is silent on time limits for delivery of an award, although limits are set on corrections, interpretations, and additions to the award. This legislation does contemplate (by providing for extensions of time) that parties may stipulate a time limit in their arbitration agreement.

Domestic arbitration legislation limits the time allowed to render an award in one of two ways. First, a time limit may be provided for the duration of the arbitration process, where an award must be rendered within X months from the commencement of the arbitration. Alternatively, an award may be required within X months of the conclusion of the arbitration hearing.

The time given for delivery of an award varies between provinces. In Nova Scotia, domestic legislation provides that the arbitrator must render a decision within 10 days of the completion of the arbitration. In British Columbia, the short rules provide for a decision to be rendered within 30 days of the closing of the hearings, whereas the standard rules allow for 60 days after the close of the hearings. Domestic legislation in Newfoundland and Labrador, the Northwest Territories, Prince Edward Island and the Yukon allow three months after entering on the reference to have the award rendered.

4.8 Place where hearings and/or meetings held

Consistent with the freedom accorded to the parties and, in the absence of agreement between them, to the arbitral tribunal to determine the procedure in the arbitration, there are no rules that govern the conduct of an international arbitration hearing aside from those set out in the Model Law. Accordingly, unless otherwise agreed by the parties, it is in the tribunal's discretion to decide whether oral hearings are to be held, although, consistently with many international arbitration rules globally, if one party requests a hearing, a tribunal would very likely grant the request to try to avoid grounds for set aside or refusal of enforcement on natural justice grounds. The issue of a right to an oral hearing, in light of COVID-19 and the inability to hold oral hearings, has yet to be decided by a Canadian court, and is an open debate internationally.

Ordinarily, the hearing will be held in the seat of the arbitration, although the parties can agree otherwise. Where an arbitration agreement provides that the arbitration be seated in Toronto, Ontario (for example), the parties could nevertheless agree for hearings to be held in Vancouver, British Columbia and be deemed

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27 *79411 USA Inc c Mondofix Inc*., 2020 QCCS 1104.

to be taking place in Toronto. In this case, the Ontario statute would still govern the procedure of the arbitration and, if the parties require court assistance, they would apply to the Ontario courts.

4.9 Ability of arbitrators to issue interim measures

Arbitrators in Canada are granted broad powers. Once appointed, arbitrators may award interim relief without prior authorisation from a court. Under international arbitration legislation, arbitral tribunals are granted broad powers to issue interim measures. Unless otherwise agreed, the arbitral tribunal may, at the request of a party, order any party to take such interim protection measures that the tribunal considers necessary in respect of the subject matter of the dispute. The arbitral tribunal may also require any party to provide appropriate security in connection with such interim measures.

Domestic legislation in Ontario, Alberta, Manitoba, New Brunswick, Nova Scotia and Saskatchewan also provides broad powers to arbitral tribunals to make an order on a party's request for the detention, preservation or inspection of property and documents which are the subject of the arbitration and may order a party to provide security in that connection. In British Columbia, unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection that the arbitral tribunal deems necessary with respect to the subject matter of the dispute and may order a party to provide security in connection with such a measure.

4.10 Arbitrators' right to admit/exclude evidence

Arbitration legislation across the provinces and territories generally affords arbitrators more flexible rules of evidence than those afforded to the courts; they are not required to apply strictly the rules of evidence. Arbitral tribunals have broad discretion to conduct the arbitration in a manner that they consider appropriate to avoid unnecessary delay or expense and to provide a fair and efficient means for the final resolution of the parties' dispute. Flowing from that discretion is the power to:

- determine the admissibility, relevance, materiality and weight of any evidence;
- exclude cumulative or irrelevant evidence; and
- direct the parties to focus their evidence or argument on specific issues which may assist in the disposal of all or part of the dispute.

Generally, in lieu of direct examination, witness evidence is provided in the form of written statements and cross-examined under oath before the tribunal. In Canada, parties and their representatives (*e.g.*, officers and employees) may present evidence as witnesses of fact, and in fact, there are generally no limitations on who may present evidence in support of a party's case.

Expert evidence may be adduced by the parties or in certain circumstances tribunals may retain experts. In common practice, the evidence is provided in a written report followed by oral examinations in a hearing.

4.11 Prescription of principles governing the awarding of interest

International arbitration legislation in Canada does not provide explicitly for the award of interest, except in British Columbia. As a result, the tribunal's power to award interest is determined by the arbitration agreement or by the procedural rules adopted for the arbitration, which may contain specific provisions as to costs. Domestic legislation in some provinces provides that the arbitral tribunal has the same power with respect to interest as the court has under provincial court order interest legislation.

Parties may expressly provide for the power to award interest in their agreement or the necessity to do so may arise as part of an arbitrator's obligation to apply the general law. Where an arbitration agreement is broad enough to encompass all claims and disputes between parties, it has been recognised that arbitrators have the power to award interest.

Generally, if there is no contractually agreed rate, the rate of the governing substantive law of the parties' agreement is most likely to prevail, although in some circumstances, it may be argued that the law of the seat or the place of enforcement should apply.

4.12 Principles governing the allocation of arbitration costs

The general principle applied in Canada is that costs follow the event and can be full indemnity for reasonable legal fees, disbursements, and arbitration costs. Tribunals generally have discretion to allocate costs, which is explicitly provided for in Canadian domestic arbitration legislation. The British Columbia international arbitration legislation also provides such discretion, although the international legislation of other provinces is less explicit.

With respect to costs claims, parties are generally invited by the tribunal to provide statements of costs (and sometimes to make submissions on costs).

4.13 Liability

Arbitrators are generally immune from civil liability, except in instances of fraud or bad faith. Except in the recent amendments to British Columbia's ICAA, legislation in Canada provides no express immunity, but most arbitral institutions' rules do. For example, the CCAC's International Arbitration Rules provide that none of the CCAC, its staff or the members of the arbitral tribunal is liable to any party for any act or omission in relation to arbitration under these rules. In the case of *ad hoc* arbitrations, jurisprudence establishes that arbitrators who are acting in a "judicial or quasi-judicial capacity" are generally immune from civil liability in Canada, except in instances of fraud or bad faith.[28]

5. The Award

As previously noted, courts across Canada have consistently given substantial deference to arbitrators' decisions, and have narrowly interpreted the grounds for setting aside arbitral awards. In addition, some provinces have explicitly accepted that international arbitral awards are akin to foreign judgments, providing parties with jurisdictional advantages and longer limitation periods for enforcing their award.[29]

The integrity of the international commercial arbitration process has further been endorsed in recognition and enforcement proceedings. When faced with challenges to the recognition of foreign awards, Canadian courts have consistently emphasised the mandatory nature of the enforcement provisions in the Model Law and Article V of the New York Convention. Based on these limited grounds on which enforcement may be refused, courts apply a high burden on arbitral award debtors to prove any allegation of injustice or impropriety that could render an award unenforceable.

5.1 Provision of reasons

The arbitral award must state the reasons on which it is based, unless the parties have agreed that no reasons are required.

5.2 Appealing an award

There are no appeals for international awards, and only the limited grounds for set aside or refusal of enforcement under the Model Law and New York Convention apply.

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28 See, for instance, *Flock v Beattie*, 2010 ABQB 193 (although this case was an Alberta case regarding the Alberta domestic Act, it also canvasses the applicable Canadian and international law).

29 For example, the definition of "local judgment" in British Columbia's *Limitations Act*, SBC 2012, c 13, s 1 [BC *Limitations Act*] specifically includes arbitral awards to which the *Foreign Arbitral Awards Act* or the *International Commercial Arbitration Act* apply, providing arbitral creditors with a 10-year limitation period for enforcement proceedings. Similarly, the British Columbia *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28 [*Proceedings Transfer Act*] presumes a "real and substantial connection" (the standard for Canadian courts to assume jurisdiction over a dispute) in any proceeding to enforce a foreign arbitral award.

Provincial legislation dealing with domestic arbitration provides limited rights to appeal an award. Generally, an appeal can be brought only on a question of law, not a question of fact. In some provinces, there is no right of appeal unless all parties have agreed to such a right or consented to an appeal. In other provinces, a right of appeal may be subject to obtaining leave to appeal from a judge or superior court of the province, and / or parties may contract out of the limited statutory rights of appeal.

5.3 Enforcement procedures and limitation periods

The international legislation provides for Model Law and New York Convention recognition and enforcement rights. Creditors of international arbitral awards generally have access to the same enforcement remedies available to domestic litigants. Awards can be enforced in local courts; the applicable legislation identifies which level of court – usually the superior court in the province – has jurisdiction. Thus, an application for recognition and enforcement of awards will be made to the Federal Court if the subject matter of the arbitration is governed by federal law. If the subject matter of the arbitration is governed by provincial or territorial law, the application must be made to the court of inherent jurisdiction (the superior court). Typically, the party seeking to enforce the award must file it, together with evidence of the arbitration agreement on which it is founded, as part of a summary procedure.

Enforcement of a domestic arbitral award may be sought by application to the court, through a procedure that is intended to be summary in nature. Once an award is recognized by the court, all usual remedies available to the holder of a court judgment are available. The particulars of the application procedure (including filing fees, limitation periods, and leave requirements) are detailed in the province's domestic arbitration legislation and rules of court.

A party with a foreign arbitral award should expect its award to be enforced, unless the extremely limited grounds to refuse enforcement apply. Canadian courts are highly deferential to arbitration and uphold the principles set out in the New York Convention. The grounds on which enforcement can be denied are limited to those set out in the New York Convention and the Model Law. Canadian courts construe these grounds very narrowly, and generally enforce international awards.

This was evident in the BC Court of Appeal decision in *Sociedade-de-fomento Industrial Private Limited v Pakistan Steel Mills Corporation (Private) Limited*,[30] which held that a party's claim to enforce a foreign arbitration award was "very strong, approaching certainty given the limited grounds upon which the claim could be defended", and reinforcing that an award creditor is entitled to the full panoply of enforcement remedies available to any creditor of a court judgment.[31]

The limitation period for recognition and enforcement of foreign awards in the Federal Court is six years.[32] The limitation periods applicable in each province varies, as discussed below.

In Alberta, legislation does not expressly provide for a limitation period applicable to recognition and enforcement of foreign awards, but recent jurisprudence addresses the issue directly. The Alberta Court of Appeal held that the applicable limitation period for foreign judgments is two years, and that the same principles apply with respect to a foreign arbitral award. The SCC has upheld this decision. It is also worth noting, that in making its determination, the SCC found that an arbitral award is not "*a judgment or a court order for the payment of money*", and is instead subject to the general two year limitation period applicable to most causes of action, per section 3 of the Alberta Limitations Act.[33]

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30 *Sociedade-de-fomento Industrial Private Limited v Pakistan Steel Mills Corporation (Private) Limited*, 2014 BCCA 205 [Sociedade-de-fomento].

31 *Ibid* at para 47.

32 *Federal Courts Act,* RSC 1985, c F-7, s 39(2) [Federal Courts Act]; Compania Maritima Villa Nova SA v Northern Sales Co, [1992] 1 FC 550 (CA); *Limitations Act,* RSA 2000, c L-12.

33 *Yugraneft Corp v Rexx Management Corp*, 2007 ABQB 450; 2008 ABCA 274; 2010 SCC 19.

In British Columbia, an action for recognition and enforcement of an arbitral award for the payment of money or the return of personal property and to which either the FAAA or the ICAA applies, is subject to a 10-year limitation period. An action consequent upon an arbitral award for the possession of land to which either the FAAA or the ICAA applies is not governed by a limitation period and may be brought at any time. Judicial interpretations of the BC Limitations Act hold that limitation periods established under that Act (which would apply to arbitral awards under the FAAA or the ICAA) only begin to run on the date on which the right to bring an action on the award or judgment in British Columbia arises. In the absence of judicial interpretation of the new BC legislation on court jurisdiction, it would be prudent to assume that the limitation period for the enforcement of arbitral awards to which the FAAA or the ICAA apply begins to run when the arbitral award is rendered.[34]

Ontario's recent enactment of the new uniform International Commercial Arbitration Act means that it has now adopted the 10-year limitation period applicable to the recognition and enforcement of a foreign arbitral award under the Model Law.[35]

Quebec legislation does not expressly provide for a limitation period applicable to recognition and enforcement of foreign awards and there is no jurisprudence addressing the issue directly. However, Quebec courts have held that the applicable period for domestic awards is 10 years from the date the award is rendered and it is likely that the same 10-year period would apply to a foreign award. The question has yet to be put to the Quebec courts.[36]

5.4 Effect of annulment or appeal proceedings

Although procedural rules in each Canadian jurisdiction permit discretionary suspension of the right to enforce an award, the introduction of annulment or appeal proceedings does not automatically suspend the exercise of the right to enforce an award.[37]

When a foreign award has been annulled at its seat, Canadian courts will approach the issue of domestic enforcement on a case-by-case basis. Courts in the past have recognised the permissive nature of this issue under the New York Convention and, in certain circumstances, may enforce an award that has been set aside at the seat. However, Canadian courts will certainly consider the status of an award at the seat, including whether a challenge to it has not yet been determined.

Canadian federal legislation adopts the language of the New York Convention, which gives Canadian courts discretion to refuse to recognise or enforce a foreign award that has been set aside by the competent authority. Neither legislation nor case law interpreting it describes the circumstances under which the court can or should exercise that discretion and refuse to recognise or enforce an award that has been set aside by the competent authority.[38]

In an *obiter dictum*, one Ontario court acknowledged the discretion granted by legislation to recognise or enforce an award that has been set aside, but no court has exercised its discretion to do so.[39]

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34 BC *Limitation Act*, *supra* note 25, ss 2(1)(e), 7(a)&(b), 30; *Proceedings Transfer Act*, *supra* note 25, ss 3 & 10(k).

35 *Arbitration Act, 1991*, SO 1991, c 17, s 10: "No application under the Convention or the Model Law for recognition or enforcement (or both) of an arbitral award shall be made after the later of December 31, 2018 and the tenth anniversary of, (a) the date on which the award was made; or (b) if proceedings at the place of arbitration to set aside the award were commenced, the date on which the proceedings concluded."

36 *Civil Code of Quebec*, art 2924; *Transport Michel Vaillancourt Inc v Cormier*, 2006 QCCS 803.

37 *Federal Courts Act*, *supra* note 29, s 50(1); Alberta Rules of Court, r 1.4(2)(h); Supreme Court Civil Rules, rr 19-3(8) and (9); *Law and Equity Act,* RSBC 1996, c 253, s 8(3); *Courts of Justice Act,* RSO 1990, c C-43, s 106; *Quebec Code of Civil Procedure,* c C-25.01, art 654.

38 UNFAACA, *supra* note 4, Art. V 1(e); Federal *CAA*, *supra* note 2, art 36(1)(a)(v).

39 *Arbitration Act, 1991*, SO 1991, c 17, art 36(1)(a)(v); *Schreter*, *supra* note 7.

6. Funding Arrangements

In Canada, many cases are funded. While the common law doctrine of champerty and maintenance remains in effect, there have been several court decisions approving litigation funding agreements in the class actions and commercial context, and one court decision determining that such agreements do not require approval by the court hearing the underlying dispute. In the context of consumer protection class action cases, an Ontario court has suggested that the existence of funding may need to be disclosed and subject to certain conditions. If asked to determine the legality of a third party funding agreement, a Canadian court would look at the terms of the agreement to confirm that it is not champertous in nature.

Notably, the recent amendments to British Columbia's ICAA specifically state that third-party funding is not to be considered contrary to public policy in British Columbia (a common law province) for the purposes of subsection 36(1)(b)(ii); the effect of which is to ensure that the presence of third-party funding will not be a legitimate reason to refuse recognition or enforcement of an arbitral award.

Also recently, in *Arrangement relatif à 9354-9186 Québec inc. (Bluberi Gaming Technologies Inc.) -and- Ernst & Young Inc.*,[40] the Quebec Superior Court reviewed the terms of a third-party funding agreement between Bentham IMF and the debtors. The court highlighted the fact that in Quebec – Canada's only civil law jurisdiction – "litigation funding by a third party has been accepted". Subsequently, in *9354-9186 Québec inc. v Callidus Capital Corp.*,[41] the SCC noted that in common law jurisdictions, third-party funding is not necessarily contrary to the principles of maintenance and champerty. The court does observe that the area of law is evolving, and that the majority of the jurisprudence is focused on the class action context where third-party funding has been leveraged to mitigate financial barriers "*which were stymieing litigants' access to justice*", but the case does provide comfort to third-party funders and their prospective clients.

7. Arbitration and Technology

7.1 Blockchain arbitration agreements

Although Canadian courts and legislatures have not addressed blockchain in this context, a blockchain arbitration agreement may be valid in some Canadian jurisdictions. As previously mentioned, in Ontario, an arbitration agreement does not need to be written to be valid. Meanwhile, in Quebec and British Columbia (in the international context), a blockchain arbitration agreement may be valid if one party alleges its existence in writing and the other party does not object. Most Canadian jurisdictions do require an arbitration agreement to be in written form, however, *e.g.*, the recently amended Domestic Arbitration Act in British Columbia expressly states that the agreement "*need not be in writing*").

7.2 Blockchain evidence and awards

No federal or provincial act limits valid forms of evidence, nor does the New York Convention state the medium on which an arbitral award must be recorded in order to be valid. That said, Canadian courts have not yet opined on the validity of blockchain evidence or blockchain arbitral awards. We would expect future jurisprudence and legislation/legislative amendments to more specifically address the identification and testing of blockchain evidence.

7.3 Electronic signatures

Each province in Canada has adopted a statute whereby electronic signatures are valid. Under these acts, an electronic signature can be any information that a person adopts or creates as a means of signing a document.[42] Accordingly, a court will consider a document signed if (a) the person inserts an image of their

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40 Arrangement relatif à 9354-9186 Québec inc. (Bluberi Gaming Technologies Inc.) -and- Ernst & Young Inc., 2018 QCCS 1040 (leave to appeal allowed, 2018 QCCA 632).

41 *9354-9186 Québec inc. v Callidus Capital Corp.*, 2020 SCC 10, paras 94-95.

42 *Electronic Commerce Act, 2000*, SO 2000, c 17; *Electronic Transactions Act*, SBC 2001, c 10; *The Electronic Information and Documents Act, 2000*, SS 2000, c E-7.22; *Electronic Transactions Act*, SA 2001, c E-5.5; *The Electronic Commerce and Information*

signature or (b) the person authenticates the document with their encrypted key. Notwithstanding these acts, Canadian common law has also developed to consider electronic signatures valid.[43]

8. Prospects for Reform

The limits of third-party funding is an emerging issue in Canada, although the above-mentioned statement approving of it in British Columbia and the SCC's recent comments distinguishing third-party funding from maintenance and champerty is a sign that it is in Canada to stay. In addition, it remains to be seen whether the provinces and territories other than Ontario and British Columbia will adopt the proposed ULCC uniform International Commercial Arbitration Act, and in so doing whether the distinctions between legislation among the provinces and territories will be reduced. Also, the ULCC has almost completed its work on a uniform Domestic Arbitration Act for the provinces to consider.

9. Compatibility of the Delos Rules with Local Arbitration Law

The Delos Rules of Arbitration do not conflict with federal or provincial laws.

