

# Transnational Business Law

## *Part B : Legal sources*

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## **PRESENTATION OUTLINE**

**I. INTERNATIONAL LAW**

**II. EUROPEAN LAW**

**III. NATIONAL LAW**

## **I. INTERNATIONAL LAW**

### **A. HARD LAW**

### **B. SOFT LAW**

## **I. INTERNATIONAL LAW**

### **A. HARD LAW**

#### **A.1 MATERIAL / SUBSTANTIVE RULES**

#### **A.2 CONFLICT OF LAWS RULES**

## I. INTERNATIONAL LAW

### A. HARD LAW

#### A.1 MATERIAL / SUBSTANTIVE RULES

- ① United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980

## A. HARD LAW

### A.1 MATERIAL / SUBSTANTIVE RULES

#### ① CISG

##### 1. Scope of Application

- Multilateral treaty (Vienna, 11 April 1980 ; in force since 1 January 1988)
- Uniform rules for international sale of goods
- Aims to reduce legal barriers & transaction costs in global trade

## ① CISG

### 1. Scope of Application

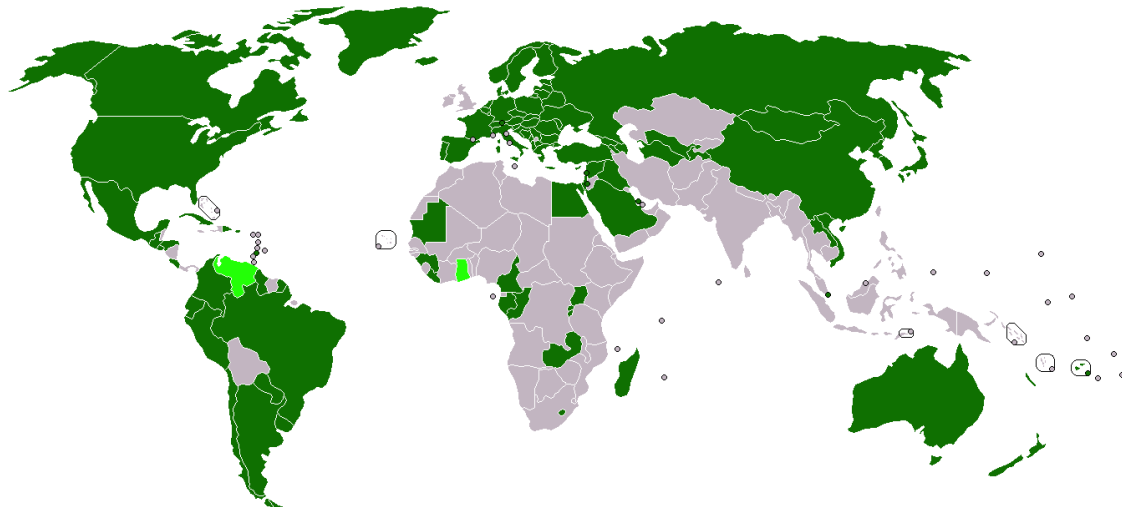
- International treaty drafted by UNCITRAL (United Nations Commission on International Trade Law) and adopted in Vienna in 1980
- Today in force in 97 countries (e.g., France, Germany, USA, China)

## ① CISG

## 1. Scope of Application

Green = ratified

Light green = signed but not ratified





## ① CISG

### 1. Scope of Application

- Directly governs material issues :
  - Contract formation
  - Parties' rights and obligations
  - Remedies

## ① CISG

### 1. Scope of Application

- Directly applicable (no transposition)
- Substantive / material rules (vs. conflict-of-law rules)
- Can be excluded or modified by parties (Art. 6)
- May be completed by national law or soft law (e.g., UNIDROIT principles)

## ① CISG

### 1. Scope of Application

- Automatically applies when :
  - EITHER : parties have their place of business in different Contracting States (Art. 1(1)(a))
  - OR : rules of Private International Law (PIL) lead to a Contracting State's law (Art. 1(1)(b))

## ① CISG

### 1. Scope of Application

Examples :

- French seller + German buyer → both parties are established in a Contracting State → CISG applies
- French seller + UK buyer :
  - UK is not a Contracting States → Art. 1(1)(a) CISG does not apply
  - Art. 1(1)(b) : rules of PIL lead to French law (seller's law) → CISG applies