Act, CCSM c E55; *Act to Establish a Legal Framework for Information Technology*, c C-1.1; *Electronic Transactions Act*, RSNB 2011, c 145; *Electronic Commerce Act*, SNL 2001, c E-5.2; *Electronic Commerce Act*, SNS 2000, c 26; *Electronic Commerce Act*, RSPEI 1988, c E-4.1; *Electronic Transactions Act*, SNWT 2011, c13; *Electronic Commerce Act*, SNu 2004, c7; *Electronic Commerce Act*, RSY 2002, c 66.

43 *I.D.H. Diamonds NV v Embee Diamond Technologies Inc.*, 2017 SKQB 79, paras 42-43.

ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, *i.e.*, with offices and a case team?	Leading arbitral institutions include: Vancouver International Arbitration Centre (VanIAC), formerly the British Columbia International Commercial Arbitration Centre (BCICAC) International Centre for Dispute Resolution of Canada (ICDR Canada) ADR Institute of Canada (ADRIC) Canadian International Internet Dispute Resolution Centre Canadian Commercial Arbitration Centre
Main arbitration hearing facilities for in-person hearings?	Vancouver: Vancouver International Arbitration Centre, Vancouver Arbitration Chambers Toronto: ADR Chambers, Bay Street Chambers, Arbitration Place Ottawa: Arbitration Place Montreal: Canadian Commercial Arbitration Centre
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	Vancouver: Print Three Calgary: Print Three Toronto: PrintLegal.ca, Legal Print & Copy Inc. Ottawa: Print Three Montreal: Copie Nova
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	Vancouver: Charest Legal Solutions, Merit Reporting, Reportex Calgary: Amicus Reporting Group, Dicta Court Reporting Toronto: Arbitration Place, Neesons, Victory Verbatim, Toronto Court Reporters Ottawa: Arbitration Place, ASAP Reporting Montreal: JML Transcription, Lexis Communications
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Montreal: Keleny Interpretation - Translation
Other leading arbitral bodies with offices in the jurisdiction?	ϕ

DELOS
dispute resolution

GUIDE TO ARBITRATION PLACES (GAP)

EGYPT

CHAPTER PREPARED BY

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ZULFICAR&PARTNERS
LAW FIRM

FOR FURTHER INFORMATION

GAP TABLE OF CONTENTS | GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS | FULL GAP ONLINE

EN DELOS MODEL CLAUSES
ES DELOS CLÁUSULAS MODELO
FR DELOS CLAUSES TYPES
PT DELOS CLÁUSULAS MODELO

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

1. Law
   a. Framework
   b. Adherence to international treaties
   c. Limited court intervention
   d. Arbitrator immunity from civil liability
2. Judiciary
3. Legal expertise
4. Rights of representation
5. Accessibility and safety
6. Ethics

Evolution of above compared to previous year =

7. Tech friendliness
8. Compatibility with the Delos Rules

VERSION: 12 FEBRUARY 2024 (v01.03)

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 any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Arbitration is the prominent mechanism for the settlement of investment and commercial disputes in Egypt. With the growing number of investors in the country and the parties to commercial transactions ultimately resorting to arbitration, Egypt adopts, by the year, measures and reforms that aim at aligning Egypt with best practices in international arbitration. By enacting the Egyptian Arbitration Act No. 27 of 1994 (the "**Arbitration Act**"), Egypt took a colossal step towards supporting arbitration and becoming an arbitration friendly jurisdiction.

Key places of arbitration in the jurisdiction?	Cairo.
Civil law / Common law environment? (if mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	Arbitral awards are confidential by law and may not be published. Consequently, arbitral proceedings are also confidential. However, confidentiality is compromised at the stages of eventual annulment or enforcement of awards.
Requirement to retain (local) counsel?	There is no requirement to retain local counsel in an international arbitration seated in Egypt.
Ability to present party employee witness testimony?	There is no legal restriction as to the submission of testimony by party employees except if one party is a public entity and, consequently, its employee a public officer, in which case the party's approval is required by law.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Hearings and meetings taking place during the arbitration may take place inside or outside of Egypt depending on the parties' agreement and the arbitral tribunal's power to assess convenience. Egyptian courts carefully and clearly distinguish "geographical venues" from "legal seats".
Availability of interest as a remedy?	Under the Egyptian civil law, the arbitral tribunal has the ultimate power to decide on issues of compensation and interest, provided that the applicable law on the merits is Egyptian law. However, a legal cap of 7% interest rate exists as a public policy rule as characterized by Egyptian courts.
Ability to claim for reasonable costs incurred for the arbitration?	The parties are free to claim the costs they incurred during the arbitral proceedings to the extent that these costs are reasonable and justifiable in the arbitral tribunal's view.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Alternative fee arrangements and contingency fees are permissible under Egyptian law with a limit of a recoverable amount of 20% out of the outcome of the dispute. There are no restrictions as to third-party funding in arbitrations. However, Egyptian courts have not yet addressed this issue and no

	legislative policy or regulation exist to address this evolving practice.
Party to the New York Convention?	Egypt is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and has neither made a commerciality nor a reciprocity reservation. Egyptian courts apply the provisions of the Convention for purposes of enforcement of awards rendered outside Egypt.
Party to the ICSID Convention?	Egypt is a party to the ICSID Convention and ratified the same on 3 May 1972.
Compatibility with Delos Rules?	The usage of Delos Rules by agreement of the parties is compatible with the Arbitration Act. The parties are free to agree on the usage of the arbitration rules of any arbitral institution in Egypt or abroad.
Default time-limitation period for civil actions (including contractual)?	The default time-limitation period is fifteen years, save for cases where the law provides for a specific time-limitation period.
Other key points to note?	ϕ
World Bank, Enforcing Contracts: *Doing Business* score for 2020, if available?	40.0
World Justice Project, Rule of Law Index: *Civil Justice* score for 2023, if available?	0.38

ARBITRATION PRACTITIONER SUMMARY

The Egyptian Arbitration Act, which is principally derived from the UNCITRAL Model Law, addresses all principal aspects of the arbitral proceedings including the arbitration agreement, issues of arbitrability, the composition of the arbitral tribunal, the challenge of arbitrators, the conduct of the proceedings, the intervention and assistance by domestic courts throughout the proceedings, the applicable law(s) and the rules pertaining to the award, as well as to its annulment and enforcement. Albeit being generally arbitration friendly, the courts can intervene in matters such as deciding on the validity of an arbitration agreement, the challenge of arbitrators, the default power to order interim measures and conduct procedures for enforcement and/or recognition, which would be daunting depending on the parties' conduct.

Date of arbitration law?	The Arbitration Act was promulgated on 21 April 1994, entered into force as of 22 May 1994 and was slightly amended in 1997 and 2000.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	The Arbitration Act is primarily based on the 1985 UNCITRAL Model Law but deviates from the Model Law in certain respects, including the following: the application of the Arbitration Act to both domestic and international arbitration as well as arbitration seated abroad where the parties agreed to its extra-territorial application, the internationalization of arbitration, the overriding mandatory requirement for an arbitration agreement to be in writing for purposes of validity, the strict rule on incorporation of arbitration agreements by express reference, the annulment of awards on the basis of exclusion of the chosen applicable law, the prohibition of annulment of a partial award or a decision on jurisdiction before the issuance of the final award, etc. The Arbitration Act has not adopted the amendments introduced by the 2006 version of the UNCITRAL Model Law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There are no specialised courts for handling arbitration matters. However, with respect to domestic arbitrations, the Arbitration Act grants competence to the court having original jurisdiction over the dispute for purposes of handling arbitration matters. In the case of international commercial arbitrations, whether conducted in Egypt or abroad, the competent court is the Cairo Court of Appeal unless the parties agree on the competence of another appellate court within Egypt (Article 9). Within the Court of Appeal, there are specific circuits or judges (administrative divisions) dedicated to dealing with arbitration-related matters, especially for annulment proceedings.
Availability of *ex parte* pre-arbitration interim measures?	Domestic courts have the power to rule on both *ex parte* and ordinary adversarial requests for interim measures if the circumstances reflect urgency, necessity and likelihood to prevail on the merits.
Courts' attitude towards the competence-competence principle?	The Arbitration Act recognizes the competence-competence principle and provides that the arbitral tribunal shall decide over any jurisdiction-related claims including on the existence, validity and scope of the arbitration agreement (Article 22.1). Generally, Egyptian courts are in favour of applying the competence-competence principle. However, there have been instances where Egyptian courts, specifically in relation to administrative contracts, have

	decided over the existence and validity of an arbitration agreement prior to or during the arbitral proceedings and irrespective of the arbitral tribunal's jurisdiction.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	An arbitral tribunal may render a decision on jurisdiction (or other issues) in the form of a partial award, without stating the reasons if the parties so agree, or if the procedural rules so allow, otherwise the tribunal will have to expressly state in its partial award that the reasons will follow in the subsequent award.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Egyptian courts are generally arbitration friendly and generally do not review domestic or foreign arbitral awards on the merits, when either the Arbitration Act or the New York Convention is applicable, save in cases raising public policy issues. When the Arbitration Act applies, the annulment procedures are significantly simplified and afford little to no power to the court with respect to review of the award on the merits, save in cases where the award contravenes principles of public policy.
Do annulment proceedings typically suspend enforcement proceedings?	Generally, annulment proceedings do not suspend enforcement proceedings. However, the competent Egyptian court may, upon the request of a party, order suspension of enforcement proceedings, if the court finds that such request is based upon serious grounds. The court has 60 days from the date of the first hearing in relation to the request for suspension to render its decision, if suspension is ordered, the court may require a given security or monetary guarantee. The Court has 6 months from the date of issuance of the suspension order to rule on the nullity action.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Egyptian courts have had little experience with the enforcement of awards annulled at the seat but are expected to adopt the position provided within the New York Convention rules.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	Arbitral tribunals have the discretion, in absence of an agreement between the parties, to adopt the procedures they deem appropriate for the proper conduct of the arbitral proceedings, provided that the parties are treated with equality and are granted an equal and full opportunity to present their respective claims/defences. Ordering to conduct a hearing remotely, despite a party's objection would not affect the recognition or enforceability of the ensuing award, provided that the parties were treated with equality and were granted an equal and full opportunity to present their respective claims/defences.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	The Arbitration Act mandates that arbitration agreements relating to administrative contracts must be approved by the competent minister, or whoever assumes his/her authority with respect to public entities, and expressly prohibits delegation of this power, subject to penalty of nullity of the arbitration agreement. Moreover, the State, its organs and state-controlled entities shall not conclude any contracts with foreign investors or enter into contracts including an arbitration clause, and/or amending these contracts, or take any

	measure that would lead to the rescission or the termination of any contract including an arbitration agreement, without having this first reviewed by the '*High Committee for Arbitration and International Disputes*', which is a ministerial committee in charge of examining and opining on all arbitration disputes involving state entities, established by virtue of Prime Ministerial Decree No. 1062 of 2019 (as amended in 2020 and 2022). In 2021, the Supreme Constitutional Court's Law No. 48 of 1979 was amended by Law No. 137 of 2021 on 15 August 2021, extending the *rationae materiae* jurisdiction of the Supreme Constitutional Court to review the constitutionality of (1) decisions rendered by international organisations; and (2) foreign court judgments where enforcement is sought against the Egyptian State in Egypt. Prior to its enactment, an earlier draft of Law No. 137 of 2021 had included the review of arbitral awards within the extended scope of review vested to the Supreme Constitutional Court. However, this reference to arbitral awards was later excluded such that the Supreme Constitutional Court will not have jurisdiction to review arbitral awards, which remain subject to the traditional review regimes under the EAL and any pertinent applicable international treaties. Aside from the above, there are no specific points to note with regard to enforcement of arbitral awards against public bodies. Normally, state immunity cannot be invoked, so long as the concerned public body has validly consented to resolving the dispute through arbitration following the required procedure (*i.e.* obtained the required prior approvals) and that the matter in dispute is arbitrable.
Is the validity of blockchain-based evidence recognised?	The Arbitration Act and the Evidence Law do not contain any provisions in relation to blockchain based evidence.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	Arbitration agreements can be concluded by way of electronic means, subject to fulfillment of the writing requirement. However, the validity of an arbitration agreement recorded on a blockchain is uncertain. A blockchain arbitral award would not be recognised as valid. The award must be "actually" signed by the arbitrators.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	It is unlikely that courts would consider a blockchain arbitration agreement or award as originals for the purpose of recognition and enforcement procedure. In practice, both shall be deposited at the court in paper form.
Other key points to note?	The enforcement procedure for foreign awards may be burdensome and relatively lengthy. The application for enforcement takes the form of an exequatur, but may, on average, take one to two years to secure an enforcement order. There is also a fee recoverable by the court which is based on a percentage of the amount of the dispute reaching around 2.5% of the awarded value. Annulment proceedings do not, in principle, preclude enforcement except upon reasoned request of the relevant party and the court's

	decision to stay enforcement pending determination of the annulment. The Arbitration Act and, more generally, the Egyptian arbitration practice remains underdeveloped and may benefit from further input with regards to internationally developed practices, namely: conclusion of arbitration agreements electronically, extension of arbitration agreements to third parties, anti-suit injunctions, third-party funding, simplification of enforcement procedures, etc.

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

The Arbitration Act is initially based on the 1985 UNCITRAL Model law on International Commercial Arbitration (the "**Model Law**"). To the exception of some provisions, the Arbitration Act significantly relies on the Model Law. There are prominent differences with the Model Law pertaining to different issues throughout the arbitration proceedings, these notably are:

- The Arbitration Act applies to both domestic and international arbitrations (Article 1);
- The application of the Arbitration Act may be extended to arbitrations seated abroad with the parties' agreement to such application (Article 1);
- The requirement that an arbitration agreement in an administrative contract be approved by the competent minister (Article 1).
- It introduces several criteria for the establishment of the international nature of an arbitration including amongst others whether the arbitration is institutional, whether it involves parties whose principal places of business are in different States or, alternatively, if the place of the arbitration is determined by the arbitration agreement, the place of performance of the obligations or the place with the closest connection to the dispute is abroad (Article 3);
- The Arbitration Act does not expressly include the possibility to enter into an arbitration agreement by way of electronic means. It does not however exclude it and is therefore considered to be implicitly included. Nevertheless, the writing requirement under the Arbitration Act is a condition for the validity as opposed to a mere evidentiary requirement. An agreement is in writing if it is contained in a document signed by the parties or contained in an exchange of letters, telegrams or other means of communication. Absence of an arbitration agreement in writing results in the nullity of the arbitration agreement and the writing requirement under the Egyptian Arbitration Act is stricter than the one under the Model Law (Article 12);
- In the case of incorporation by reference, the reference to the arbitration agreement must be explicit in order for the arbitration agreement to form an integral part of the main contract (Article 10);
- The Arbitration Act does not provide for the "referral exception" whereby a state court may accept to decide jurisdiction if it finds that the arbitration agreement is null and void, inoperative or incapable of being performed (Article 13);
- The arbitral tribunal must be constituted of an odd number of arbitrators. The violation of this requirement leads to the nullity of the award (Article 15);
- A preliminary decision by the arbitral tribunal on jurisdiction cannot be the subject to court review prior to the arbitral tribunal's rendering of the final award deciding on the entire dispute. The final award must be rendered prior to the competent court's review or annulment (Article 22);
- The arbitral tribunal may only issue interim relief if the parties grant such a power (Article 24);
- If the parties do not agree on the language of the arbitration, the arbitration shall be conducted in Arabic (Article 29);
- If the parties do not agree on the applicable law, the arbitral tribunal may apply the law having the closest connection to the dispute (Article 39). This is normally the law of a State;

- The threshold used by the Arbitration Act for the challenge of arbitrators is higher than its Model Law counterpart in that the doubts as to the arbitrator's impartiality and independence must be *serious* (Article 18);
- The Arbitration Act adds a ground for annulment based on the non-application by the arbitral tribunal of the *lex causae* chosen by the parties.
- The Arbitration Act introduces a further condition for purposes of *exequatur that is not listed in the Model Law* (Article 58), namely: No previous judgment to the contrary has been issued by the Egyptian courts in the subject matter of the dispute.

1.2 When was the arbitration law last revised?

The Arbitration Act was not frequently revised since its adoption except for a limited number of amendments. The three important amendments pertain to (i) the arbitration agreement for administrative contracts, (ii) the procedure for the challenge of an arbitrator and (iii) of an order granting or denying an *exequatur*.

(i) In 1997, the law was amended to include a requirement pertaining to the mandatory signature of the relevant Minister for the conclusion of an arbitration agreement with respect to administrative contracts, or of the person exercising his authority within the relevant public entities (entering into such arbitration agreements).[1]

(ii) Another amendment relates to the procedure for the challenge of an arbitrator. Law No. 8 of 2000 imposes the intervention of the local courts *in lieu* of the arbitral tribunal in the procedure of challenging an arbitrator. By virtue of this amendment, if an arbitrator does not step down within 15 days running from the date of his challenge, the Cairo Court of Appeal, the court designated by the Arbitration Act for intervention and assistance throughout the proceedings, must rule on the challenge. Its ruling is final and binding and may not be reversed.[2]

(iii) A third amendment pertains to the Constitutional Court decision enabling parties to challenge a decision granting or denying an *exequatur* under Article 58 of the Arbitration Act. Prior to 2001, it was only possible to challenge a decision denying *exequatur*; a decision granting an *exequatur* was not open to challenge on the premise of a pro enforcement bias under the Law. However, the Constitutional Court ruled that a challenge is possible in either case (*i.e., whether an exequatur is granted or denied*). The amendment incorporates this decision into the Arbitration Act.

On 22 March 2022, Decree No. 8 of 2022 was issued by the Deputy Minister of Justice for Arbitration and International Disputes establishing a committee in charge of discussing possible amendments to the Arbitration Act. The committee is headed by the Deputy Minister of Justice for Arbitration and International Disputes and comprises members of the ministry's arbitration and international disputes' department as well as other arbitration practitioners, including academics and lawyers. The scope of the amendments is limited, and the committee's work is still ongoing and not yet finalised. To date, there are no amendments that have been enacted.

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1 Amendment introduced to Article 1 of the Arbitration Act by Law No. 9 of 1997 dated 15 May 1997.

2 Amendment introduced to Article 19 of the Arbitration Act by Law No. 8 of 2000 dated 4 April 2000 and entering into force on 5 April 2000.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

In determining the law applicable to the arbitration agreement, Egyptian courts have an obvious tendency towards the law of the seat as selected by the parties. This is the position adopted by the Court of Cassation on the one condition that the provisions of this law do not contravene Egyptian public policy rules.[3]

This position is based on the assumption that the arbitration agreement constitutes the first step of the arbitral proceedings and should therefore be subject to the law applicable thereto, the law of the seat. This interpretation is however strongly rejected by scholars who view the arbitration agreement as a step preceding the arbitral proceedings and should therefore be subject to the parties' substantive choice of law which, in turn, may be implicit.

According to some scholars, absent a choice of law, the applicable law is that of the State where the award is rendered independently from the choice of law by the parties with respect to the subject-matter to the dispute.[4] As far as capacity to conclude the contract is concerned, the applicable law is that applicable to each party independently from the other, be it the law governing nationality, domicile for natural persons or effective principal place of management for juridical persons.[5]

2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

The Arbitration Act makes an express distinction between the legal seat and the venue of arbitration, and allows the parties to agree on the place (*i.e.* geographical location or venue, not the legal seat) of the arbitration whether inside or outside of Egypt, and in absence of agreement between the parties, the arbitral tribunal proceeds with determining the place taking into account the circumstances of the case and the convenience to the parties.[6] In this regard, it is worth mentioning that the legal seat determines the procedural law applicable to the arbitration proceedings (***lex arbitri***), whilst the geographical venue consists in the location for holding meetings, hearings and/or deliberations, which does not have any effect as to the applicable procedural rules to the arbitral proceedings, it is simply the place to convene hearings or any other related in-person meetings. In various decisions, Egyptian Courts expressly recognise the distinction between the notions of '*legal seat/place*' and '*geographical venue*' and confirm that arbitration has gradually shifted away from the traditional notion of localisation.[7] However, to determine the seat of arbitration, the court will have to examine for instance, the parties' common intent at the time of concluding the arbitration agreement, if any implicit agreement existed between them regarding the seat, or the place of performance of the disputed obligation, taking into account the place of enforcement of the award to be rendered. Moreover, the parties' choice to submit their dispute to a standard contract or international convention includes applying the provisions related to arbitration provided therein.[8]

2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

It has long been established in Egypt that the arbitration agreement is considered independent from the original contract in which it is contained or which governs the subject-matter of the dispute. This has been legislatively captured by the Arbitration Act and confirmed by both Egyptian courts and scholars. The arbitration agreement, whether an arbitration clause is included in the principal contract, is separate, or takes

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3 Court of Cassation, Challenge No. 453 of 42 JY (9 February 1981) and Challenge No. 1259 of 49 JY (13 June 1983).

4 Fathi Wali, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., pp. 121-23.

5 *Id.*

6 Article 28 of the Arbitration Act.

7 Court of Cassation, Challenge No. 18309 of 89 JY (27 October 2020); Cairo Court of Appeal, Case No. 42 of JY 136 (8 March 2021); and Cairo Court of Appeal, Case No. 53 of JY 138, Hearing session (30 May 2022).

8 Article 6 of the Arbitration Act.

the form of a *compromis d'arbitrage* (*i.e.* standalone arbitration agreement), is considered as a legally separate instrument that is not affected by the nullity, rescission or any other defect that could affect the original contract.[9] This severability principle is widely considered as one of the fundamental pillars of arbitration in Egypt.[10] This principle is also expressly enshrined in Article 23 of the Arbitration Act.

It is however worth mentioning, although inexistent in practice, that the principle pertaining to the severability of the arbitration agreement is not a principle of public policy and can therefore, theoretically, be subject to derogation in certain cases where the nullity of the contract may lead to the nullity of the arbitration agreement.[11]

2.4 What are the formal requirements (if any) for an enforceable arbitration agreement?

Egyptian courts will apply the law of the seat of the arbitration to the arbitration agreement. This includes the requirements for its enforceability which will draw their value from the applicable contract law. This is equally the case for Egyptian law, the primary conditions for contract enforceability of which are governed by the general theory of contract law.

In the event that the Arbitration Act is applicable (particularly in the cases where the seat is in Egypt or where the parties select the Arbitration Act to apply), further requirements, in addition to the contract law requisites, exist for the validity (and enforceability) of the arbitration agreement under penalty of nullity:[12]

- The parties must have capacity to enter into the agreement;[13]
- The subject-matter of the dispute must be arbitrable;[14]
- The subject of the dispute to be resolved by arbitration must be specified (in the *compromise d'arbitrage*, or in the Statement of Claim in case of a prior agreement to arbitrate);[15] and
- It must be in writing or else it is null (writing includes a document signed by the parties or an agreement by exchange of correspondences or other means of communication).[16]

2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

The Arbitration Act does not expressly regulate the extension of the arbitration agreement to third parties or other contracts. Egyptian court decisions, all the same, do not portray a clear trend as to this doctrine and accord the ultimate weight to the parties' consent to arbitration as determined by arbitral tribunals. Egyptian courts are increasingly becoming more flexible in considering the extension of arbitration agreements to third parties and/or the joinder of third parties to arbitral proceedings and will usually defer to the arbitral tribunal's findings in this regard, unless there is no agreement in writing or principles of public policy have been contravened.

The Egyptian Court of Cassation decisively ruled that an arbitration agreement included in a contract does not automatically extend to a company that forms part of a larger group of companies entering into the said contract. The company must have *actively contributed in the performance* of the contract or there must have been a confusion between the intents of the two relevant companies.[17] In other words, the doctrine of group

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9 Court of Cassation, Challenge No. 824 of 71 JY (24 May 2007).

10 Court of Cassation, Challenge No. 933 of 71 JY (24 May 2007).

11 FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 107.

12 FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 119.

13 Article 11 of the Arbitration Act.

14 Article 11 of the Arbitration Act.

15 Article 10 of the Arbitration Act.

16 Article 12 of the Arbitration Act.

17 Court of Cassation, Challenge No. 4729 of 72 JY (22 June 2004).

of companies is accepted by the courts for purposes of extension of the arbitration agreement in the presence of an implication in the performance process of the contract.

The doctrine of economic unity is not sufficient, in and of itself, for purposes of extension of the arbitration agreement if the third party has not exhibited consent to arbitration.[18] However, Egyptian courts have shown flexibility regarding extension to third parties and would normally defer to the Tribunal's reasoning in this respect, unless a clear principle of public policy is compromised.

The Egyptian Court of Cassation held that an arbitration agreement cannot exist without consent of the parties, but added that an arbitration agreement may extend to third parties and to other contracts connected to the principal contract on the basis of several doctrines and principles including: group of companies, group of contracts, universal succession, mergers or assignment.[19]

2.6 Are there restrictions to arbitrability? In the affirmative:

2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law, etc.)?

Any matter that is not capable of settlement/conciliation is non-arbitrable under the Arbitration Act.[20] Non-arbitrable matters principally pertain to matters of personal or family status, public policy, or rights *in rem* relating to immovables (e.g., registration of real estate mortgages) and criminal law issues.

Otherwise, the Arbitration Act solely requires that the right subject to arbitration be of an economic nature.[21]

2.6.2 Do these restrictions relate to specific persons (i.e., State entities, consumers, etc.)?

All natural or juridical persons and entities who enjoy legal capacity may agree to arbitrate their disputes.[22] However, arbitration agreements in administrative contracts require the approval of the competent Minister, or whoever assumes his/her authority with respect to public entities. Delegation of this power is prohibited.[23] In this regard, a judgment by the State Council ruled that the arbitration agreement is void when the competent Minister, or whoever assumes his or her authority with respect to public entities, has only approved it but has not signed it, and that such requirement is a matter of public policy. It also ruled that the arbitration agreement must deal only with matters that are arbitrable and in the case of a *compromis d'arbitrage*, the parties must identify the dispute subjected to the arbitral proceedings or the agreement would be null and void.[24] Moreover, the State, its organs and state-controlled entities shall not conclude any contracts with foreign investors or enter into contracts including an arbitration clause, and/or amending these contracts, or take any measure that would lead to the rescission or the termination of any contract including an arbitration agreement, without having this first reviewed by the '*High Committee for Arbitration and International Disputes*'.[25]

3. Intervention of domestic courts

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

Egyptian courts are under a legal obligation to dismiss litigation with respect to disputes subject to an arbitration agreement if the defendant, at the commencement of the proceedings, advances a plea

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18 Cairo Court of Appeal, Commercial Circuit No. 62, Case No. 83 of 118 JY (5 August 2002), in FATHI WALI, *Arbitration in local and international commercial disputes*, Munsha'at Al Ma'aref, 2014 ed., pp. 195-96.

19 Court of Cassation, Challenges Nos. 2698, 3100 and 3299 of 86 JY (13 March 2018).

20 Article 11 of the Arbitration Act.

21 Article 2 of the Arbitration Act.

22 Article 11 of the Arbitration Act.

23 Article 1 of the Arbitration Act.

24 State Council, Challenge No. 8256 of 56 JY (5 March 2016).

25 Prime Ministerial Decree No. 1062 of 2019 amended by Decree No. 2592 of 2020 and Decree No. 3218 of 2022.

pertaining to the existence of an arbitration agreement.[26] However, the court is not under an obligation to reject the case *ex officio* for the mere existence of an arbitration agreement; the defendant must raise an objection at the commencement of the proceedings (see, Article 13.1 of the Arbitration Act) prior to the examination of merits otherwise the defendant would lose the right to object. This is principally due to the fact that an arbitration agreement is not constitutive of public policy. In the absence of a plea by the defendant in litigation, parallel proceedings will be conducted before the arbitral tribunals and the courts and decisions will be rendered irrespective of the parties' prior agreement to arbitrate. In the event that the two decisions are contradictory, the successful party in the arbitration may elevate the conflict to the Supreme Constitutional Court in accordance with the law.[27]

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halting or withdrawing litigation proceedings?

The Arbitration Act is silent on the matter. However, as a matter of practice, arbitral tribunals do not have the power to order the parties to refrain from going to the courts, or halting or withdrawing litigation proceedings. In any event, an interim measure by the arbitral tribunal may however only address the parties to the arbitral proceedings and cannot impact or bind third parties, let alone national courts, for the purpose of halting ongoing proceedings or mandating a dismissal of a claim to begin with if a party does seize it with a claim in defiance of the tribunal's order, once issued.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

The application of the Arbitration Act extends to international arbitrations seated outside of Egypt in the event that the parties agree to apply it to their arbitration. This extends the jurisdiction of Egyptian courts to all the matters where the Arbitration Act refers to the competent court. These include for instance appointing arbitrators in the event of default, their challenge, sanctioning defaulting witnesses to penalties prescribed by Egyptian Evidentiary Law, extending the time-limit for the rendering of the arbitral award based on a party's request and all matters pertaining to enforcement and annulment of arbitral awards.

The Egyptian legal system does not regulate anti-suit (or anti-arbitration) injunctions and there is no prohibition on the issuance of such injunctions. However, as a matter of practice, courts generally do not render such injunctions. The power of Egyptian courts with respect to the stay of proceedings is in fact restrained to an exhaustive list of cases mentioned in the Egyptian Law, amongst which anti-suit injunctions are not addressed. However, there have been a limited number of judicial instances where Egyptian administrative courts issued anti-suit injunctions. This however remains unregulated and questioned by scholars.[28]

4. The conduct of the proceedings

4.1 Can parties retain foreign counsel or be self-represented?

The parties have the freedom to decide whether to retain outside counsel (Egyptian or foreign) or represent themselves in the arbitral proceedings. In 2020, the Court of Cassation addressed the issue of party representation and determined that there are no limitations or restrictions on party representation in arbitrations seated in Egypt. The Court of Cassation recognised that the parties to an arbitration, be it domestic or international proceedings, may be represented by any person of their choice, whether being a lawyer, Egyptian or foreigner, or a non-lawyer.[29]

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26 Article 13-1 of the Arbitration Act.

27 FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 205.

28 FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 492.

29 Court of Cassation, Challenge No. 18309 of 89 JY (27 October 2020).

Representation is made by virtue of a power of attorney in favour of a representing counsel.[30] However, as a matter of practice, the power of attorney must reference arbitration proceedings to avert the risk of challenge of authority to represent a party in arbitral proceedings. The tribunal has the discretion to accept or reject the representation of a party before it.[31]

Representation includes all steps of the arbitral proceedings starting from the service of the request to arbitrate to the hearing and the issuance of the award.[32] The parties also have the freedom to represent themselves or retain outside counsel under the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?

The Arbitration Act regulates challenges to arbitrators. The competent court may intervene regarding the challenge of an arbitrator if s/he does not step down after 15 days from the date of a party's application for challenge before the arbitral tribunal. The Arbitration Act therefore imposes a pre-requisite of submitting the challenge to the arbitral tribunal before the transmittal of the challenge case to the court.

The obligation to transmit the challenge to the competent Egyptian court here is incumbent upon the arbitral tribunal itself.[33] This is normally applicable to *ad hoc* proceedings exclusively governed by the Arbitration Act. The court's power with respect to upholding or rejecting the challenge of an arbitrator stems from the arbitrator's *legal obligation to divulge all information or circumstance* which may give rise to *doubts* as to his/her independence or impartiality.[34] The standard used for the challenge of an arbitrator is that of *"serious doubts as to his impartiality and independence"*[35] which the circumstances unfold.[36] The arbitrator's independence and impartiality are considered fundamental guarantees of justice.[37] However, an arbitrator is presumed independent and impartial if s/he accepted his/her mission and the party challenging these notions bears the burden to raise and prove the opposite.[38] The court's decision on the application for challenge is final and may not constitute the subject of a further appeal.[39]

Generally, non-disclosure does not, in and of itself, suffice to uphold a challenge; non-disclosure ought to pertain to an event, issue or fact that raises serious doubts as to impartiality and independence. For example, in a court decision, after the issuance of the arbitral award, it came to the knowledge of the respondent that the chairman of the arbitral tribunal is a client of the co-arbitrator appointed by the claimant, and that neither has disclosed the existence of this relationship during the arbitral proceedings. However, the other-co-arbitrator appointed by the respondent had disclosed at the time of his appointment that he is the lawyer of the respondent and confirmed to be impartial in this arbitral proceedings, and the claimant accepted his appointment after such disclosure. In this regard, the Cairo Court of Appeal held that the non-disclosure of the relationship existing between the chairman and the co-arbitrator appointed by the claimant creates doubts as to their impartiality and independence, which consist in fundamental requirements for the appointment of any arbitrator. Therefore, the Cairo Court of Appeal annulled the arbitral award on the ground of non-disclosure by the chairman and the co-arbitrator appointed by the claimant of their existing

30 MAHMOUD MOSTAFA YOUNES, *The Reference for Arbitration Principles*, Dar An-Nahda Al-Arabiyyah (2009), p. 349, para. 419.

31 FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p 434.

32 FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p 434.

33 Court of Cassation, Challenge No. 9568 of 79 JY (14 March 2011).

34 Article 16-3 of the Arbitration Act.

35 Article 18-1 of the Arbitration Act.

36 MAHMOUD MOKHTAR Al-Berairy, *International Commercial Arbitration*, Dar An-Nahda Al Arabiyyah (2004), 3rd ed., p. 75, para. 42.

37 Court of Cassation, Challenge No. 240 of 74 JY (9 February 2010).

38 Court of Cassation, Challenge No. 240 of 74 JY (9 February 2010).

39 Article 19-1 of the Arbitration Act.

relationship prior to the commencement of the arbitral proceedings.[40] In another court decision, the Cairo Court of Appeal held that there was no breach of the duty of disclosure when an arbitrator failed to disclose (1) membership of the Board of Trustees of the CRCICA and of the Advisory Committee of the CRCICA (an independent international non-profit organisation) when the respondent's counsel is also a member of the same Advisory Committee, and (2) in addition that two arbitrators (the Chairman and a co-arbitrator) were speakers on the same panel with the respondent's counsel in an event held by the CRCICA, where the law firm of the respondent's counsel was a golden sponsor to such event. The court reasoned that the aforementioned circumstances do not constitute a "real danger of bias" or create "justifiable doubts" as to the independence or impartiality of the arbitrators, due to the absence of a connection of dependency, or a financial or psychological relation between the arbitrators and any of the parties.[41]

In 2022, the Court of Cassation expressly referred, for the first time ever, to the IBA Guidelines on Conflicts of Interest in International Arbitration (2014), quoting Clause 3.3.5 of the Orange list of the IBA Guidelines, on the basis that these Guidelines serve as guidance in determining the duty of disclosure and its impact on the independence and impartiality of an arbitrator.[42] The Court explained that the duty of disclosure of an arbitrator is a binding legal obligation that is necessary to warrant the integrity and impartiality in the conduct of the arbitration process. The Court added that the non-disclosure in itself does not lead to the setting aside of an award. However, to set aside an award, the Court shall assess on a case-by-case basis whether the undisclosed circumstance justifies in itself or leads in a reasonable manner to infer a real danger of bias. The Court concluded that the supervision exercised by the Egyptian judiciary with respect to the arbitrators' independence and impartiality boosts the confidence of the parties to international arbitrations in choosing Egypt as a seat of arbitration.

By and large, the prevailing view is that the procedure and grounds for challenge under the Arbitration Act do not normally apply to institutional proceedings, where the procedural rules regulate challenges.

4.3 On what ground do courts intervene to assist in the constitution of the arbitral tribunal (in case of ad hoc arbitration)?

Egyptian courts may intervene in the arbitral process for purposes of constitution of the arbitral tribunal in various cases of *ad hoc* proceedings:

- A default in the appointment of the sole arbitrator due to absence of agreement;[43]
- A default in the appointment by a party of its party-appointed arbitrator after the lapse of 30 days from the other party's request to the first party to proceed with the appointment;[44]
- A default in the appointment of the president of the arbitral tribunal for lack of agreement by the party-appointed arbitrators after the lapse of 30 days from the date of the appointment of the last arbitrator;[45]
- A default in the appointment by the parties of arbitrators in a tribunal composed of over three members;[46] and

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40 Cairo Court of Appeal, Case No. 92 of 135 JY (12 January 2019).

41 Cairo Court of Appeal, Case No. 42 of JY 136 (8 March 2021).

42 Court of Cassation, Challenge No. 13892 of JY 81 (22 February 2022).

43 Article 17-1 of the Arbitration Act.

44 Article 17-2 of the Arbitration Act.

45 Article 17-2 of the Arbitration Act.

46 BORHAN AMRALLAH, An invitation to A Common Word regarding the Appointment of the Arbitrator by the Courts, Arab Journal of Arbitration, 19th ed. (December 2012), p. 105.

- In the case of absence of agreement by the parties as to the number and method of appointment of the tribunal members (what is known under French Arbitration Act as *"clause blanche"*).

The court's decision with respect to the appointment of an arbitrator is final and may not be appealed[47] except based on invalidity for not following the proper legal procedures for appointment.[48] The court may however grant the party or parties a short period to try appointing or agreeing on the appointment of an arbitrator before rendering its decision.[49]

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

The Arbitration Act grants the competent court in Egypt the inherent power to order interim measures upon the application by any party both prior to the commencement of the proceedings and during the conduct of the arbitration.[50] Egyptian law regards the role of the court as vital to the adoption of such special measures which may include for instance an order relating to a witness default in appearance to testify before the arbitral tribunal.[51]

The court has the power, as it does in litigation cases, to order provisional or interim measures in the absence of the parties and without the obligation to state reasons to its decision if the matter requires speedy resolution and satisfies the local requirements for the issuance of such measures.[52] The measure may be subject to appeal before the court.[53]

In practice, it is very difficult and quite rare to have a court ratify or enforce an interim measure ordered by an arbitral tribunal. However, in 2017, the president of the Cairo Court of Appeal, in an *ex parte* proceeding, enforced, for the first time, an interim decision rendered by an ICC arbitral tribunal seated in Paris.[54] The enforcement order was affirmed by the full panel of the Cairo Court of Appeal in an adversarial proceeding in 2018.[55]

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The principle of confidentiality of the arbitral proceedings is inferred from the rule prohibiting the publication of the arbitral award and is confirmed by the Explanatory Note to the Law, which explains that the confidentiality of the arbitration is of significant importance to the parties in order to preserve inter-commercial relations.[56] However, there is no explicit reference in the Arbitration Act providing for the confidentiality of the proceedings without the parties' agreement.

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47 Article 17-3 of the Arbitration Act.