## ① CISG

### 2. Legal structure

- Part I. Sphere of application and general provisions
  - Chapter I. Sphere of application (Art. 1-6)
  - Chapter II. General provisions (Art. 7-13)
- Part II. Formation of the contract (Art. 14-24)

## ① CISG

### 2. Legal structure

- Part III. Sale of goods
  - Chapter I. General provisions (Art. 25-29)
  - Chapter II. Obligations of the seller (Art. 30-52)
  - Chapter III. Obligations of the buyer (Art. 53-65)
  - Chapter IV. Passing of risk (Art. 66-70)
  - Chapter V. Provisions common to the obligations of the seller and of the buyer (Art. 71-88)
- Part IV. Final provisions (Art. 89-101)

## ① CISG

### 3. Key provisions

- Art. 1 (geographical scope) : different Contracting States + PIL rules
- Art. 2 – 3 (material scope) : exclusions of goods / contractual contents
- Art. 4 (thematic scope) : only formation of the contract and rights and obligation of the parties (not validity of contract / clauses)
- Art. 6 (party autonomy) : exclusion totally or partially
- Art. 7 (interpretation) : uniform application + good faith

## ① CISG

### 3. Key provisions

- Art. 8 (interpretation) : according to the common intention of the parties or according to the understanding that a reasonable person would have
- Art. 9 (usages and practices) : trade usages + established practices
- Arts. 14-24 (formation) : offer and acceptance (no specific form required) + no acceptance if offer is substantially altered (by GTC)



## ① CISG

### 3. Key provisions

- Art. 25 (fundamental breach) : serious deprivation of expected benefit
- Art. 38 (Conformity of the goods and duty of examination) : buyer must examine the goods
- Art. 39 (Loss of the right to rely on a lack on conformity) : notice of the lack of conformity within a reasonable time / within a period of two years from delivery
- Art. 74 (damages) : loss of profit + foreseeable damages
- Art. 79 (exemption) : force majeure + uncontrollable events

## I. INTERNATIONAL LAW

### A. HARD LAW

#### A.2 Conflicts of law

- ② Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods
- ③ Hague Convention of 2 October 1973 on the Law Applicable to Products Liability
- ④ Hague Convention of 14 March 1978 on the Law Applicable to Agency Contracts

## ② Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods

### 1. Scope of application

- Covered : international sales of goods
- Not covered :
  - Personal / home use (unless seller didn't know)
  - Sales by court or public authority
  - Shares, stocks, negotiable instruments
  - Ships, planes, electricity
- No rules about : party capacity, contract form, ownership transfer, third-party effects, court/arbitration rules, consumer protection

## ② Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods

### 1. Scope of application

- In force since 1964
- Contracting Parties (Art. 2) : Italy, Belgium, France, Denmark, Finland, Norway, Niger, and Sweden

## ② Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods

### 1. Scope of application

- The Hague Convention may play a role when:
  - Parties are not established in Contracting States to the CISG, or
  - CISG has been excluded by the contract (Art. 6), or
  - CISG does not cover certain aspects (e.g., contract validity, third party effects)

## ② Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods

### 1. Scope of application

- Complementarity with CISG :
  - Hague 1955 = conflict-of-laws rules
  - CISG = substantive / material rules

## ② Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods

### 1. Scope of application

- Legal articulation between the 1955 Hague Convention and the European PIL :  
→ Rome I Regulation on the law applicable to contractual obligations of 2008
  - Hague Convention 1955 applies in its Contracting States (that are also member states of EU) as the specific conflict-of-laws rule for the contract of sale of goods
  - Rome I Regulation 2008 applies in the Hague Convention's Contracting States (that are also member states of EU) as the general conflict-of-laws rule for all other types of contracts (besides the sale of goods)

## ② Hague Convention 15 June 1955 on the Law Applicable to International Sales of Goods

### 2. Legal structure

- 4 chapters:
  - Chapter 1 (Art. 1 – 6): scope
  - Chapter 2 (Art. 7 – 13): choice of law rules
  - Chapter 3 (Art. 14 – 23): general rules (public policy, multi-territory States, reservations)
  - Chapter 4 (Art. 24 – 26): final clauses (entry into force, ratification)



## ② Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods

### 3. Key provisions

- Art. 2 : party choice of law = valid if clear or express; change allowed anytime
- Art. 3 : default of choice of law
  - Principle: Seller's law (place of business)
  - Exceptions :
    - Vendor's establishment's law if order has been received in this country
    - Purchaser's law if order has been received (by vendor or vendor's agent) in purchaser's country

## ② Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods

### 3. Key provisions

- Art. 5 : Convention does not apply to:
  - capacity of the parties,
  - form of the contract,
  - transfer of ownership
  - effects of the sale in relation to persons other than the parties

## ③ Hague Convention of 2 October 1973 on the Law Applicable to Products Liability

### 1. Scope of Application

- In force since 1977
- Contracting parties : Belgium, Croatia, Finland, France, Italy, Luxembourg, Montenegro, Netherlands, North Macedonia, Norway, Portugal, Serbia, Slovenia, Spain

## ③ Hague Convention of 2 October 1973 on the Law Applicable to Products Liability

### 1. Scope of Application

- Legal articulation between the Hague Convention 1973 and the European PIL :
  - Rome II Regulation of 11 July 2007 on the law applicable to non-contractual obligations (Art. 5 : product liability)
- Hague Convention 1973 is in its Contracting States (that are also MS of EU) the specific conflict-of-laws rule for product liability (→ Art. 5 Rome II Regulation does not apply)
- Rome II Regulation 2007 is in the Hague Convention's Contracting States (that are also MS of EU) the general conflict-of-laws rule for all the other non-contractual obligations (besides product liability)

## ③ Hague Convention of 2 October 1973 on the Law Applicable to Products Liability

### 1. Scope of Application

- Covers : liability of manufacturers and other business parties for product damage
- Damage = personal injury, property damage, economic loss
- Liability = defects, wrong description, missing warnings

## ③ Hague Convention of 2 October 1973 on the Law Applicable to Products Liability

### 2. Legal Structure

- 22 articles, no formal chapters, but:
  - Art. 1-3 : scope
  - Art. 4-7 : choice of law rules
  - Art. 9-16 : general provisions (public policy, territorial scope, reservations)
  - Art. 17-22 : final clauses (ratification, territorial extension, entry into force, denunciation, renewal)
- Possible reservations (e.g., exclude raw agricultural products)
- Open to new accessions by HCCH (Hague Conference on Private International Law) and UN member States

## ③ Hague Convention of 2 October 1973 on the Law Applicable to Products Liability

### 3. Key provisions

- Art. 4 : basic rule = *lex loci damni*;  
→ applicable law = internal law of place of damage, if also
  - (a) victim's residence,
  - (b) defendant's main place of business, or
  - (c) place where victim bought the product
- Art. 5 : if not, law of victim's residence if also defendant's business or place of purchase
- Art. 6 : otherwise, law of defendant's main business

## ③ Hague Convention of 2 October 1973 on the Law Applicable to Products Liability

### 3. Key provisions

- Art. 7 : foreseeability exception = if defendant could not reasonably foresee sale in damage/residence State → Art. 4–6 does not apply
- Art. 8 : covers all liability aspects = basis / extent of liability, grounds for exemption from liability, kinds of damage, form of compensation, claim transfer, ability to claim, principal's liability for agent's acts, burden of proof, rules of prescription and limitation
- Art. 11 : no reciprocity needed — applies even if the applicable law is from non-contracting State (= “universal” approach of Hague Conventions)



## ④ Hague Convention of 14 March 1978 on the Law Applicable to Agency Contracts

### 1. Scope of application

- Applies to international contracts where an agent acts on behalf of a principal
- Includes agents who negotiate, receive, or transmit offers for others
- Applies whether the agent acts in its own name or in the name of the principal
- Excludes legal representation in family law, court procedures, public functions, and employment

## ④ Hague Convention of 14 March 1978 on the Law Applicable to Agency Contracts

### 1. Scope of application

- Contracting States : France, Netherlands, Portugal and Argentina
- Legal articulation between the Hague Convention 1978 and the European PIL :  
→ Rome I Regulation (concerning the contracts between principal and agent)
  - Hague Convention 1978 is in its Contracting States (that are also MS of EU) the specific conflict-of-laws rule for the contractual relationship between the principal and agent
  - Rome I Regulation is in the Hague Convention's Contracting States the general conflict-of-laws rule for contractual obligations including the contract between principal and third party