48 Court of Cassation, Challenge No. 17170 of 74 JY (22 November 2007).

49 BORHAN AMRALLAH, An invitation to A Common Word regarding the Appointment of the Arbitrator by the Courts, Arab Journal of Arbitration, 19th ed. (December 2012), p. 118.

50 Article 14 of the Arbitration Act.

51 Explanatory Note to the Arbitration Act.

52 Court of Cassation, Challenge No. 1975 of 66 JY (12 December 1996).

53 MAHMOUD SAMIR AL-CHARKAWI, *Interim and Provisional Measure in Commercial Arbitration*, Arab Journal of Arbitration, 19th ed. (December 2012), p. 70.

54 Cairo Court of Appeal, Arbitration Orders, Ordinance No. 39 of 134 JY (8 November 2017)

55 Cairo Court of Appeal, Case No. 44 of 134 JY (9 May 2018). (The case is still under challenge before the Court of Cassation).

56 Explanatory Note to the Arbitration Act.

4.5.2 Does it regulate the length of arbitration proceedings?

The arbitral tribunal must issue its award within the time-limit agreed by the parties. In absence of an agreement, the award must be issued within 12 months from the date of commencement of the proceedings, subject to possible extension by the arbitral tribunal for a period of 6 months unless the parties agree to a longer period.[57]

If the award is not issued within these time-limits,[58] a party may then proceed to courts for purpose of securing an order either to extend or terminate the proceedings. In the latter case, the parties have the right to initiate a claim before the initially competent court which means that the arbitration agreement itself is terminated.[59]

However, Egyptian courts have confirmed that such principles apply to *ad hoc* (not institutional) proceedings only.

An interesting court decision is worth mentioning whereby the Cairo Court of Appeal found that the COVID-19 illness of two arbitrators in a panel of three arbitrators constitutes a force majeure event that automatically interrupts the arbitration proceedings, by the force of law. Therefore, the arbitration proceedings shall be suspended during the period of their illness until their full recovery. The Court explained that the illness of the arbitrators is an incidental matter that renders the deliberations and the continuance of the arbitration proceedings impossible prior to their recovery, and that the arbitral tribunal enjoys the authority to rule over the dispute within the period agreed upon with the parties or as determined by the applicable procedural rules, in order to warrant that the length of the arbitration proceedings is not unreasonably extended.[60] In the same decision, the Cairo Court of Appeal held that *WhatsApp* is a valid means of communication in arbitral proceedings, provided that the fundamental principles of arbitration are observed, such as confidentiality, due process and fair and equitable treatment of the parties.

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

The Arbitration Act makes an express distinction between the legal seat and the geographical location to proceed with one or more procedural issues. The Arbitration Act allows the parties to agree on the place (i.e. geographical location or venue, not the legal seat) of the arbitration whether inside or outside of Egypt. In the absence of such agreement, the arbitral tribunal may determine the place while taking into account the circumstances of the claim and the convenience of the place to the parties without prejudice to its given power to convene in the place it deems convenient for purposes of the arbitral proceedings such as hearing the parties, witnesses and experts or the perusal of documents, inspection of goods or monies or, finally, for deliberation purposes.[61] The arbitral tribunal enjoys a discretionary power to decide on procedural matters as it deems appropriate, in absence of agreement between the parties,[62] while preserving equal treatment of the parties and granting them an equal and full opportunity to present their case.[63] The Arbitration Act does not preclude holding hearings/meetings remotely, therefore, these can be held remotely, and the objection of a party does not affect the tribunal's decision. In this respect, the Court of Cassation expressly acknowledged the increased use of virtual hearings in arbitrations across the globe, and was keen on incorporating an express reference to the expression *'virtual hearings'* in English language in one of its

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57 Article 45 of the Arbitration Act.

58 MAHMOUD MOSTAFA YOUNES, *The Reference for Arbitration Principles*, Dar An-Nahda Al-Arabiyyah (2009), p. 349, para.472.

59 *Id*.

60 Cairo Court of Appeal, Case No. 43 of JY 138 (26 April 2022).

61 Article 28 of the Arbitration Act; MAHMOUD MOKHTAR AL-BERAIRY, *International Commercial Arbitration*, Dar An-Nahda Al Arabiyyah (2004), 3rd ed., p.103, para.61.

62 Article 25 of the Arbitration Act.

63 Article 26 of the Arbitration Act.

decisions rendered midst the COVID-19 Pandemic, which proves that the conduct of virtual hearings is consistent with the Arbitration Act.[64]

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, c under what conditions?

The Arbitration Act allows the arbitral tribunal to issue interim measures upon application by a party only if the parties agreed to grant the arbitral tribunal such power.[65] This agreement can well result from a general agreement as to the application of institutional rules which automatically grant the arbitral tribunal such power. For purposes of enforcement, the measure must satisfy all requirements imposed by the Egyptian procedural law which would likely entail the court's intervention to issue an order to this effect.[66] The court will have to abide by the rules prescribed for the enforcement of foreign awards in the case of an interim measure issued in an arbitration seated abroad but that requires execution in Egypt.[67]

It is worth noting that under the Arbitration Act interim relief may also be awarded in the form of an interim award (Article 42) which makes it subject to the ordinary procedures for the enforcement and recognition of arbitral awards. Nonetheless, interim awards do not a have *res judicata* effect as do final awards.

In the event where the party subject to the measure fails to comply with it, the arbitral tribunal may, upon request from the other party, allow the latter to undertake necessary procedures for its enforcement and execution without prejudice to the party's right to request same from the court as stated above.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

The Arbitration Act does not regulate the arbitrators' powers with respect to evidence. It merely gives them the right to request the originals of the documents submitted in support of the parties' claims (Article 30). However, it is unequivocal that the arbitral tribunal enjoys the power to admit and weigh evidence. Nevertheless, it should be noted that, as a matter of Egyptian law, rules of evidence have procedural and substantive aspects. The arbitral tribunal's powers include: undertaking any evidentiary procedure it deems appropriate, reversing a procedure it had previously ordered and the discretion to decide on the evidence on record. Arbitrators also have the right to accept or deny a party's request for an order on evidentiary procedures without prejudice to the party's defense rights.[68]

According to the Egyptian Code of Evidence, there is no specific prohibition with respect to the testimony of an employee of a private sector entity. However, if the employee is a public officer or an employee of a public entity, the law prohibits his testimony with regard to non-public information learnt during the performance of his/her work even after he ceases to work for this entity except if the latter allows it.[69]

4.5.6 Does it make it mandatory to hold a hearing?

The Arbitration Act accords the arbitral tribunal the power to decide whether the case requires a hearing for the parties to present their case and whether it is satisfied with the parties' written submissions and evidence.

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64 Court of Cassation, Challenge No. 18309 of 89 JY (27 October 2020). There are other judgments where Egyptian courts expressly refer to "virtual hearings" in English language. See for example, Cairo Court of Appeal, Case No. 43 of JY 138 (26 April 2022); and Cairo Court of Appeal, Case No. 53 of JY 138 (30 May 2022).

65 Article 24 of the Arbitration Act.

66 MAHMOUD SAMIR AL-CHARKAWI, *Interim and Provisional Measure in Commercial Arbitration*, Arab Journal of Arbitration, 19th ed. (December 2012), p. 78.

67 *Id*.

68 MAHMOUD SAMIR AL-CHARKAWI, *International Commercial Arbitration: A Legal Comparative Study*, Dar Al-Nahda Al-Arabiyyah (2011), p. 320-21.

69 Article 65 of the Arbitration Act.

The arbitral tribunal's power is however subject to any agreement by the parties on this matter which naturally takes priority over any such power.[70]

As a matter of law and practice, the arbitral tribunal can order a hearing or proceed on a documents-only basis absent the parties' agreement to the contrary.

4.5.7 Does it prescribe principles governing the awarding of interest?

The Arbitration Act does not limit the arbitral tribunal's power as to the award of interest. The tribunal must follow customary practice depending on the nature of the dispute. However, Egyptian courts will strictly deny enforcement of an award granting interest in excess of 7% per annum. The cap is imposed by the Court of Cassation and is considered a rule of public policy for purposes of enforcement and annulment even in the case where the parties agree on a higher rate, which will have to be reduced to the mentioned cap.[71] The only exception to the cap is the award of interest in certain banking transactions which the legislator exempts from the public policy rule. In this regard, interest may be payable at the rate set by the Central Bank of Egypt (the "CBE") which in fact may exceed 7% at the CBE's annual decision. This rate would apply in relation to (i) commercial loans; and (ii) amounts/expenses pertinent to the trader's trade (Article 50 of the Egyptian Commercial Code), in which cases public policy would not be contravened.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

The Arbitration Act does not include any provision relating to the allocation of costs which accords the tribunal a great discretion in this regard. Arbitration tribunals seated in Egypt are generally inclined to follow international practice as to costs' allocation by adopting the "costs follow the event" rule.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

Albeit the absence of any legal text providing for the arbitrator's immunity, such immunity is presumed from the legislative immunity accorded to the judge/court.[72] However, the immunity does not apply in cases of fraud, deceit or gross negligence, in which cases the arbitrator's civil liability can be exceptionally invoked before the courts.[73]

4.6.2 Are there any concerns arising from potential criminal liability for any participants in an arbitration proceeding?

There are no special provisions pertaining to the potential criminal liability of participants in arbitration proceedings seated in Egypt. However, in January and May 2019 the Egyptian courts passed and confirmed imprisonment sentences against certain arbitrators and members of a purported local arbitration institution who were engaged in the rendering of an arbitral award in sham arbitral proceedings. Charges of misappropriation by fraudulent means and forgery were made against the sentenced individuals.[74] This is an exceptional case that involved a flagrant criminal scheme that resulted in the issuance of a US$18 billion award against Chevron and enforcement petitions were also declined by US courts in California and Houston in relation to the award resulting from the sham proceedings in Cairo.

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70 Article 33 of the Arbitration Act.

71 Court of Cassation, Challenge No. 3778 of Judicial Year 64 (17 February 2004).

72 FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., pp. 367-68.

73 FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., pp. 369-71.

74 Al-Nozha Misdemeanor Court in Cairo, Case No. 12648 of Judicial Year 2018; Cairo Court of Appeal, Appeal No. 695 of Judicial Year 2019 (East Cairo Appeals). Whilst the lower court had passed 3-year imprisonment sentences for the arbitrators and the other implicated persons, the Court of Appeal reduced the sentence of one of the arbitrators to one year.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

The Arbitration Act allows the parties to agree to dispense with the reasoning requirement. Another exception is in the case where the applicable procedural rules do not impose a requirement as to the inclusion of the arbitral tribunal's reasoning for the decision.[75] Absent these exceptions, an unreasoned award is susceptible of annulment as per the Arbitration Act.[76]

In this regard, the Cairo Court of Appeal held that the lack of reasoning in an arbitral award, is not a public policy requirement, in compliance with Article 43 of the Arbitration Act which enables the parties to release the tribunal from rendering a reasoned award. In this context, the Court found that the arbitral awards subject to the nullity action were sufficiently reasoned and clarified that a contradicting reasoning is not synonymous to the lack of reasoning, because the former is a substantive defect, whilst the latter is a formal defect. The Court explained that by permitting the court adjudicating the nullity action to examine whether there exists any contradiction in the reasoning of an award, this would be a backdoor for the court to re-examine the merits of the case through the nullity action, which falls outside the scope thereof.[77]

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

A party may independently waive its right to seek the annulment of the award. However, this waiver will only produce its effect if made after the issuance of the arbitral award where it will preclude the initiation of any annulment proceedings.[78] This applies *mutatis mutandis* to the parties' agreement to waive this right.[79]

Waiver may be explicit or implicit in accordance with Egyptian legal principles. A party's acceptance of the enforcement of the award is considered as an implied waiver to seek annulment.[80]

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

For purposes of validity, the award must satisfy a set of normative requirements notably: (i) being made in writing, (ii) the inclusion of the arbitrators' signature (in case of dissent, the signature of the majority and the reason for the dissent), names and addresses of the parties and arbitrators, capacities and nationalities of the arbitrators, (iii) the inclusion of a summary of the parties' claims, submissions and documentation, (iv) the inclusion of the *dispositive* (operative part), (v) the date and place of issuance and (vi) the reasoning if there is no agreement by the parties to exclude such reasoning. The award must be accompanied by a copy of the arbitration agreement or an explicit citation thereto within the text of the award.[81]

At the time of the deposit of the award for enforcement, a certified Arabic translation of the award must accompany its original or copy.[82]

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75 Article 43-2 of the Arbitration Act.

76 MOHAMED SELIM AL-AWWA, International Arbitration in Egypt and the Arab Countries: Commented based on scholarly writings and case law, 2014 ed., Vol. II, p. 374.

77 Cairo Court of Appeal, Case No. 53 of JY 138 (30 May 2022).

78 Article 54-1 of the Arbitration Act.

79 FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 782.

80 *Id.*

81 Article 43 of the Arbitration Act.

82 Article 47 of the Arbitration Act.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

An award is not subject to an appeal before the Egyptian courts. Save for setting aside (annulment), any other form of challenge of or recourse against the arbitral award is strictly prohibited by the Arbitration Act.[83]

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

5.5.1 Enforcement of Awards subject to the Arbitration Act

The scope of the Arbitration Act only encompasses local and international arbitrations seated in Egypt or arbitrations seated abroad where the parties agree on the application of the Arbitration Act. With respect to enforcement procedures, the Arbitration Act sets the following requirements:

- the deposit of an original or a signed copy of the award and its Arabic translation if the award is in another language;
- the deposit of a copy of the arbitration agreement; and
- a copy of the minutes indicating the deposit of the award at the court.[84]

The decision is then issued without the need for a hearing. Pursuant to a Constitutional Court ruling, a party may contest an order granting or refusing enforcement within 30 days of its issuance.[85] An application for enforcement will not be accepted except after the lapse of the time-limit set for the application for annulment of the award (90 days from the date of notification to the losing party). Enforcement may be refused in the following cases:[86]

- contradiction with a previous judgment by the Egyptian courts on the subject matter of the dispute;
- contravention of rules of public policy (pertaining to, amongst others, arbitrability); and
- improper or lack of notification to the losing party.

5.5.2 Enforcement of Foreign Awards

In addition to the Arbitration Act requisites above, enforcement of foreign awards is also subject to the New York Convention requirements, to which Egypt is signatory.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

The Arbitration Act specifically prohibits the possibility to apply for enforcement before the lapse of the time-limit for the application for annulment.[87] Nonetheless, the mere application for annulment proceedings does not, *per se*, stay the enforcement of the arbitral award – if a party applies for annulment, this does not preclude the other party from applying for enforcement and does not even preclude the issuance of an order to this effect.[88]

The court may however stay enforcement if the applicant for annulment so requests in its application which shall include the reasons for such request. The court will rule on the stay of enforcement within 60 days from

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83 Article 52 of the Arbitration Act.

84 Article 56 of the Arbitration Act.

85 Article 58-3 of the Arbitration Act.

86 Article 58-2 of the Arbitration Act.

87 Article 58-1 of the Arbitration Act.

88 FATHI WALI, Arbitration in local and international commercial disputes, Munsha'at Al Ma'aref, 2014 ed., p. 620.

the date of the first hearing. If it does stay enforcement, it must decide on annulment within 6 months from the date of the order providing the stay.[89]

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

Egyptian law provides for the supremacy of international conventions. In this instance, the Egyptian courts shall apply the New York Convention. However, the Arbitration Act does not contain a provision that is similar to the New York Convention with respect to the possibility for the court to refuse enforcement based on the setting aside of the award by the courts of the seat. Egyptian courts have not issued any decisions that determine a clear position on the matter and will assess the possibility of enforcement of a set aside award on a case by case basis.

5.8 Are foreign awards readily enforceable in practice?

Egypt is a signatory State of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Egyptian courts are favorable to enforcement despite the lengthy procedure applicable to the enforcement of foreign awards pursuant to Article 3 of the New York Convention. Generally, recent practice shows an increasingly supportive position for the enforcement of foreign awards in Egypt.

The Cairo Court of Appeal shed light on the importance of the New York Convention forming part of the Egyptian legal system, which extends the applicability of the Arbitration Act to the enforcement of foreign arbitral awards, given that the Arbitration Act provisions are less onerous than the default provisions for the enforcement of foreign judgments in the Egyptian Code of Civil and Commercial Procedures. The Court added that the New York Convention is a distinguished international legal instrument governing the settlement of international trade disputes via arbitration in an equitable, swift and efficient manner. Finally, the Court held that national courts are bound to respect these unified and well-known principles and standards, as these "*most probably*" relate to international procedural public policy.[90]

6. Funding arrangements

6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

The Arbitration Act does not include provisions relevant to contingency fees. However, Egyptian Advocacy Law No. 17 of 1983 allows lawyers to receive contingency fees, and therefore allows them to enter into alternative fee arrangements, in a margin of 5% to 20% of the outcome of the case. However, the 5% minimum was declared unconstitutional by the Supreme Constitutional Court, and so there is no minimum threshold as a matter of Egyptian law.[91] Alternative fee arrangements between client and counsel cannot be based on the client's solvency as ruled out by the Supreme Constitutional Court.[92]

The Arbitration Act is silent on the issue of third-party funding. Albeit the absence of significant case law on the matter, this does not preclude, *per se*, arbitration tribunals from embracing this increasingly important practice.

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89 Article 57 of the Arbitration Act.

90 Cairo Court of Appeal, Case No. 2 of JY 139 (9 March 2022).

91 Supreme Constitutional Court, Case No. 22 of JY 14 (12 February 1994).

92 *Id.*

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

The Arbitration Act and the Evidence Law are silent on the matter of blockchain-based evidence. In principle, the parties are free to agree on the procedural rules governing their arbitral proceedings and the Arbitration Act does not regulate the arbitrators' powers with respect to evidence. However, it is admitted in practice and by courts that arbitrators have the power to admit, assess and weigh evidence.[93] So the validity of blockchain-based evidence would be subject to the parties' agreement on its applicability and the arbitrators' discretion, which remains to be tested.

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

A distinction shall be made between arbitration agreements and arbitral awards.

Arbitration agreements must be in writing.[94] The Arbitration Act does not expressly include the possibility to enter into an arbitration agreement by way of electronic means. However, it does not exclude it, and therefore, nothing prohibits the conclusion of arbitration agreements by electronic means and insofar as the electronic communication fulfills the requirement of writing. It is our opinion that arbitration agreements recorded on a blockchain may be recognised as valid, but this has not yet been tested to the best of our knowledge.

Arbitral awards must be in writing and signed by the arbitrators.[95] The award must be authenticated and cannot be sent electronically. Practice has not yet reached the stage of electronic submission of awards. Therefore, awards recorded on a blockchain would not be recognised as valid.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

The arbitration agreement and the award cannot be submitted electronically to the court. A Blockchain arbitration agreement and award would not be considered as originals or admissible before Egyptian courts. The party seeking enforcement of an award must submit a hard copy of the arbitration agreement and the original award or a certified/authenticated signed copy of the award, along with other requirements provided under the Arbitration Act for obtaining the *exequatur*.[96]

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

In practice, arbitral awards always bear the actual signature of arbitrators, although, Egypt enacted Law No. 15 of 2004 for Digital Signatures, it has not been implemented until date in relation to the signing of arbitral awards. Courts are still accustomed to receiving actually signed awards. The award must be authenticated and cannot be electronically signed or submitted electronically to the court.