## ④ Hague Convention of 14 March 1978 on the Law Applicable to Agency Contracts

### 2. Legal Structure

- 28 articles, grouped in 5 chapters :
  - Scope of the Convention (Art. 1-4)
  - Internal relationship (principal ↔ agent) (Art. 5-10)
  - External relationship (principal / agent ↔ third party) (Art. 11-15)
  - General provisions (Art. 16-22)
  - Final clauses (ratification, entry into force, declarations) (Art. 23-28)

## ④ Hague Convention of 14 March 1978 on the Law Applicable to Agency Contracts

### 3. Key provisions

- Article 5 : Parties can choose the law governing the agent-principal relationship
- Article 6 : If no choice, law of agent's business location (or main activity) applies
- Article 8 : Convention governs agent's powers, duties, breach, termination, delegation, non-competition clauses, etc.

## ④ Hague Convention of 14 March 1978 on the Law Applicable to Agency Contracts

### 3. Key provisions

- Article 11 : The existence and effects of the agent's authority within the relationship between principle and third party = law of agent's business location (with exceptions)
- Article 14 : Parties may agree to a different law for third-party effects (must be accepted in writing)

## I. INTERNATIONAL LAW

### A. HARD LAW

### B. SOFT LAW

⑤ UNIDROIT Principles

⑥ INCOTERMS

⑦ Arbitrations Rules – ICC

## ⑤ UNIDROIT Principles

### 1. Scope of Application

- Non-binding rules for international commercial contracts
- Apply only if parties expressly choose them in contract
- Parties can refer to "*general principles of law*" or "*lex mercatoria*"
- Used in arbitration to fill legal gaps (suppletive source)

## ⑤ UNIDROIT Principles

### 2. Legal structure

- Adopted by UNIDROIT (Rome-based intergovernmental body)
- First published 1994, updated in 2004, 2010, 2016
- 2016 edition : 11 chapters



## ⑤ UNIDROIT Principles

### 2. Legal structure

- Chapter 1 : general provisions (Art. 1.1 - 1.12)
- Chapter 2 : formation and authority of agents (Art. 2.1.1 - 2.2.10)
- Chapter 3 : validity (Art. 3.1.1 – 3.3.2)
- Chapter 4 : interpretation (Art. 4.1 – 4.8)
- Chapter 5 : content and third party's rights (Art. 5.1.1 – 5.3.5)
- Chapter 6 : performance (Art. 6.1.1 – 6.2.3)

## ⑤ UNIDROIT Principles

### 2. Legal structure

- Chapter 7 : non-performance (Art. 7.1.1 - 7.4.13)
- Chapter 8 : set-off (Art. 8.1 – 8.5)
- Chapter 9 : assignment of rights, transfer of obligations, assignment of contracts (Art. 9.1.1 – 9.3.7)
- Chapter 10 : limitation periods (Art. 10.1 – 10.11)
- Chapter 11 : plurality of obligors and of obligees (Art. 11.1.1 – 11.2.4)

## ⑤ UNIDROIT Principles

### 2. Legal structure

- Model rules – no legal effect without party agreement
- Soft law : valid only within the limits of the subsidiarily applicable national laws (ius cogens)
- Frequently applied by arbitral tribunals
- Rarely used by national courts (only to fill gaps when express parties' agreement on it)

## ⑤ UNIDROIT Principles

### 3. Key provisions

- Art. 1.1 : party autonomy
- Art. 1.2 : no form required (informality)
- Art. 6.2.2 - 6.2.3 : hardship clause (renegotiation if fundamental change)
- Art 7.1.7 : force majeure

## ⑥ INCOTERMS

### 1. Scope of Application

- Non-binding rules by International Chamber of Commerce (ICC)
- Standardized General Terms and Conditions (GTC) for cross-border sale of goods
- Apply only if chosen by parties in the contract : concrete choice of the applicable Incoterm necessary
- Define trade obligations (for seller and purchaser) and risk transfer