8. Is there likely to be any significant reform of the arbitration law in the near future?

There are ongoing discussions for reform and possible amendments are being considered by the committee established by Decree No. 8 of 2022 issued on 22 March 2022 by the Deputy Minister of Justice for Arbitration

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93 Cairo Court of Appeal, Appeal No. 26 of 120 JY (22 November 2003); and Cairo Court of Appeal, Case No. 52 of 130 JY (10 September 2014).

94 Article 12 of the Arbitration Act.

95 Article 43.1 of the Arbitration Act.

96 Article 56 of the Arbitration Act.

and International Disputes. The committee is headed by the Deputy Minister of Justice for Arbitration and International Disputes and comprises members of the ministry's arbitration and international disputes' department as well as other arbitration practitioners, including academics and lawyers. The scope of the amendments is limited, and the committee's work is still ongoing and not yet finalised.

9. Compatibility of the Delos Rules with local arbitration law

The Arbitration Act preserves the parties' right to choose the procedural rules governing their dispute, which includes the Rules of arbitral institutions or centres, in Egypt or abroad.[97] In this respect, the Court of Cassation has provided insight on what is meant by an arbitral institution under Article 3 of the Arbitration Act by referring to the ICC International Court of Arbitration and stating the following:[98]

"It is inferred from the travaux préparatoires of Law No. 27 for the year 1994 on Arbitration in Civil and Commercial Matters, and its international sources, and the doctrine and jurisprudence of international arbitration, that a permanent arbitral institution or an arbitration centre, considered under this law [the Arbitration Act], is that institution or that centre established and based in Egypt by virtue of an international or regional treaty, law, or pursuant to a law, for the purpose of administering international commercial arbitration cases, as well as all permanent arbitral institutions or arbitration centres headquartered outside Egypt, which are internationally or regionally well-known and has gained the trust of clients – over the years – in the field of international business, trade and investment, for their internal rules and regulations and stable administrative bodies refined by practical experience and frequency of administering arbitration cases, which ultimately provides for legal and procedural security for the parties to arbitration." [Bracketed words added]

Hence, the Delos Rules are compatible with the Arbitration Act, as Delos fulfils the criteria of an arbitral institution.

10. Further reading

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- Samir El Sharkawy, International Commercial Arbitration (Dar Al Nahda Al Arabiya 2011) (in Arabic)
- Mokhtar Berreri, Commercial International Arbitration (Dar Al Nahda Al Arabiya 2004) (in Arabic)
- Okasha Mohamed Abdel Aal and Mostafa Mohamed Al Gammal, Arbitration in International and Domestic Private Relationships, (Al Halaby legal publications, Beirut – Lebanon 1998) (in Arabic)
- Mohamed S. Abdel Wahab and Noha Khaled Abdel Rahim, "National Report for Egypt (2018 through 2023)", in Lise Bosman (ed), ICCA International Handbook on Commercial Arbitration, (Kluwer Law International; ICCA & Kluwer Law International 2023, Supplement No. 126, April 2023), pp. 1 – 90.
- Mohamed S. Abdel Wahab, "Investment Arbitration: An Update on Egypt" in J. Fouret (ed.) Enforcement of Investment Treaty Arbitration Awards: A Global Guide (Globe Business Publishing 2021)
- Mohamed S. Abdel Wahab, "Construction Arbitration in the MENA region" in The Guide to Construction Arbitration GAR Fourth Edition – 2021
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- Mohamed S. Abdel Wahab and Noha Khaled, "Egypt – New Developments in Arbitration Law", in Yearbook of Islamic and Middle Eastern Law, Volume 21 (2019-2021).

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97 Article 25 of the Arbitration Act.

98 Court of Cassation, Challenge No. 14126 of 88 JY (22 October 2019).

- Mohamed S. Abdel Wahab, "The Egyptian Court of Cassation Sets Standards and Affirms Arbitration-Friendly Principles and Trends in a Ground-Breaking Judgment", Kluwer Arbitration Blog (22 December 2020).
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- Mohamed S. Abdel Wahab, "Petroleum Concessions in Egypt: A Recipe for Disputes?", BCDR International Arbitration Review, Volume 7, Issue 1 (2020), pp. 72 – 108.
- Mohamed S. Abdel Wahab, "Investment Arbitration: The Chronicles of Egypt – A Perilous Path to Pass", in International Journal of Arbitration, Mediation and Dispute Management CIArb (Sweet & Maxwell), Volume 83, Issue 1 (2017).
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ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, *i.e.* with offices and a case team?	Cairo Regional Centre for International Commercial Arbitration.
Main arbitration hearing facilities for in-person hearings?	In-person hearings are conducted at the premises of the Cairo Regional Centre for International Commercial Arbitration which has 3 hearing rooms.
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	Xerox offices.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	ϕ
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	ϕ
Other leading arbitral bodies with offices in the jurisdiction?	ϕ

DELOS
dispute resolution

GUIDE TO ARBITRATION PLACES (GAP)

FRANCE

CHAPTER PREPARED BY

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AUGUST DEBOUZY

FOR FURTHER INFORMATION

GAP TABLE OF CONTENTS | GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS | FULL GAP ONLINE

EN DELOS MODEL CLAUSES
ES DELOS CLÁUSULAS MODELO
FR DELOS CLAUSES TYPES
PT DELOS CLÁUSULAS MODELO

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

1. Law
   a. Framework
   b. Adherence to international treaties
   c. Limited court intervention
   d. Arbitrator immunity from civil liability
2. Judiciary
3. Legal expertise
4. Rights of representation
5. Accessibility and safety
6. Ethics

Evolution of above compared to previous year =

7. Tech friendliness
8. Compatibility with the Delos Rules

VERSION: 12 FEBRUARY 2024 (v01.02)

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 any and all responsibility.

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? (if mixed or other, specify)	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 provides for a general rule of confidentiality of international arbitration. 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. Yet, 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 state 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 required.
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 and/or remotely?	French law does not contain any specific provision requiring that meetings and/or hearings must be held at the seat of the arbitration. In a general manner, pursuant to Article 1464 CCP (domestic arbitration) and Article 1509 CCP (international arbitration), proceedings are governed by the rules contained in the arbitration agreement itself or by the institutional rules that the arbitration agreement refers to but they have to be conducted in accordance with essential procedural principles of French law (such as notably due process). If the arbitration agreement and/or designated institutional rules are silent on a specific point, the arbitral tribunal has discretion to decide on such point. Therefore and unless otherwise provided by the parties, there is no obstacle under French law that the meetings and/or hearings be held outside of the seat or remotely, notably when the arbitration rules agreed to by the parties provide for such possibility, as long as the essential procedural principles are complied with.
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 adopted on 28 February 2017 a resolution confirming that third-party funding is a positive development for access to justice and does not contravene French Law. 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 published in October 2017 a status report

	reflecting on the evolution of the *quota litis* pact and the possible lifting of its prohibition.
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.
Party to ICSID Convention?	France signed the ICSID Convention on 22 December 1965. It was ratified on 21 August 1967 and it entered into force on 20 September 1967.
Compatibility with Delos Rules?	Delos Rules (in their version applicable as from 14 January 2020) are fully compatible with French law. It should be specified, however, that the general waiver of the right to challenge the award under Article 10(2) of Delos Rules will not preclude a party from bringing annulment proceedings.
Default time-limitation period for civil actions (including contractual)?	Pursuant to Article 2224 of the French Civil Code, the default limitation period applicable to civil actions is five years from the day on which claimant learnt or should have learnt about the facts enabling him to exercise his right. In contractual matters, it is considered that such 5-year period starts to run from the date of occurrence of the damage. There are however several exceptions to this default principle, concerning both the starting point of the limitation period and its duration that apply in specific matters (for instance, insurance law). Such exceptions are set forth under the provisions of the French Civil Code governing such specific matters and other statutory provisions.
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 a foreign arbitral award at the seat of the arbitration does not automatically prevent the award from being enforced in France; (3) French State courts have admitted, on several occasions and in some limited circumstances, the possibility to extend the arbitration agreement to non-signatories; (4) The Paris Court of Appeal created in April 2018 an international chamber that has jurisdiction to hear (i) appeals of first-instance decisions in cross-border commercial and financial matters, (ii) annulment proceedings against international arbitral awards rendered in Paris as well as (iii) challenges against *exequatur* orders that allow enforcement of foreign awards.
World Bank, Enforcing Contracts: *Doing Business* score for 2020, if available?	73.5 (2020). France was ranked 16 out of the 190 countries included in the study.
World Justice Project, Rule of Law Index: *Civil Justice* score for 2023, if available?	0.69 (2020). France was ranked 22nd out of the 142 countries included in the study.

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. Likewise, the grounds allowing a party to (i) set aside an award rendered in France in an international arbitration or to (ii) challenge the *exequatur* orders allowing enforcement of foreign awards in France are very limited and actions initiated on such grounds are dismissed in the vast majority of cases. Finally, the enforcement of foreign arbitral awards is highly effective, notably because State judges make only a limited review of the award while deciding whether an enforcement order (*exequatur*) should be granted and given that a foreign 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? 2006 version?	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, especially in *ad hoc* proceedings, as his role is limited in proceedings governed by institutional rules. In addition, the Paris Court of Appeal has recently created a dedicated international chamber exclusively focused on appeals against first-instance decisions in cross-border commercial matters and some other specific matters such as annulment proceedings against international arbitral awards rendered in Paris and challenges against the enforcement orders (these cases were previously heard before Section 1, Chamber 1 of the Court) in order to ensure coherent case law. Similarly, the French *Cour de cassation* – the highest judicial authority in annulment 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 must give priority to arbitral tribunal to rule on its own jurisdiction unless *(i)* the arbitral tribunal is not constituted yet and *(ii)* the arbitration agreement is manifestly void or it is manifestly inapplicable to the dispute. 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.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Should the ruling on jurisdiction (or other issues) be rendered in the form of partial award, Article 1482 CCP, which applies to both domestic and international arbitration, requires that it (i) briefly present parties' positions and their arguments and that it (ii) contain the underlying reasons. In such case, the reasons would thus have to be exposed in the partial award itself.
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. On the contrary, French law is more liberal than the New York Convention as the annulment of the award at the seat of arbitration is not a ground for refusing its enforcement or recognition in France. 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 arbitrator(s) and it must be adopted by a majority vote if the tribunal consists of more than one arbitrator.
Do annulment proceedings typically suspend enforcement proceedings?	Under Article 1526 CCP, neither (i) an action for annulment against an award nor (ii) an appeal against an order granting *exequatur* automatically suspend enforcement proceedings. However, a party may request suspension and/or adaptation of enforcement by filing a petition to the First Chairman of the Court of Appeal or the judge in charge of managing the proceedings ("*conseiller de la mise en état*"), once such judge is appointed by the Court of Appeal. In order to succeed, the applicant must demonstrate that enforcement is likely to lead to "manifestly

	excessive consequences" (e.g. enforcement can lead to debtor's insolvability; serious risk of non-recovery of funds in case the award is annulled and/or the order granting exequatur is reversed, etc.).
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.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	Articles 1464 CCP (applicable to domestic arbitration) and 1509 CCP (applicable to international arbitration) grant the arbitral tribunal wide discretion to conduct the proceedings in the manner it deems appropriate as long as it complies with the procedural rules specified by the parties in their arbitration agreement and/or the designated institutional rules. However, while taking procedural measures, such as ordering a remote hearing, the arbitral tribunal shall always ensure that essential procedural rights of the objecting party are complied with (adversarial proceedings, right to be heard and to present defence, etc.). If a remote hearing does not infringe any party's essential procedural rights, the tribunal's order should not affect the recognition or enforceability of the future award.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	Under Article 2060 of the Civil Code, French public entities cannot, in principle, validly agree to arbitration. However, some types of public bodies can be authorised to do so by way of a State decree. However, the French *Cour de cassation* considers that Article 2060 does not apply to international arbitration. Specific rules regarding enforcement measures against public bodies are provided under Articles L. 111-1-1 to L. 111-1-1-3 of the Code of Civil Enforcement Proceedings[1]. Article L. 111-1-1 requires judge's prior authorisation in order to perform enforcement measures against public bodies. Article L. 111-1-2 of the same Code lists three criteria, one of which at least must be complied with so that the judge can issue such an authorisation. Finally, Article L. 111-1-3 reinforces the immunity of diplomatic property by requiring a "special and express" waiver to implement an enforcement measure against such type of property.
Is the validity of blockchain-based evidence recognised?	There is no specific provision under French law regarding the validity of blockchain-based evidence. Indeed, the French legislator seems to consider that there is no need to create a new category of evidence as the legality of blockchain-based evidence can be assessed by French judges by considering the existing general rules of evidence.[2] The mere fact that the evidence is blockchain-based

1 https://www.august-debouzy.com/en/blog/943-sovereign-immunity-a-convenient-amendment-to-the-sapin-ii-law

2 https://questions.assemblee-nationale.fr/q15/15-22103QE.htm

	will not automatically result in discarding it. Indeed, in commercial matters (and more generally in almost all civil matters), the principle is to admit all type of evidence.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	As regards international arbitration, French law does not require that an arbitration agreement be in "writing" whereas such requirement exists with respect to domestic arbitration. It thus seems that as long as a party can prove the existence of an arbitration agreement, be it through blockchain-based evidence, its existence is likely to be recognised in case of an international arbitration. With respect to domestic arbitration, the French judge is likely to analyse whether the use of blockchain can amount to a valid electronic signature. Likewise, Article 1480 CCP (applicable to domestic arbitration) and Article 1513 CCP (applicable to international arbitration) both require that the award be signed by the arbitrators. In order to assess whether the award is validly signed, the French judge is thus likely to analyse whether the use of blockchain can amount to a valid electronic "signature".
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	Article 1515 CCP is less stringent than Article IV of the New York Convention as it does not require production of the "duly authenticated" original copy of the award for the purposes of recognition and enforcement. Applicant needs to merely present the original award and the original arbitration agreement (or duly certified copies). As French law does not require any particular form for the original of the award and/or the arbitration agreement, it appears that a French court could accept a blockchain arbitration agreement and/or award for the purposes of recognition and enforcement as long as the applicant manages to establish that the submitted documents are originals.
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 whose enforcement is sought 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 French arbitration law and the UNCITRAL Model Law

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.[3] 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.[4]

Several specific provisions related to arbitration can be found outside the CCP. By example, Article L. 721-3 of the French Commercial Code 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 been amended by the Act 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 as Article

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

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

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 French arbitration law

The last major reform of 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 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. However, the exact content of French arbitration law is constantly being re-shaped by case law.

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.[5]

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.[6]

2.2 French court's reaction to absence of express designation of a 'seat' in the arbitration agreement

The absence of express designation of a 'seat' in the agreement would not lead French courts to consider such agreement as invalid insofar as the designation of a seat is not required under French arbitration law.

Furthermore, French courts would not proceed to the designation of the seat themselves. Indeed, pursuant to Articles 1464 CCP (applicable to domestic arbitration) and 1509 CCP (applicable to international arbitration), the proceedings shall be conducted by the arbitral tribunal in accordance with the procedural rules agreed to by the parties. Such rules usually contain specific provisions regarding the designation of the seat by the arbitral institution or by the arbitral tribunal itself. In case the parties did not agree to any specific procedural rules, Articles 1464 and 1509 CCP give the arbitral tribunal discretion to determine the rules governing the proceedings (including the seat) as long as such rules comply with essential procedural principles of French law.

2.3 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.

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

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

The principle of severability of the arbitration agreement was first formally recognized in international arbitration by the *Cour de cassation* in 1963.[7] It has since been enshrined in Article 1447 CCP, which is applicable to both domestic and international arbitration.

2.4 Form of the arbitration agreement

In domestic arbitration, pursuant to Article 1443 CCP, the arbitration agreement 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 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.[8] 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.[9]

2.5 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 on several occasions that the application of the arbitration agreement could be extended to third parties where (i) their consent can be found or, at least, inferred from relevant factual circumstances or where (ii) they were involved in the negotiation, performance and/or termination of the contract.

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.[10] 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.[11] 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.[12] 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.[13]

Secondly, French courts have ruled that non-signatories could also be bound by the arbitration agreement in presence of a group of contracts that are related to each other. 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 if (i) such contracts form part of a single economic operation with the contract containing the arbitration agreement and (ii) it can be, at least, presumed that the third parties knew about the existence of the arbitration agreement. Such knowledge is often inferred from the involvement of third parties in the performance of the main contract or their implication in the underlying global economic operation. For example, the *Cour de Cassation* admitted that the arbitration agreement contained in the main

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

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

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

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

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

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

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

contract was also applicable to a sub-contractor who (i) knew about the existence of the arbitration agreement and (ii) was directly involved in performance of the main contract[14].

Thirdly, French courts also accepted to extend the application of the arbitration clause to third parties in several cases where it was proven that such third parties (i) belonged to the same group of companies as the party who signed the contract containing the arbitration clause and (ii) directly participated in the negotiation, conclusion and/or performance of the contract. This solution was admitted for the first time by the Paris Court of Appeal in its decision[15] concerning the motion to set aside the award in the *Dow Chemical v/ Isover-Saint-Gobain* case rendered under the auspices of the ICC[16]. It was subsequently applied in several other cases[17].

Finally, French judges also approved the extension of the arbitration clause to third parties in some cases where a third party created an impression that it was an actual party to the agreement. 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*".[18]

2.6 Restrictions to arbitrability

2.6.1 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 (i) the civil status or capacity of a person, (ii) relating to divorce or legal separation, (iii) involving public authorities and public entities (see para. **2.6.2.** below) and (iv) 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 characterise certain breaches of competition law and, as a consequence, annul a contract or award damages,[19] 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.

2.6.2 Restrictions in relation to specific persons

(i) Non-professionals

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,

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14 *Cour de cassation,* 1st civil Division, 26 October 2011, n°10-17.708.

15 Paris Court of Appeal, 21 October 1983.

16 ICC award n°4131, 23 September 1982.

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

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

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

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 as the employee had a choice to solve his dispute against the employer either before the arbitral tribunal or before the state employment court.[20]

As stated above, this solution was extended to domestic arbitration in November 2016 by amending Article 2061 of the Civil Code, which now reads 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.

In a recent ruling dated 30 September 2020, the *Cour de cassation* raised an interesting question of validity of the arbitration agreements in a consumer contract entered into between a French national and a Spanish law firm. It was decided that the provisions of the EU law that protect consumers against unfair terms prevail over the "*kompetenz-kompetenz*" principle. As such, the *Cour de cassation* confirmed the decision of the Versailles Court of Appeal that had considered that an arbitration clause contained in an agreement for the provision of legal services was an unfair term within the meaning of the EU Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and thus discarded it[21]. It is uncertain whether the solution adopted in this ruling is of general application as there has been no other recent decision on this point. However, it should be stressed that in order to conclude that the arbitration clause was an unfair term, the Versailles Court of Appeal heavily relied on the circumstances of the case, and the specific fact that the clause had not been subject to any negotiation and that it was standardised.[22] As such, it would be premature to conclude, based on this single decision, that any arbitration agreement stipulated in an international consumer contract will be considered by French judges as unfair term under EU law.

(ii) State entities

As regards public State entities, the rule in domestic arbitration set forth 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[23] 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 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.[24]

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.[25]

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

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

21 *Cour de cassation,* 1st civil Division, 30 September 2020, n°18-19.241.