## ⑥ INCOTERMS

### 2. Legal structure

- Updated every 10 years by ICC
- Current version : Incoterms 2020 (valid from Jan 2020 to Dec 2029)
- 11 Incoterms divided into 2 groups:
  - Maritime only : FAS, FOB, CFR, CIF, DPU (ex-DAT)
  - Multimodal : EXW, FCA, CPT, CIP, DAP, DDP
- Based on commercial trade practices, not law

## ⑥ INCOTERMS

### 2. Legal structure

Incoterms® 2020 Rules Responsibility Quick Reference Guide											
IncoDocs	Freight Collect Terms					Freight Prepaid Terms					
Groups	Any Mode or Modes of Transport		Sea and Inland Waterway Transport				Any Mode or Modes of Transport				
Incoterm	EXW Ex Works (Place)	FCA Free Carrier (Place)	FAS Free Alongside Ship (Port)	FOB Free On Board (Port)	CFR Cost and Freight (Port)	CIF Cost Insurance & Freight (Port)	CPT Carriage Paid To (Place)	CIP Carriage & Insurance Paid to (Place)	DAP Delivered at Place (Place)	DPU Delivered at Place Unloaded (Place)	DDP Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Obligations & Charges:											
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller

\*CIP requires at least an insurance with the minimum cover of the Institute Cargo Clause (C) (Number of listed risks, subject to removed exclusions)  
 \*\*CIP now requires at least an insurance with the minimum cover of the Institute Cargo Clause (A) (All risk, subject to removed exclusions)  
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 This is general information for guidance purposes only. IncoSolutions Pty Ltd is not responsible for these contents nor do the contents listed above contain all details. For a full and complete description, refer to the full version of Incoterms® 2020 by the International Chamber of Commerce at the ICC website.

## ⑥ INCOTERMS

### 3. Key provisions

- Define :
  - Transfer of risk (delivery point)
  - Who pays for freight, insurance, customs, etc.
- Examples :
  - EXW : delivery at seller's premises – minimal seller obligation
  - FOB : seller bears costs/risks up to loading on ship
  - CIF : seller adds basic insurance + transport to destination
  - FCA : seller loads goods for export – risk passes at loading
  - CIP : seller pays carriage + insurance to destination
  - DAP/DDP : seller delivers to buyer's country – risk at delivery



## ⑦ Arbitrations Rules – ICC

### 1. Scope of Application

- Procedural rules set by international arbitration institutions for a private / contractual / justice (vs. traditional / public Justice before State Courts)
- Examples for arbitral institutions :
  - ICC – International Chamber of Commerce (global)
  - LCIA – London
  - SIAC – Singapore
  - European Court of Arbitration – Strasbourg
  - CMAP – Paris
  - AFA – Association Française d'Arbitrage
  - OSCE – Geneva
  - CIMA – Centre Interprofessionnel de Médiation et d'Arbitrage

## ⑦ Arbitrations Rules – ICC

### 1. Scope of Application

- Apply when parties agree to use the institution's arbitration rules (private / contractual justice) :
  - Arbitration clause (before dispute)
  - Compromise (after dispute)
- Do not confuse :
  - Arbitral institution (organizing and ruling the arbitral proceedings)
  - Arbitral tribunal (jurisdictional power to resolve the dispute)
- If parties do not agree on institutional arbitration : → *ad hoc* arbitration
  - Parties shall organize themselves the arbitral proceedings
  - Parties can ask for assistance to State Courts (supporting Judge)

## ⑦ Arbitrations Rules – ICC

### 2. Legal structure

- Example : ICC Arbitration Rules 2021
  - Introductory Provisions (Art.1-3)
  - Commencing the Arbitration (Art. 4-6)
  - Multiple Parties, Multiple Contracts and Consolidation (Art. 7-10)
  - The Arbitral Tribunal (Art. 11-15)
  - The Arbitral Proceedings (Art. 16-30)

## ⑦ Arbitrations Rules – ICC

### 2. Legal structure

- Example : ICC Arbitration Rules 2021
  - Awards (Art. 31-36)
  - Costs (Art. 37-38)
  - Miscellaneous (Art. 39-43)
  - Appendix I Statutes of the International Court of Arbitration (Art. 1-10)
  - Appendix II Internal Rules of the International Court of Arbitration (Art. 1-7)