22 Versailles Court of Appeals, 15 February 2018, No 17/03779.

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

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

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

courts, they must decline their jurisdiction if a motion to dismiss for lack of jurisdiction is raised by defendant unless *(i)* the arbitral tribunal has not yet been constituted and *(ii)* the arbitration agreement is "*manifestly null*" or "*manifestly inapplicable*".

It stems from Article 1448 CCP that 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.

The notion of "*manifestly null or manifestly inapplicable*" used in Article 1448 CCP 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 can only rule on the alleged nullity or inapplicability on a *prima facie* basis.[26] 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)*.

Still, 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[27] or where a dispute was manifestly outside the scope of the contract containing the arbitration agreement[28].

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.[29] 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 as the court cannot decline its jurisdiction on its own initiative (Article 1448 CCP). Such motion to dismiss must be brought before any defence on the merits.[30]

Please note that, in a recent ruling, the *Cour de cassation* decided that the provisions of the EU law protecting consumers against unfair terms prevail over the "*kompetenz-kompetenz" principle.* The *Cour* thus discarded an arbitration clause contained in an international contract concluded between a professional and a consumer as it considered such clause as unfair (for more details see para. **2.6.2.** above)[31].

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 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.[32]

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*

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

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

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

29 *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.

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

31 *Cour de cassation,* 1st civil Division, 30 September 2020, n°18-19.241.

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

even if such proceedings are seated outside of 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. With respect to the risk of a denial of justice, the *Cour de cassation* decided that the French *juge d'appui* had jurisdiction to appoint a member of the arbitral tribunal where one of the parties refused to do so as such situation led to the blockage of the arbitration proceedings.[33]

In a recent decision rendered on 16 April 2021, the Paris First-Instance Court reminded that the French *juge d'appui* did not have jurisdiction to intervene with respect to an arbitration seated outside France where no risk of denial of justice was established[34].

4. The conduct of the proceedings

4.1 Legal counsel

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[35]. This is notably the case when the information that the party relies on to challenge the arbitrator was publicly accessible and could have been obtained before the expiry of the timeframe set by institutional rules[36].

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".[37] It was held that an arbitrator had a duty to disclose the fact that other lawyers from his firm were advising the parent company of one of the parties when the arbitral proceedings were on-going.[38] However, it has been held that the fact that an arbitrator attended a symposium in which one of the parties took part,[39] or the political opinions of an arbitrator[40] do not constitute circumstances which need to be disclosed. Arbitrators are in a general manner dispensed from disclosing circumstances deemed notorious.[41] A French court will only annul an award if it

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33 Cour de cassation, 1st civil Division, 1 February 2005 ; n°01-13.742.

34 Paris First-Instance Court, 16 April 2021, n°21/50115.

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

36 *Cour de cassation*, 1st civil Division, 19 December 2018, n°16-18.349.

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

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

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

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

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

determines that the undisclosed circumstance could have created a reasonable doubt as to the impartiality of the arbitrator.[42]

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 First-Instance Court (*Président du Tribunal judiciaire*[43]), 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 First-Instance Court (*Président du Tribunal judiciaire 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.[44]

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).

In the aforementioned recent decision of 16 April 2021, the Paris First-Instance Court reminded that in case of an international arbitration governed by institutional rules, the role of the *juge d'appui* is not to replace the arbitral institution that is responsible itself for deciding procedural issues arising from the application of its rules and that the only event in which the *juge d'appui* can intervene is when the institution fails to act and such failure hinders the constitution of the arbitral tribunal. Based on this general principle, the Court held

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

43 Formerly *Tribunal de grande instance*.

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

that the *juge d'appui* had no jurisdiction to hear a dispute arising from the decision taken by the arbitral institution that, on a *prima facie* basis, there was no arbitration clause applicable to 9 out of 11 defendants designated by claimant and that the arbitration proceedings should thus only proceed with respect to the remaining 2 defendants, as there was no evidence of any failure of the arbitral institution that could hinder the constitution of the arbitral tribunal.[45]

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 State courts from ordering interim measures as long as the arbitral tribunal has not been constituted. Indeed, pursuant to Article 1449 CCP (applicable to both domestic and international arbitration), *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, which requires that the application be based on a legitimate ground and made before any action on the merits, or *(ii)* grant conservatory measures in case of urgency.

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 have generally discretion to organise the 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 specifically 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 in both domestic and international arbitration.

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 demonstrate the very existence of a confidentiality obligation, which shows that the confidentiality should not be taken for granted.[46] 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 Paris Court of Appeal recently ruled that parties' agreement to extend

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45 Paris First-Instance Court, 16 April 2021, n°21-50115.

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

the time limit specified in the terms of reference can be inferred from their manifest intention to participate in the arbitral proceedings after its expiry[47].

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 have full discretion to determine if the hearings will actually take place and if so, the place of such hearings. Meetings, hearings and even deliberations of the arbitral tribunal can take place outside of the seat of the arbitration.[48] Furthermore, French law does not contain any provision prohibiting that the meetings and/or the hearings be held remotely. Should a party object to a remote meeting and/or hearing, it appears from the French law perspective that the arbitral tribunal can still order that such meeting and/or hearing be held remotely if such decision does not violate any essential procedural right of the objecting party (such as the right to present defence, the right to adversarial proceedings, equality of the parties). With respect to a similar question, the Paris Court of Appeal decided that the fact that witnesses had been heard through an audio conference instead of a video conference due to technical problems did not violate the principle of adversarial proceedings, especially because no party raised any objection in this regard at the time of the hearing.[49]

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.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 in this matter (see para. **4.4.** above).

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.[50] A question has been raised as to whether French lawyers 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 lawyers. 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 both domestic and international arbitration, arbitrators have a general duty to ensure that the equality of the parties and due process are respected as the non-respect of basic procedural guarantees can be a reason for annulment of the award. The parties must thus be given a

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47 Paris Court of Appeal, 27 November 2018, n°17/01628.

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

49 Paris Court of Appeal, 3 June 2010, n°09/22247.

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

reasonable opportunity to present their arguments. As such, should the arbitral tribunal wish to decide the case without holding a hearing, it should ensure that such decision would not infringe the procedural rights of any of the parties. The same analysis should be adopted in cases where the arbitral tribunal would like to hold the hearing remotely.

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. The judge can also decide not to apply Article 700 CCP at all based on the equity considerations and thus not to grant any costs to the winning party. Indeed, pursuant to Article 700 CCP, the judge shall base its decision on equity and financial situation of the succumbing party. This provision is not directly applicable to arbitral proceedings but arbitrators may take it into account while deciding on costs, especially if the arbitration is seated in France. Please, however, note that Article 700 CCP will be applicable in case of arbitration-related State court proceedings such as annulment proceedings or challenges against *exequatur* orders. The general practice of French courts is to limit the amount of recoverable legal fees (which are often below the amount claimed or the amount of the costs effectively incurred). However, in case of annulment proceedings, the recoverable legal fees often correspond to the real amount of legal fees spent by the winning party.

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.[51] 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*" 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.[52] 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[53] or to disclose a relevant circumstance regarding their impartiality.[54]

Two recent decisions rendered by the Paris First-Instance Court raised the question of jurisdiction over disputes regarding arbitrator's civil liability. In its decision of 16 April 2021, the Court stated that arbitrator's duty to reveal any circumstance that could affect its independence and/or impartiality arises from the

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

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

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

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

relationship between the arbitrator and the parties (and not from the agreement between the arbitral institution and the parties) and that such action should be brought before a court that has jurisdiction to hear a contractual liability dispute against the arbitrator.[55] In another decision rendered on 31 March 2021, the Court decided that EU Regulation No 1215/2012 (the so-called Brussels I Bis Regulation) was applicable to a contractual liability action against an arbitrator and that the appropriate court to hear the dispute is the one located in the place where the arbitrator effectively performed his "intellectual services" in the scope of his arbitrator's appointment. In that case, the Court considered that even though the arbitration was seated in Paris, the arbitrator performed his "intellectual services" in Germany as the hearing and the deliberations between the members of the arbitral tribunal occurred in Germany.[56]

However, by a ruling of 22 June 2021, the Paris Court of Appeals reversed the decision of the Paris First-Instance Court dated 31 March 2021 by stating that (i) EU Regulation No 1215/2012 does **not** apply to a liability claim against an arbitrator as such action is expressly excluded from its scope under the exception provided under Article 1(2)(d)[57] and that, as a general rule, (ii) the tribunal that has jurisdiction to hear a liability claim against an arbitrator is **the one of the seat of the arbitration**.[58] This ruling, which can be further challenged before the *Cour de cassation*, also contradicts the decision of the Paris First-Instance Court of 16 April 2021 and it will be interesting to see the position that will be adopted by French courts with respect to this question in future.

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) as this requirement is considered as an element of a due process and a part of arbitrator's mission[59].

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.[60] 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. According to

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55 Paris First-Instance Court, 16 April 2021, n°21/50115.

56 Paris First-Instance Court, 31 March 2021, n°19/00795.

57 Article 1(2)(d) of EU Regulation No 1215/2012: "*This Regulation shall not apply to arbitration*".

58 Paris Court of Appeal, 22 June 2021, n°21/07623.

59 Paris Court of Appeal, 20 November 2018, n°16/10379 and 16/10381.

60 Paris Court of Appeal, 11 December 2012.

case law[61], 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?

Under Article 1481 CCP, applicable to both domestic and international arbitration, the arbitral award rendered in France 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 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 rendered in France in domestic arbitration must be signed by the arbitrators. The same requirement applies to international arbitrations under Article 1513 CCP.

Pursuant to Article 1520 CCP, an arbitral award rendered in France in international arbitration can only be set aside if *(i)* the tribunal did not have jurisdiction to hear the dispute, *(ii)* the tribunal was not regularly constituted, *(iii)* the tribunal exceeded its authority, *(iv)* the principle of due process was not respected or *(v)* the award is contrary to the French definition of international public policy. Pursuant to Articles 1520 and 1525 CCP, an order granting *exequatur* to a foreign award or an award rendered in France in international arbitration can only be challenged on the same grounds.

In domestic arbitration, there are additional grounds for annulment. As such, an award rendered in France in domestic arbitration may also 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. As regards more specifically the date of the award, it was recently held that the fact that the award mentioned two different dates should be interpreted as a clerical error and cannot be a reason for its annulment.[62] It was reminded in the same decision that the State judge cannot control the relevance of the reasoning adopted by the arbitral tribunal but only its existence.

5.4 Possibility to appeal the award

In domestic arbitration, Article 1489 CCP provides that the award shall not be subject to appeal 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 parties agreed to the appeal, the parties cannot initiate parallel annulment proceedings relating to the same award (Article 1491 CCP). In international arbitration, the award cannot be appealed but it can be, nevertheless, annulled through setting aside proceedings.

5.5 Recognition and enforcement of domestic and foreign awards

French awards rendered in domestic arbitration, foreign awards rendered in international arbitration and awards rendered in France in international arbitration 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 First-Instance Court (*Tribunal judiciaire*). In domestic arbitration, the application must be filed with the First-

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61 Paris Court of Appeal, 3 April 2014, Rev. arb. 2015. 110, note Leboulanger.

62 Paris Court of Appeal, 27 November 2018, n°17/01628.

Instance 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 First-Instance 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 the original copy of the underlying arbitration agreement (Article 1487 applicable to domestic arbitration and Articles 1514 and 1515 CCP applicable to international arbitration) or copies of such documents complying with the requirements necessary for their authenticity. 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). Pursuant to Article 1524 CCP, if a debtor of an award rendered in France in international arbitration brings setting aside proceedings, the order that granted *exequatur* of such award is automatically challenged, too.

An order granting the *exequatur* can only be appealed if it concerns a foreign award in an international arbitration, as the annulment proceedings cannot be brought against such awards (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). Should the request for annulment be dismissed, the *exequatur* order will be automatically confirmed.

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*[63] case and confirmed in the *Putrabali*[64] 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 awards in France in spite of the annulment decision rendered by the first-instance judge at the seat of the arbitration in April 2016 (the Hague).[65]

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 setting aside the award is high, yet awards were recently annulled in cases where it was found that they manifestly violated the international public order, in a variety of circumstances. Notably, awards were set aside by the French courts in cases of corruption (*Indagro* case, September 2017[66] and *Alstom Transport*, April 2018[67] and May 2019[68]), money laundering (*Belokon* case, February 2017[69]) or violation of foreign public policy rules (*MK Group*, January 2018[70]). In order to assess whether or not the awards should be set aside on the ground of international public order, judges now tend to perform a more intense factual and legal investigation of the facts and allegations at stake, notably with respect to the cases that might have involved corruption.

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

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

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

65 https://www.august-debouzy.com/en/blog/1092-the-yukos-case-former-shareholders-lose-their-legal-battle-in-france-but-continue-the-war.

66 Cour de cassation, 1st civil Division, n°16-25.657.

67 Paris Court of Appeal, 10 April 2018, n°16/16588

68 Paris Court of Appeal, 28 May 2019, n°16/11182.

69 Paris Court of Appeal, 21 February 2017, Rev. arb., 2017.915.

70 Paris Court of Appeal, 16 January 2018, n°15/21703, Rev. arb., 2018.401.

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 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.[71]

The annulment proceedings against awards rendered in international arbitrations seated in Paris used to be heard before the 1st Chamber of the 1st Civil Section of the Paris Court of Appeal. However, the Paris Court of Appeal created in April 2018 "the International Chamber" specifically dedicated to disputes relating to international commercial contracts including annulment proceedings. In the scope of their proceedings before the International Chamber, parties may agree on the application of the "Protocol relating to procedural rules applicable to the International Chamber of the Court of Appeal of Paris" signed between the Paris Court of Appeal and the Paris Bar Association on 7 February 2018[72]. Its application enables the parties to produce submissions and exhibits in English and use English for testimonial evidence. Parties' counsel who are admitted to the Paris Bar can also plead in English. Finally, the Protocol encourages the use of witnesses' examination and reminds the relevant provisions of the CCP in this regard.

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.

5.11 Additional point: enforcement against State assets

Further to numerous seizures performed in France on assets that appeared to belong to the Russian Federation in the scope of enforcement of the awards rendered in the Yukos case, France amended its rules applicable to enforcement against State assets.

Indeed, Law n°2016-1691 dated 9 December 2016 on transparency, anti-corruption measures and modernisation of economy (the so-called "Sapin II Act") extended sovereign immunity of States facing provisional attachments or enforcement measures. As a consequence, a party that seeks provisional or enforcement measures against State assets must obtain, on an *ex parte* basis, a prior authorisation from a judge.[73] Such authorisation will only be granted if one of the following alternative conditions is met: (i) the State concerned has expressly consented to the application of the measure in question, (ii) the State reserved or affected the asset concerned by the enforcement measures sought to the satisfaction of the claim which is the purpose of the proceedings or (iii) if the asset in question is specifically in use or intended to be used

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

72 Protocol relating to procedural rules applicable to the International Chamber of the Court of Appeal of Paris.

73 Article L. 111-1-1 of the Code of Civil Enforcement Proceedings.

by the State concerned for purposes unrelated to non-commercial public service and is linked to the entity against which the proceedings are initiated[74].

Moreover, the immunity of diplomatic property was reinforced as a (i) special and (ii) express waiver is now required to implement an enforcement measures against such property.[75] This amendment directly overruled the *Cour de cassation*'s decision of 13 May 2015 where the Court held that the waiver only needs to be express. Further to adoption of the Sapin II Act, the *Cour de cassation* recently overturned its own decision rendered in 2015 to admit that the waiver must be both express and special.[76]

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").[77] 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.[78] 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.[79]

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.[80] 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 development for access to justice and does not contravene French Law.[81] 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. Arbitration and technology

Surprisingly, it appears that the question of the interplay between arbitration and blockchain under French law has not been discussed much by the French legal doctrine so far. Likewise, to the best of our knowledge,

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74 Article L. 111-1-2 of the Code of Civil Enforcement Proceedings.

75 Article L. 111-1-3 of the Code of Civil Enforcement Proceedings.

76 *Cour de cassation*, 10 January 2018, n°16-22.494.

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

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

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

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

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

no French judge has been confronted so far with the specific issue of the validity of a blockchain-based evidence and/or of an arbitration agreement or an arbitration award registered by a blockchain system.

7.1 Blockchain and evidence

There is no specific provision under French law regarding the validity of blockchain-based evidence. Indeed, in an answer to the Parliamentary Question No 22103 dated 10 December 2019, the French legislator seems to consider that there is no need to create a new specific category of evidence as the legality of blockchain-based evidence can be assessed by French judges by considering the existing general rules of evidence.[82]

In this respect, the principle under Article L. 110-3 of the Commercial Code is that all types of evidence are admissible to establish the existence of obligations between professional parties ("*commerçants*"). More generally, this principle is also widely recognized in all civil matters. As such, a blockchain-based evidence can thus be submitted to the judge in the same way as any other type of evidence.

Article 1366 of the Civil Code specifies that an electronic document has the same probative value as a paper document and Article 1367 provides for the possibility of an electronic signature. However, the electronic signature is only valid if it had been created through a reliable identification process. The reliability of such process is presumed, in the absence of proof to the contrary, when (i) the electronic signature is created, (ii) the identity of the signatory is assured and (iii) the integrity of the act guaranteed. As such, a person who would like to rely on a blockchain-based evidence in order to prove the existence of a legal act would need to establish that the blockchain system used to register the act complied with the requirements of a valid electronic signature. In this regard, it appears that given the specificity of the blockchain technology, the identity of the signatory of the document could be difficult to establish.[83]

7.2 Validity of arbitration agreement or award and blockchain

As regards the validity of **arbitration agreements**, French law does not require, with respect to international arbitration, that such agreement be in writing whereas such requirement exists with respect to domestic arbitration. It thus seems that as long as a party can prove the existence of an arbitration agreement, be it through blockchain-based evidence, its existence is likely to be recognised in case of an international arbitration. With respect to domestic arbitration, the French judge is likely to analyse whether the use of blockchain can amount to a "writing". In this regard, Article 1174 of the Civil Code provides that where a "writing" is required, such writing can be established and preserved in an electronic format as long as it complies with requirements set out under Articles 1366 and 1367 of the Civil Code.

As regards the validity of **awards**, Article 1480 CCP (applicable to domestic arbitration) and Article 1513 CCP (applicable to international arbitration) both require that the award be signed by the arbitrators. In order to ensure that the use of a blockchain system constitutes a valid signature under French law, a local judge would have to analyse if such system complies with the conditions set forth under Article 1367 of the Civil Code and described above (para. **7.1.**).

7.3 Blockchain and enforcement of the award

Article 1515 CCP is less stringent than Article IV of the New York Convention as it does not require production of the "duly authenticated" original copy of the award for the purposes of recognition and enforcement. Applicant needs to merely submit the original copies of (i) the award and (ii) the arbitration agreement or their copies that comply with the conditions required to establish their authenticity.

In theory, given that Article 1515 CCP does not require a "duly authenticated" original copy of the award and the arbitration agreement, the acknowledgment of the existence of an award and/or an arbitration

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82 https://questions.assemblee-nationale.fr/q15/15-22103QE.htm.