## ⑦ Arbitrations Rules – ICC

### 2. Legal structure

- Example : ICC Arbitration Rules 2021
  - Appendix III – Arbitration Costs and Fees (Art. 1-3)
  - Appendix IV – Case Management Techniques
  - Appendix V – Emergency Arbitrator Rules (Art. 1-8)
  - Appendix VI – Expedited Procedure Rules (Art. 1-5)

## ⑦ Arbitrations Rules – ICC

### 3. Key provisions

- Art. 4 : Request for Arbitration
- Art. 5 : Answer to the Request : Counterclaims
- Art. 12 : Constitution of the Arbitral Tribunal
- Art. 13 : Appointment and Conformation of the Arbitrators
- Art 18 : Place of the Arbitration
- Art. 19 : Rules Governing the Proceedings
- Art. 20 : Language of the Arbitration
- Art. 21 : Applicable Rules of Law

## ⑦ Arbitrations Rules – ICC

### 3. Key provisions

- Art 22 : Conduct of the Arbitration
- Art. 24 : Case Management Conference and Procedural Timetable
- Art. 26 : Hearings
- Art. 28 : Conservatory and Interim Measures
- Art. 29 : Emergency Arbitrator
- Art. 31 : Time Limit for the Final Award
- Art. 32 : Making of the Award
- Art. 33 : Award by Consent

## **II. EUROPEAN LAW**

**A. Treaties**

**B. Regulations / Conventions**

**C. Directives**



## II. EUROPEAN LAW

### A. Primary law

- ⑧ Treaty on European Union (TEU)
- ⑨ Treaty on the Functioning of the EU (TFEU)
- ⑩ Charter of Fundamental Rights of the EU

## ⑧ Treaty on European Union (TEU)

### 1. Scope of Application

- Also known as the Maastricht Treaty (1992), amended by Lisbon Treaty (2009)
- Defines main EU institutions, their roles and powers
- Introduces principles of attribution and subsidiarity

## ⑧ Treaty on European Union (TEU)

### 1. Scope of Application

- Applies in all EU Member States and to EU institutions
- Constitutional treaty of the EU
- Sets core principles of EU functioning
- Defines EU objectives : internal market, social Europe, sustainable development, etc.
- Establishes EU values and competences

## ⑧ Treaty on European Union (TEU)

### 2. Legal structure

- Title I : common provisions (Art. 1-8)
- Title II : provisions on democratic principles (Art. 9-12)
- Title III : provisions on the institutions (Art.13-19)
- Title IV : provisions on enhanced cooperation (Art. 20)
- Title V : general provisions on the Union's external action and specific provisions on the common foreign and security policy (Art. 21-46)
- Title VI : final provisions (Art.47-55)

## ⑧ Treaty on European Union (TEU)

### 3. Key provisions

- Art. 3 → Objectives : social market economy, cohesion, equality, intergenerational solidarity, children's rights
- Art. 5 → Competence principles : attribution, subsidiarity, proportionality
- Art. 6 → Charter of Fundamental Rights becomes binding : aims for EU accession to ECHR

## ⑨ Treaty on the Functioning of the European Union (TFEU)

### 1. Scope of Application

- Complements the TEU
- Origin : Treaty of Rome (1958), revised by Treaty of Lisbon (13 December 2007)
- Lists common policies and internal market framework

## ⑨ Treaty on the Functioning of the European Union (TFEU)

### 1. Scope of Application

- Covers EU substantive law
- Governs concrete EU policies : internal market, social, environmental, etc.
- Defines EU competences and how they are exercised

## ⑨ Treaty on the Functioning of the European Union (TFEU)

### 2. Legal structure

- Part one – Principles (Art. 1-17)
  - Title I – Categories and areas of Union competence (Art. 2-6)
  - Title II – Provisions having general application (Art. 7-17)
- Part two – Non-discrimination and Citizenship of the Union (Art. 18-25)
- Part three – Union policies and internal actions (Art. 26-197)
  - Title I – Internal market (Art. 26-27)
  - Title II – Free movement of goods (Art. 28-37)



## ⑨ Treaty on the Functioning of the European Union (TFEU)

### 2. Legal structure

- Title III – agriculture and fisheries (Art. 38-44)
- Title IV – free movement of persons, services and capital (Art. 45-66)
- Title V – area of freedom, security and justice (Art. 67-89)
- Title VI – transport (Art. 90-100)
- Title VII – common rules on competition, taxation and approximation of laws (Art. 101-118)
- Title VIII – economic and monetary policy (Art. 119-144)
- Title IX – employment (Art. 145-150)
- Title X – social policy (Art. 151-161)
- Title XI – european social fund (Art. 162-164)