83 https://questions.assemblee-nationale.fr/q15/15-22103QE.htm ; E. Théocharidi, *La conclusion des smart contracts : révolution ou simple adaptation ?*, Revue Lamy Droit civil, N° 161, 1er juillet 2018.

agreement for the purposes of the enforcement and/or recognition of the award appears to be possible as long as the applicant proves that the submitted documents are indeed originals. However, in practice, it can be feared that the court clerks and/or the judge in charge of deciding on the *exequatur* order be reluctant to accept blockchain-based awards and/or arbitration agreements.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

As regards the validity of an award rendered in France that would be electronically signed, such signature would only be considered as valid if the requirements set forth under Article 1367 are complied with. It notably implies that the signature be verified through a reliable identification process. As such, an award signed by inserting the image of a signature would very likely not be considered as valid under French law unless it is proven that such signature has been verified trough a reliable identification process.

As regards the enforcement of an electronically signed award, French law only requires that the originals of the award and the arbitration agreement (or copies complying with requirements necessary for their authenticity) be submitted to the judge. As such, French law does not require any specific form of the award and/or its signature but the applicant would still have to prove that the presented documents are indeed originals. An author observes that this requirement can be difficult to be proven in case of arbitral proceedings conducted entirely electronically where no original hard copy of the award would exist.[84]

8. 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. 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.

9. Compatibility of the Delos Rules with local arbitration law

Delos Rules (as in force from 14 January 2020) appear to be fully compatible with French arbitration law. Still, in order to reduce the risk of any subsequent difficulties with enforcement and/or validity of the award rendered in an arbitration governed by Delos Rules, the following three points should be raised:

(i) Articles 4(1) and 4(2) of Delos Rules set out time limits for producing Respondent's "Notice of Defence and Counterclaim" and Claimant's "Notice of Response to Counterclaim" respectively. Such time limits can be considered as rather short (from 7 to 21 days depending on the complexity of the dispute) and a party could claim that it has not been provided sufficient time to present its defence. In this respect, it is important that DELOS ensures that Article 2(3) providing for the possibility to extend any time-limit set out in Delos Rules is effectively applied in circumstances where a party does need additional time to present its defence.

(ii) Article 7 of Delos Rules provides that the "Tribunal shall take an active role in the resolution of legal and factual issues on the basis of the parties' submissions". According to Delos Rules, such wide power implies, among other things, procedural measures such as limiting the length of parties' written submissions or to render an award with or without holding an oral hearing. While such measures are not *per se* contrary to French law, the arbitral tribunal must ensure that they would not jeopardise the parties' key procedural rights (due process, right to be heard, adversarial proceedings).

(iii) Article 10(2) provides that by submitting their dispute to arbitration under Delos Rules, the parties "waive their right to any form of recourse insofar as such waiver can validly be made". However, it

84 T. Clay, *Code de l'arbitrage commenté*, Article 1515 CCP.

should be stressed that such general waiver will not preclude a party from bringing annulment proceedings against an award rendered in an arbitration under the auspices of Delos Rules seated in Paris. Indeed, even though Article 1522 CCP provides for the possibility for the parties to waive their right to bring annulment proceedings against an award by way of a specific agreement, it has been pointed out by case law that such waiver cannot result from a general provision by which the parties (i) accepted that the award will be definitive and (ii) waived their rights to any challenge. In order to be valid, the waiver must be specific, meaning that it must specifically refer to annulment proceedings ("*recours en annulation*").[85]

10. Further reading

- Ch. Seraglini, J. Ortscheidt, *Droit de l'arbitrage interne et international*, 2019 edition, L.G.D.J., https://www.lgdj.fr/droit-de-l-arbitrage-interne-et-international-9782275042459.html
- Th. Clay, *Code de l'arbitrage commenté*, 2021 edition, LexisNexis, https://www.lgdj.fr/code-de-l-arbitrage-commente-edition-2021-9782711026739.html
- *Revue de l'arbitrage*, Comité Française de l'Arbitrage, available on Kluwer: https://kluwerlawonline.com/Journals/Revue+de+l%E2%80%99arbitrage/745
- *Cahiers de l'arbitrage* (The Paris Journal of International Arbitration), L.G.D.J., https://www.labase-lextenso.fr/cahiers-de-larbitrage, https://www.lgdj.fr/themes/droit-15/droit-de-l-arbitrage-1534.html?lgdmag_type=19

[85] Paris Court of Appeal, 3 April 2014, Rev. arb. 2015. 110, note Leboulanger.

ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, *i.e.* with offices and a case team?	- International Chamber of Commerce (**ICC**): https://iccwbo.org/ - Delos Dispute Resolution (**Delos**): https://delosdr.org/ - Arbitration and Mediation Centre of Paris (*Centre de Médiation et d'Arbitrage de Paris* or **CMAP**): https://www.cmap.fr/ - French Arbitration Association (*Association Française d'Arbitrage* or **AFA**): http://www.afa-arbitrage.com/ - Paris International Court of Arbitration (*Chambre Arbitrale Internationale de Paris* or **CAIP**): http://www.arbitrage.org/ - Paris Court of Maritime Arbitration (*Chambre Arbitrale Maritime de Paris* or **CAMP**): https://www.arbitrage-maritime.org/CAMP-V3/accueil/
Main arbitration hearing facilities for in-person hearings?	- Hearing Centre of the International Chamber of Commerce (https://iccwbo.org/dispute-resolution-services/hearing-centre/) - Hearing facilities of Delos Dispute Resolution (https://delosdr.org/hearing-services/paris-hearings/) - Hearing facilities of the Paris Court of Maritime Arbitration (https://www.arbitrage-maritime.org/CAMP-V3/accueil/) - The World Bank Group Paris Conference Centre (for ICSID hearings only) (https://icsid.worldbank.org/services/hearing-facilities/paris) - WOJO (co-working and conference rooms facilities in Paris and other French cities) https://www.wojo.com/fr - WELLIO (co-working and conference rooms facilities in Paris and other French cities) https://wellio.com/fr/ - Salon des Arts et Métiers (https://www.salons-artsetmetiers.com/)
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	The Delos, ICC and World Bank hearing facilities can assist with photocopying and printing needs (https://iccwbo.org/dispute-resolution-services/hearing-centre/services/). "COPY TOP" reprographics shops (copying, printing, faxing, scanning) can be found in different locations in Paris.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	Hearings in French: - Simone Bardot (http://stenomedia.com/simone-bardot) - Catherine Le Madic (https://stenotypiste.com/stenotypiste/catherine-le-madic/) - Christine Rouxel Merchet (c.rouxelmerchet@frenchrealtime.com) - Agnès Naudin (agnesnaudin@wanadoo.fr)

	Hearings in English: - EPIQ (https://epiqsolutions.com/, local contact person: Ghyslaine Ferre Morel (gferremorel@epiqglobal.com) - Trevor McGowan (tm@TMGreporting.com and thecourtreporter@gmail.com) - Yvonne Vanvi (yhvanvi@aol.com)
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	General websites listing interpreters qualified in France covering various languages: - List of interpreters admitted as experts before the Paris Court of Appeals (https://www.courdecassation.fr/IMG///2021-01-28_CA-Paris-experts.pdf, pages 255 onwards) - Website listing highly qualified interpreters (https://aiic.fr/) For specific firms or persons - Cabinet Stern (11, rue Saint Florentin 75008 Paris ; Tel.: +33.1.42.60.89.59 ; E-mail: ds@cabinetstern.com) - Geotext Translations, Inc. (75, boulevard Haussmann 75008 Paris ; Tel: +33.1.42.68.51.47 ; E-mail: paris@geotext.com) - Gabrielle Baudry (70, boulevard Auguste Blanqui 75013 Paris ; Tel.: +33 (0)6 73 20 92 82 ; E-mail: G.baudry@aiic.net) – English, French, German - Sarah Rossi (12, avenue de la Bourdonnais 75007 Paris ; Tel.: +33 (0)6 03 84 40 05 ; E-mail: sarah@rossi-translations.fr), English, French, Spanish
Other leading arbitral bodies with offices in the jurisdiction?	ϕ

DELOS
dispute resolution

GUIDE TO ARBITRATION PLACES (GAP)

LEBANON

CHAPTER PREPARED BY

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FOR FURTHER INFORMATION

GAP TABLE OF CONTENTS | GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS | FULL GAP ONLINE

EN DELOS MODEL CLAUSES
ES DELOS CLÁUSULAS MODELO
FR DELOS CLAUSES TYPES
PT DELOS CLÁUSULAS MODELO

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JURISDICTION INDICATIVE TRAFFIC LIGHTS ‡

1. Law
   a. Framework
   b. Adherence to international treaties
   c. Limited court intervention
   d. Arbitrator immunity from civil liability
2. Judiciary
3. Legal expertise
4. Rights of representation
5. Accessibility and safety
6. Ethics

Evolution of above compared to previous year =

7. Tech friendliness
8. Compatibility with the Delos Rules

VERSION: 12 FEBRUARY 2024 (v01.03)

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 any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Lebanon is an arbitration-friendly jurisdiction. The arbitration legislation reflects contemporary practice and embraces established principles of international arbitration. In addition, the Lebanese judiciary is generally supportive of the arbitral process and respectful of the parties' choice of arbitration as their method for the settlement of disputes.

Key places of arbitration in the jurisdiction?	Beirut.
Civil law / Common law environment? (if mixed or other, specify)	Civil law. The civil legal tradition was inherited from the French during their mandate over Syria and Lebanon between 1920 and 1943.
Confidentiality of arbitrations?	Under Lebanese law, there are no provisions dealing with the confidentiality of arbitral proceedings *per se*. However, in practice, arbitral proceedings are treated as confidential as long as the parties agree to specific confidentiality obligations and no legal proceedings before the local courts are filed (requests for the assistance of the judge of summary proceedings, recourse for annulment of the award, etc.).
Requirement to retain (local) counsel?	There are no restrictions as to the nationality of persons who qualify to act as counsel or arbitrators in international arbitration proceedings seated in Lebanon.
Ability to present party employee witness testimony?	Employee witness testimony is not admissible in domestic arbitration unless the parties agree otherwise. Save where specified otherwise in the applicable procedural rules, arbitral tribunals in international arbitrations seated in Lebanon have the discretion to call a party employee for inquiry and clarification purposes.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	If Lebanon is selected as the seat of an arbitration, it is nonetheless permissible to conduct hearings and procedural meetings elsewhere.
Availability of interest as a remedy?	In Lebanon, interest can be applied to the principal claim as well as to costs. The legal interest rate is 9 percent in civil and commercial matters unless agreed otherwise by the parties. In commercial matters, the parties can freely determine the interest rate in their agreement.
Ability to claim for reasonable costs incurred for the arbitration?	The parties to an arbitration seated in Lebanon can recover legal fees paid and other reasonable costs incurred for the purposes of the arbitration. The arbitral tribunal has discretion to decide whether it will apply the "loser pays" rule.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Lebanese law does not expressly regulate or forbid contingency fee arrangements or third-party funding.

Party to the New York Convention?	Lebanon is a party to the New York Convention, which entered into force in Lebanon on 9 November 1998. Lebanon has made a reciprocity reservation under the Convention, declaring that it will apply the Convention on a reciprocal basis to the recognition and enforcement of awards made only in the territory of another contracting state.
Party to the ICSID Convention?	Lebanon is a party to the ICSID Convention. The Convention was signed by Lebanon on 26 March 2003 and entered into force in Lebanon on 25 April 2003.
Compatibility with the Delos Rules?	Yes.
Default time-limitation period for civil actions (including contractual)?	The default time-limitation period for civil actions is 10 years (Articles 348 and 349 of the Lebanese Code of Obligations and Contracts).
Other key points to note?	Lebanon is a signatory of the following conventions: ▪ The Unified Agreement for the Investment of Arab Capital in the Arab States (Arab Investment Agreement, 1980);[1] ▪ The Agreement on Promotion, Protection and Guarantee of Investments amongst the Member States of the Organization of the Islamic Conference (OIC Investment Agreement, 1981);[2] ▪ The Euro-Mediterranean Interim Association Agreement (EC - Lebanon Association Agreement, 2002);[3] ▪ the Free Trade Agreement between the European Free Trade Association and Lebanon (EFTA-Lebanon FTA, 2004);[4] and ▪ The Trade and Investment Framework Agreement between the United States and Lebanon (Lebanon - US TIFA, 2006).[5]
World Bank, Enforcing Contracts: *Doing Business* score for 2020?	50.8
World Justice Project, Rule of Law Index: *Civil Justice* score for 2023?	0.40

1 The Unified Agreement for the Investment of Arab Capital in the Arab States ("**Arab Investment Agreement**") was signed by Lebanon on 26 November 1980 and entered into force on 7 September 1981. Lebanon ratified the 2013 amendments to the Arab Investment Agreement by virtue of Law No. 120 dated 29 March 2019.

2 The OIC Investment Agreement entered into force in February 1988.

3 The EC - Lebanon Association Agreement was signed on 17 June 2002 and entered into force on 1 April 2006.

4 The EFTA – Lebanon FTA was signed on 24 June 2004 and entered into force on 1 January 2007.

5 The Lebanon – US TIFA was signed on 30 November 2006 but has not entered into force.

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	The Lebanese Code of Civil Procedure ("**LCCP**"), which was enacted by Law 90/83 dated 16 September 1983, with amendments resulting from Law No. 440 dated 29 July 2002, devotes an entire chapter (Chapter 2) to arbitration, with a distinction being made between domestic arbitration (Articles 762 to 808 LCCP) and international arbitration (Articles 809 to 821 LCCP).
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	The provisions on arbitration in the LCCP are based on the old French arbitration law (French decrees No. 80-354 of 14 May 1980 and No. 81-500 of 12 May 1981) and not on the UNCITRAL Model Law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There is no specialist court in Lebanon dealing with arbitration matters. The judiciary in the Court of First Instance is however considered as the "*juge d'appui*" (i.e. the judge acting in support of the arbitration). As such, the Court of First Instance may, for example, hear requests for the appointment of arbitrators and summon recalcitrant witnesses within its jurisdiction.
Availability of *ex parte* pre-arbitration interim measures?	Lebanese courts can grant ex parte provisional relief in support of arbitration when the Arbitral Tribunal is not yet constituted. In this case, an application for interim measures should be filed before the competent judge of summary proceedings.
Courts' attitude towards the competence-competence principle?	Article 785 of the LCCP expressly recognises the principle of competence-competence.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	No. For an award to be to be enforceable in Lebanon it should provide the reasoning underlying the decision or award.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Lebanese law provides no additional grounds to those based on the criteria for the recognition of awards under the New York Convention. It is notable however that the Lebanese arbitration law is more favourable than the New York Convention in referring to a violation of 'international public policy' rather than 'public policy' as a ground for annulment of international arbitral awards (see section 5.2 below for further details regarding the grounds for annulment under Lebanese law and the position in domestic arbitrations).
Do annulment proceedings typically suspend enforcement proceedings?	Yes, annulment proceedings suspend the award's enforcement.
Courts' attitude towards the recognition and enforcement of	An award rendered outside Lebanon and set aside at the seat of arbitration may still be recognised and enforced in Lebanon because local courts have the discretion to independently assess

foreign awards annulled at the seat of the arbitration?	the grounds for annulment when a request for recognition and *exequatur* of a foreign award is sought.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	Lebanese arbitration law is silent on virtual hearings. To our knowledge, Lebanese courts have not yet confronted this issue in the context of award annulment or enforcement proceedings. It should be noted that in the absence of an agreement between the parties on the format of the hearing, there is still the risk to see an argument raised in relation to violation of due process in case a party objects on the conduct of a hearing remotely.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	The concept of the state's sovereign immunity from execution is recognized under Lebanese law and therefore can be raised as a defense at the enforcement stage. Article 860 (1) LCCP provides that the assets of the state and public legal bodies cannot be seized. Article 860 (2) LCCP emphasizes that the assets of foreign states cannot be seized save for those which are subject to private law. In this regard, the President of the Execution Bureau in Beirut, issued a decision pursuant to which an international organization acting in its capacity as a private party, in a private transaction, which does not relate to the execution of a public service, cannot avail itself of its immunity of execution. (President of the Beirut Executive Bureau, decision dated 18/7/2013). This position has also been upheld by the Court of Appeal in Beirut in a case where the party invoking immunity from execution was an Iraqi bank affiliated to the Iraqi state. The Court ruled that immunity from execution does not apply to state-related bodies conducting commercial operations; even though there may be a degree of interference from the State in the implementation of their mission they are nonetheless subject to private law (See, for example, Court of Appeal of Beirut, decision no. 41/2018 dated 10/01/2018).
Is the validity of blockchain-based evidence recognised?	This issue is not regulated by the Lebanese arbitration legislation, nor have the courts been faced with it.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	This issue is not regulated by the Lebanese arbitration legislation, nor have the courts been faced with it.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	This issue is not regulated by the Lebanese arbitration legislation, nor have the courts been faced with it.

Other key points to note?	Under Lebanese legislation, the following types of disputes are subject to the exclusive jurisdiction of the state courts *i.e.* are not arbitrable:[6] questions of personal and social status, capacity, fundamental rights, rights of succession, questions of public policy, insolvency, employment contracts and social security. Furthermore, Lebanese courts have traditionally held that commercial representation disputes are subject to the exclusive jurisdiction of local courts. Recent jurisprudence, however, suggests a more supportive approach towards arbitration in specific cases. Finally, in administrative contracts, a state and public entity can validly conclude an arbitration agreement subject to prior authorisation by the Council of Ministers upon a recommendation of either the relevant minister or the relevant regulatory authority (*autorité de tutelle*). In international administrative contracts, while the law is silent on the necessity of obtaining a prior approval from the Council of Ministers, it is recommended to systematically obtain such authorisation.

6 There are exceptions with respect to most of these exclusions; see below (III, 2, d)).

JURISDICTION DETAILED ANALYSIS

1 The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

1.1.1 If yes, what key modifications if any have been made to it?

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1.1.2 If no, what form does the arbitration law take?

The Lebanese Code of Civil Procedure provisions on arbitration are not based on the UNCITRAL Model Law but on the old French arbitration law.[7] The second chapter of the LCCP is devoted to arbitration, making the distinction between domestic arbitration (Articles 762 to 808 of the LCCP) and international arbitration (Articles 809 to 821).

Pursuant to Article 809 of the LCCP, arbitration is deemed international 'when it involves the interests of international trade'. The Lebanese courts have interpreted this statutory provision by holding that the international nature of an arbitration is determined by the international character of the economic transaction underlying the arbitration, and to extent to which it involves a cross-border flow of goods, persons or services.8 Factors that are not taken into account when determining when an arbitration is international include the nationality of the parties or arbitrators, the place of the arbitration, the residence of the parties or the place where the contract was concluded. Additionally, the application of a foreign law or procedure will have no bearing on the definition of an arbitration as international.9

Regarding international arbitration seated in Lebanon, Article 812 LCCP provides that: 'The provisions of Articles 762 to 792 (relating to domestic arbitration) shall only apply in default of specific agreements and subject to the provisions of Articles 810 and 811 (relating to international arbitration).'

1.2 When was the arbitration law last revised?

The arbitration law was last revised in 2002 (by virtue of Law No. 440 dated 29 July 2002).

2 The Arbitration Agreement

2.1 Governing law

The LCCP is silent on the governing law of the arbitration agreement.

2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

To the extent that an arbitration agreement is valid, an ambiguous clause will be subject to the Tribunal's interpretation on the basis of the parties' mutual intent. To the extent of our knowledge, the issue set out under para. 2.2 has not yet been addressed by the Lebanese courts.

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7 French decrees No. 80-354 of 14 May 1980 for domestic arbitration and No. 81-500 of 12 May 1981 for international arbitration

8 Beirut Court of Appeal, Third Chamber, 10 December 2001; Beirut Court of Cassation, Decision No 14/2014, 25 January 2014.

9 Arbitration in Lebanon', in Abdul Hamid El Ahdab and Jalal El-Ahdab, *Arbitration with Arab Countries*, Kluwer Law International 2011, pp 337 – 449.

2.3 Separability of the arbitration agreement

The doctrine of separability of the arbitration agreement from the main contract is a well-established principle in Lebanon and is recognised by Lebanese courts.[10]

2.4 Formal requirements for an enforceable agreement

Unlike in domestic arbitrations, where the written form of the arbitration agreement is required as a condition for its validity (Article 763 LCCP), there is no particular requirement for an international arbitration agreement to be valid other than the parties having consented to it. Article 814(2) LCCP, however, provides that an agreement in writing is required to obtain exequatur of an award rendered in international disputes.

Insofar as administrative contracts are concerned, one important formal requirement concerns contracts made with the Lebanese state or with other state entities. In domestic administrative contracts, a state or state entity can enter into an arbitration agreement subject to prior authorization by the Council of Ministers upon a recommendation of either the relevant minister or the relevant regulatory authority (*autorité de tutelle*). In international administrative contracts, while the law is silent on the necessity of obtaining a prior authorization from the Council of Ministers, it is recommended to systematically obtain such authorization in respect of arbitration clauses inserted in such agreements.

Although not mandatory, in international arbitration, it is preferable for the arbitration agreement to designate the number of arbitrators and their method of designation, the seat and the language of the arbitration.[11] In domestic arbitration, the arbitration agreement should be in writing and should designate, subject to nullity, the arbitrator or the arbitrators in person or their qualities or the mechanism for their designation (Article 763 LCCP).

2.5 Third parties

Arbitration agreements are subject to the principle of privity of contracts, thereby only binding the parties that signed them. However, under Lebanese law, a third party to a contract containing an arbitration agreement may be bound by such arbitration agreement in the following circumstances:

- Universal successors and successors by a particular title (Article 225 of the Code of Obligations and Contracts ('***COC***'));
- Subrogation (Articles 313 and 315 COC);
- Transfer of rights (Article 285 COC);
- Specific merger scenarios in the banking sector (Article 4, para. 1 Law 192 dated 4 January 1993);
- Transfer of contracts (Beirut Court of Appeal 3rd Chamber decision No. 763 dated 2 April 2004, Beirut Court of Appeal, 10th Chamber, decision dated 28 December 2000 '*Société UFFE v. Compagnie de dévelopement des bâtiments et autres*'*);* and,
- Third-party beneficiary contracts (*stipulation pour autrui*, Article 230 COC). However, this exception to the principle of non-transmittal of the arbitration clause to the third parties is subject to doctrinal debate.

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10 Eg. Beirut Court of Appeal, decision no. 767/2008 dated 20 May 2008, Lebanese Court of Cassation no.14/2014 dated 25 January 2014.

11 Article 810 LCCP suggests to include such provisions but is not formulated in mandatory terms.

A third party may also be bound by an arbitration agreement in light of the nature of the relationship it has with one of the signatories to the arbitration clause. For example, in a chain of contracts that has the same objectives and forms an economic unity ("*operation économique unique*").[12]

Ultimately, the extension of the arbitration clause remains a matter to be assessed on a case-by-case basis in light of the specific circumstances of each matter.

Concerning the joinder of a third party, Article 786 LCCP provides that third parties cannot be joined to an arbitration proceeding without the approval of the parties to the arbitration. The law is silent on the need of approval of the arbitrators.

As to consolidation, the Lebanese legislation does not recognise the possibility for an Arbitral Tribunal seated in Lebanon to consolidate separate arbitral proceedings under one or more contracts unless the arbitration rules agreed upon by the parties allow such consolidation. By way of example, Article 8 in Appendix II of the Rules of the Beirut Chamber of Commerce and Industry allows consolidation of claims.

2.6 Arbitrability of disputes

Under Lebanese legislation, the following types of disputes, relating to specific domains, are subject to the exclusive jurisdiction of the state courts – *i.e.*, are not arbitrable:

- Questions of personal status (age, nationality and adoption) and questions of social status (marriage and divorce). However, an exception is allowed by virtue of Article 1037 COC regarding financial compensation arising from personal status matters. In this case, arbitration will be confined to the compensation sought;
- Non-negotiable personal rights such as the right to human dignity, the right to physical integrity, the right to privacy, the right to food (food allowance), etc. However, any dispute relating to monetary compensation in connection with any of those personal rights is capable of being arbitrated;
- Rights of succession. Arbitration over acquired hereditary rights is nevertheless possible if the value of such right is determined;
- Questions of public policy which include all matters considered by law as guaranteeing social, economic or political interests;
- Questions of insolvency. Article 490 of the Code of Commerce provides that state courts have exclusive jurisdiction to deal with insolvency matters;
- Questions of employment contracts and social security. These issues fall under the exclusive competence of the local Labour Arbitration Court; and,
- Contracts for commercial representation (Article 5 of Decree Law No. 34 dated 5 August 1967, although the Lebanese courts have adopted a more permissible stance towards the arbitrability of such disputes in specific circumstance.

3 Intervention of domestic courts

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

Lebanese legislation recognizes the positive effect of the principle of competence-competence. However, the negative effect of this principle is not recognised. Accordingly, Lebanese courts will stay litigation if a party raises an objection on the court's jurisdiction on the basis of a valid arbitration agreement concluded between the parties, irrespective of whether the seat of the arbitration is within or outside of the jurisdiction.

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12 Beirut Court of Appeal, First Chamber, Decision No 294/2009, 21 July 2010; Beirut Court of Appeal, Third Chamber, Decision No 192/2008, 5 February 2008.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

Injunctions issued by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings are not enforceable by Lebanese courts.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

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4 The conduct of the proceedings

4.1 Requirements regarding counsel or self-representation

In domestic and international arbitration, there are no express provisions for mandatory legal representation. Consequently, unless provided otherwise, the parties are free to decide whether or not they wish to be represented by legal counsel, with no conditions of nationality.

4.2 Arbitrators' independence and impartiality

Arbitrators are required to act independently and impartially failing which they might be subject to challenge pursuant to Article 770 LCCP. Moreover, an arbitrator has a duty to disclose to the parties any event which could constitute a ground for challenge as per Article 769 LCCP.

4.3 Courts' intervention to assist in the constitution of the Arbitral Tribunal

Lebanese legislation provides for the assistance of courts in the absence of an agreed set of institutional rules containing a default mechanism for the constitution of an Arbitral Tribunal or a mechanism provided for in the arbitration clause itself. Pursuant to Article 810 LCCP, the most diligent party, when faced with a difficulty in constituting the Arbitral Tribunal, may request the President of the competent Court of First Instance to make the appointment.

4.4 Ability of courts to issue interim measures in connection with arbitrations

Under Articles 589 – 593 LCCP, the Lebanese courts can grant provisional relief in support of arbitration when the Arbitral Tribunal is not yet constituted. In this case, an application for interim measures should be filed before the competent judge of summary proceedings, which can be done on an *ex parte* basis.

After the constitution of the Arbitral Tribunal, parties have the choice to either request interim measures before the local courts or before the Arbitral Tribunal. Generally, interim measures are submitted directly to the Arbitral Tribunal, which has the power to order any interim and conservatory relief deemed appropriate in accordance with Articles 789 and 859 LCCP. The arbitrators may also request the local judge interim to sanction witnesses who fail to appear at a hearing or those who refuse to testify, as per Article 779 LCCP.

Finally, a party may seek an interim attachment order from the competent court to freeze the assets of the losing party pending the enforcement of an arbitral award.

4.5 Law regulations on the conduct of the arbitrations

4.5.1 Confidentiality of arbitration proceedings

Under Lebanese law, there are no provisions dealing with the confidentiality of arbitral proceedings *per se*. However, in practice, arbitral proceedings are treated as confidential as long as the parties agree to specific confidentiality obligations and no legal proceedings before the local courts are filed (requests for the assistance of the judge of summary proceedings, recourse for annulment of the award, *etc.*).

4.5.2 Length and place of arbitration proceedings

In domestic arbitration, arbitrators should render the final award within 6 months from the date at which the last arbitrator accepted his/her appointment unless the parties agree otherwise. Save in circumstances where the applicable arbitration rules provide otherwise, this duration can be extended either by mutual consent of the parties or by the decision of the President of the First Instance Tribunal upon being petitioned by a party or the Arbitral Tribunal (Article 773 LCCP).

This provision only applies to international arbitrations to the extent that the parties have not agreed otherwise (by adopting institutional rules for example).

4.5.3 Place of hearings and meetings

If Beirut is selected as the seat of arbitration, hearings and procedural meetings can be conducted elsewhere.[13]

4.5.4 The arbitrators' ability to issue interim measures

In domestic arbitration, Article 789 LCCP (with reference to Article 589) grants Arbitral Tribunals the power to order any interim or conservatory measures they consider necessary in light of the nature of the dispute, and in line with those measures provided under Article 589 LCCP.

These provisions would apply to international arbitrations to the extent parties have not agreed otherwise (by adopting institutional rules for example).

Lebanese legislation does not provide a specific requirement regarding the form that a Tribunal's decision on such measures should take. The Tribunal, therefore, has the discretion to decide whether to issue a procedural order or a partial award in respect of any interim measure sought.

4.5.5 The Arbitrators' right to admit and exclude evidence

The arbitrators have wide discretion in the conduct of the proceedings including the right to admit and exclude evidence subject to the preservation of due process.[14]

4.5.6 Hearing

Holding a hearing is not compulsory in arbitrations seated in Lebanon. However, it is common practice in Lebanon to hold a final hearing on the merits.

4.5.7 Principles governing the award of interest

Interest can be applied to the principal claim and costs. As a matter of Lebanese law, the legal interest rate is 9 percent in civil and commercial matters unless agreed otherwise by the parties.[15] Arbitral Tribunals can award both simple and compound interest. In commercial matters, the parties can freely determine the interest rate in their agreement.[16] In civil matters, however, usurious interest is forbidden.[17]

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13 There is no specific legal text stating that hearings and procedural meetings can be conducted anywhere, although this is a widely accepted principle in Lebanon. Furthermore, it is generally admitted under Lebanese law, that whatever is not expressly forbidden by the law shall be allowed, thus reinforcing the idea that no restrictions exist on the place of hearings and meetings when arbitrations are seated in Lebanon.

14 The comment in footnote 13 above equally applies to arbitrators' wide discretion to conduct the proceedings.

15 As stated in Article 767 of the COC and in Article 767 of the Lebanese Commercial Code. See also Law of 24 June 1939.

16 Lebanese Court of Cassation, Decision No 16, 22 February 1973.

17 Article 661 of the Lebanese Penal Code. See also Usury Law of 24 June 1939.

4.5.8 Principles governing the allocation of costs

The parties are able to recover legal fees and costs reasonably incurred, which can include arbitration costs as well as arbitrators' fees and expenses. It is usually left to the Arbitral Tribunal's discretion to decide whether it will apply the "loser pays" rule.[18]

There is no provision in the LCCP's arbitration chapter which allows the courts to review the Tribunal's decision on costs.

4.6 Liability

As a matter of Lebanese law, arbitrators are not afforded immunity from suit.

Arbitrators can be civilly but not criminally liable. Article 770 LCCP provides that arbitrators may be challenged on the same grounds as judges for reasons which arise or become known after their appointment and are exclusively listed in Article 120 LCCP. This includes cases of lack of independence or impartiality. Moreover, an arbitrator might be liable for his/her gross fault as it is the case for local judges pursuant to Article 741 LCCP.

5 The award

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

Lebanon does not recognize agreements between, parties to waive the requirement for an award to provide the underlying reasons.

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

The right to file an annulment action is a matter of public order and policy, and cannot be waived by the parties prior to the final award being rendered. The Parties can nonetheless agree to waive their right to seek annulment after the award is rendered.

5.3 Award's validity requirements

Article 790 LCCP provides that the arbitral award should contain the following information:

- The name of the arbitrator(s);
- The date and place of the award;
- The full names and denominations of the parties and their legal counsel;
- A summary of the parties' positions and the evidence provided in support of their respective positions;
- The reasons for the award and the dispositive part; and
- The signature of the arbitrators on the arbitration award rendered. In the event that a dissenting arbitrator refuses to sign the award, the remaining arbitrators should mention such refusal and the award will have the same effect as an award signed by all arbitrators.

This article applies in international arbitrations to the extent the parties have not agreed otherwise (by adopting institutional rules for example).

[18] The comment in footnote 13 above equally applies to allocation of costs.

5.4 Appeal of an award

International arbitration awards cannot be appealed before the Lebanese courts. A party dissatisfied with the outcome of an international arbitration seated in Lebanon can only seek the annulment of the award as per Article 819 LCCP and under the grounds set out under Article 817 LCCP.

In domestic arbitrations, an award is subject to appeal unless agreed otherwise by the parties in the arbitration agreement. The reverse principle applies if the arbitration was decided *ex aequo et bono*. In such a case, the award is not subject to appeal unless agreed otherwise by the parties in the arbitration agreement. If the award is appealed under these circumstances, the Court of Appeal will also rule on an e*x aequo et bono* basis (Article 799 LCCP).

5.5 Procedure for recognition and enforcement of an award in Lebanon

The recognition and enforcement of an award in Lebanon is made through *ex parte* proceedings.

The competent court to grant exequatur varies depending on the nature of the dispute. In civil and commercial matters, exequatur requests are filed before the President of the Court of First Instance, either at the place where the award was made if an international award was rendered in Lebanon, or in Beirut if the award was rendered outside Lebanon. In administrative matters, exequatur requests should be filed before the President of the Council of State (Articles 770, 775,793, 795 and 810 LCCP).

The exequatur application must contain (i) the arbitral award and (ii) the arbitration agreement or a certified copy of these documents, irrespective of whether the award is domestic or foreign. For international or foreign awards, the judge will principally verify (i) the existence of the award and (ii) that recognition of the award does not manifestly violate Lebanese international public policy (Articles 795, 814 and 815 LCCP).

A court decision granting recognition or enforcement of a domestic or international award rendered in Lebanon is not subject to any recourse (Articles 805 and 819 LCCP).

A court decision denying recognition or enforcement of a domestic award, foreign or international award rendered in Lebanon, is subject to appeal (Articles 806 and 816 LCCP).

The appeal of an award (in domestic arbitrations) or the action for setting aside the award (in both domestic and international arbitrations) *de facto* entails a challenge to the decision granting exequatur and the judge of exequatur will no longer hear the dispute (Articles 805 and 819 LCCP).

5.6 Suspensive effect of annulment or appeal proceedings

Unless the arbitral award is subject to provisional enforcement,[19] its execution is suspended within the 30 days' time-limit in which a challenge against the arbitral award can be submitted (Articles 803 and 820 LCCP).

5.7 Effect of annulment on the enforcement of an award in Lebanon

An award rendered outside Lebanon, which is subsequently set aside at the seat of arbitration, may still be recognised and enforced in Lebanon.

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[19] The provisions on provisional enforcement ("*exécution provisoire*") are set out under articles 570 to 578 LCCP. In general, provisional enforcement is granted by the court upon a party's request which has an interest in commercial matters or when urgency is characterized (Article 572 LCCP). This measure is mandatorily granted by the court upon a party's request with an interest in the following circumstances (Article 571 LCCP):

(i) If the judgement was rendered on the basis of a previous final judgement or was issued with the provisional enforcement's mention or was rendered to execute this previous judgement.

(ii) If the judgement was rendered on the basis of an official or non-official deed or on the basis of an admission.

The provisional execution can also be conditioned upon providing a guarantee (Article 573 LCCP).

5.8 Enforceability of foreign awards

A legitimate interest is required for a court to accept jurisdiction over proceedings for the recognition and enforcement of foreign awards. The applicant must produce as evidence (i) the arbitral award (original or a certified copy) and (ii) the arbitration agreement.

The proceedings are conducted *ex parte*, whereby the judge will only verify (i) the existence of the award and (ii) that recognition of the award is not manifestly contrary to international public policy.

A foreign award has to be translated to Arabic for the purpose of seeking its enforcement pursuant to Article 814 of the LCCP.

6 Funding arrangements

6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

The Lebanese Legal Profession Act provides that legal fees are determined by an agreement concluded between the lawyer and the client. The Act does not provide an indication nor a restriction on the nature of the agreement which remains subject to the parties' contractual free will. Insofar as a third-party funding is concerned, a careful structure is required to ensure that such arrangements would not fall under the prohibition of excessive *riba*[20] under Lebanese law.

7 Arbitration and technology

7.1 Arbitration and blockchain technology

The issue of arbitration and blockchain technology has not been regulated by Lebanese legislation and has not been raised before Lebanese courts.

7.2 Electronically and digitally signed awards in recognition and enforcement procedures

Lebanese legislation does not differentiate between an electronic signature and a digital one. Both terms are used interchangeably.

Law No. 81 of 2018 on electronic transactions and personal data protection, states under Article 4 that « *the electronic writings and signatures have the same legal effects than those done on paper or any other type of support, providing that their specific author can be traced and that they are stored in a secured manner*».

Accordingly, there should not be in principle an issue with the recognition and enforcement of electronically signed awards. However, this remains an open issue that needs to be tested before local courts. To our knowledge, Lebanese courts have not yet been faced with such issue at the recognition and enforcement stage.

8 Significant reform of the arbitration law in the near future?

There are discussions to reform the arbitration law in the near future but these have not yet materialized.

9 Compatibility of the Delos rules with local arbitration Law

The Delos rules are compatible with the Lebanese arbitration law.

10 Further reading

- OBEID LAW FIRM*, The Middle Eastern and African Arbitration Review 2020,* Lebanon Chapter (English)

[20] See Usury Law of 24 June 1939.

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- NAJJAR, Nathalie - *Arbitration and International Trade in the Arab Countries*, Brill-Nijhoff, 2018, with the foreword by E. Gaillard (English)
- OBEID, Zeina - *The action for setting aside arbitral awards in the Arab Countries: Saudi Arabia, Bahrain, Egypt, United Arab Emirates, Iraq, Jordan, Kuwait, Lebanon, Qatar, Syria,* Thesis, Univeristé Paris II Pantheon-Assas, Editions A. Pedone, 2017 (French)
- NAMMOUR, Fadi - *Arbitration law*, Point Delta, LGDJ, Lextenso, 4th ed. 2014 (French)
- COMAR-OBEID, Nayla*, The Impact and Consequences of Changes in Lebanese Arbitration Law*, 2003, (includes a study on administrative contracts and arbitration in Lebanese Law), ICC Digital Library (English)
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ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, *i.e.* with offices and a case team?	The Lebanese Arbitration and Mediation Centre
Main arbitration hearing facilities for in-person hearings?	ϕ
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	Malik's and Desco
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	ϕ
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Bablex (bab-lex.com) Quality translation services | translation services in Lebanon, subtitling, interpreting, desktop publishing (qualitytranslationservices.com) Professional Arabic Language Interpretation Services in Lebanon | Professional Arabic Language Interpreters (worldinterpreting.com)
Other leading arbitral bodies with offices in the jurisdiction?	ϕ