## ⑨ Treaty on the Functioning of the European Union (TFEU)

### 2. Legal structure

- Title XII – education, vocational training, youth and sport (Art. 165-166)
- Title XIII – culture (Art. 167)
- Title XIV – public health (Art. 168)
- Title XV – consumer protection (Art. 169)
- Title XVI – trans-european networks (Art. 170-172)
- Title XVII – industry (Art. 173)
- Title XVIII – economic, social and territorial cohesion (Art. 174-178)
- Title XIX – research and technological development and space (Art. 179-190)
- Title XX – environment (Art. 191-193)

## ⑨ Treaty on the Functioning of the European Union (TFEU)

### 2. Legal structure

- Title XXI – energy (Art. 194)
- Title XXII – tourism (Art. 195)
- Title XXIII – civil protection (Art. 196)
- Title XXIV – administrative cooperation (Art. 197)
  
- Part four – association of the overseas countries and territories (Art. 198-204)
  
- Part five – the Union’s external action (Art. 205-222)
  - Title I – general provisions on the Union’s external action (Art. 205)
  - Title II – common commercial policy (Art. 206-207)

## ⑨ Treaty on the Functioning of the European Union (TFEU)

### 2. Legal structure

- Title III – cooperation with third countries and humanitarian aid (Art. 208-214)
- Title IV – restrictive measures (Art. 215)
- Title V – international agreements (Art. 216-219)
- Title VI – the union's relations with international organizations and third countries and union delegations (Art. 220-221)
- Title VII – solidarity clause (Art. 222)

## ⑨ Treaty on the Functioning of the European Union (TFEU)

### 2. Legal structure

- Part six – institutional and financial provisions (Art. 223-334)
  - Title I – institutional provisions (Art. 223-309)
  - Title II – financial provisions (Art. 310-325)
  - Title III – enhanced cooperation (Art. 326-334)
- Part seven – general and final provisions (Art. 335-358)

## ⑨ Treaty on the Functioning of the European Union (TFEU)

### 3. Key provisions

- Art. 9 : social clause (social protection in all EU actions)
- Art. 17 : non-discrimination based on nationality
- Art. 26 : internal market = free movement without borders
- Art. 49 : right of establishment
- Art. 54 : EU companies are treated as natural persons who are nationals of Member States: companies' mobility within the EU

## ⑨ Treaty on the Functioning of the European Union (TFEU)

### 3. Key provisions

- Art. 67 : area of freedom, security, and justice
- Art. 151-161 : social policy
- Art. 191-193 : environmental policy

## ⑩ Charter of Fundamental Rights of the EU

### 1. Scope of Application

- Proclaimed in 2000, legally binding since Treaty of Lisbon (entered into force 1 December 2009)
- Primary EU law (constitutional value)
- Applies to EU institutions and to Member States when implementing EU law



## ⑩ Charter of Fundamental Rights of the EU

### 2. Legal structure

- 7 Chapters :
  - Dignity (Art. 1-5)
  - Freedoms (Art. 6-19)
  - Equality (Art. 20-26)
  - Solidarity (Art. 27-38)
  - Citizens' Rights (Art. 39-46)
  - Justice (Art. 47-50)
  - General provisions on interpretation and application (Art. 51-54)

## ⑩ Charter of Fundamental Rights of the EU

### 3. Key provisions

- Art. 15 → Freedom to choose occupation
- Art. 18 → Right to asylum
- Art. 21 → Non-discrimination
- Art. 37 → Environmental protection
- Art. 45 → Freedom of movement

## II. EUROPEAN LAW

### B. Regulations / Conventions

B.1 Conflicts of jurisdiction

B.2 Conflicts of law

B.3 EU company regulations

## II. EUROPEAN LAW

### B. Regulations / Conventions

#### B.1 Conflicts of jurisdiction

- ⑪ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I bis Regulation) & Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Brussels Convention) of 27 September 1968
- ⑫ Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Lugano Convention) of 30 October 2007

## ⑪ Brussels I bis Regulation & Brussels Convention

### 1. Scope of Application

- Secondary EU law (binding regulation)
- Based on Art. 81 TFEU
- Harmonizes jurisdiction and recognition / enforcement of judgments in EU

## ⑪ Brussels I bis Regulation & Brussels Convention

### 1. Scope of Application

- Civil and commercial matters (excludes fiscal, customs, administrative, and public power responsibility)
- Intra-EU disputes (based on domicile of defendant – Art. 6)
- Brussels I bis Regulation applies to cases initiated after 10 January 2015 (Art. 66 §1)

## ⑪ Brussels I bis Regulation & Brussels Convention

### 1. Scope of Application

- Brussels I bis Regulation replaces the 1968 Brussels Convention, which was the initial legal instrument
- Successive reforms:
  - Brussels Convention (1968)
  - Brussels I Regulation (2001)
  - Brussels I bis Regulation (2012)

## ⑪ Brussels I bis Regulation

### 2. Legal structure

- Chapter 1 : scope and definitions (Art. 1-3)
- Chapter 2 : jurisdiction (Art. 4-35)
- Chapter 3 : recognition and enforcement (Art. 36-57)
- Chapter 4 : authentic instruments and court settlements (Art. 58-60)
- Chapter 5 : general provisions (Art. 61-65)
- Chapter 6 : transitional provisions (Art. 66)
- Chapter 7 : relationship with other instruments (Art. 67-73)
- Chapter 8 : final provisions (Art. 75-81)



## ⑪ Brussels I bis Regulation

### 3. Key provisions

- Art. 4 : General rule → jurisdiction at defendant's domicile
- Art. 7 : Special jurisdiction in contractual/tort matters
  - Art 7(1) : contractual matters:
    - Principle : place of performance
    - Specific applications:
      - ✓ Sales of goods: place of delivery
      - ✓ Provision of services : place of provision
  - Art. 7(2) : tort matters : place of damage

## ⑪ Brussels I bis Regulation

### 3. Key provisions

- Section 4 (Art. 17-19) : consumers protection in B2C contracts
  - Definition of consumer contracts (Art. 17)
    - Sales of goods / loan : payment by installments
    - Other party (professional / trader) pursues or directs its activities in or to the MS where Consumer has its place of residence
  - Jurisdiction rules
    - C may sue B before the courts of his or B's place of residence
    - B can sue C solely before courts of C's place of residence
    - B and C can conclude a jurisdiction agreement under certain conditions (e.g., after the dispute arose)

## ⑪ Brussels I bis Regulation

### 3. Key provisions

- Section 4 (Art. 17-19) : consumers protection in B2C contracts (definition!)
  - The consumer may bring a dispute before the courts of his place of residence or the professional
  - Where proceedings are brought against him, the courts of the consumer's place of residence shall have jurisdiction.
  - An agreement is possible under certain conditions e.g., after the dispute arose.
- Section 5 (Art. 20-23) : employees protection in individual employment contracts

## ⑪ Brussels I bis Regulation

### 3. Key provisions

- Art. 24 : Exclusive jurisdiction for real estate, company validity, etc.
- Art. 25 : Choice of court agreement (autonomy of the parties)
- Art. 39 : Abolition of exequatur (automatic recognition & enforcement in other MS)
- Art. 52-53 : Mutual recognition of MS's judgements via certificate form (Annex 1)

## ⑫ Lugano Convention

### 1. Scope of Application

- Multilateral international treaty signed in 2007 (replacing 1988 version)
- Lugano Convention mirrors Brussels I Regulation structure (rules on jurisdiction, recognition, and enforcement)
- Adopted via Council Decision 2009/430/EC to make EU a party
- Adjusted to fit EFTA legal systems

## ⑫ Lugano Convention

### 1. Scope of Application

- Convention between EU and EFTA countries (Switzerland, Norway, Iceland) → extends Brussels I Regulation rules to non-EU EFTA states
- Applies to civil and commercial matters
- Excludes : taxation, customs, public administration, arbitration, family law, insolvency
- Ensures mutual recognition and enforcement of judgments

## ⑫ Lugano Convention

### 2. Legal structure

- Title 1 : scope
- Title 2 : jurisdiction
- Title 3 : recognition and enforcement
- Title 4 : authentic instruments and court settlements
- Title 5 : general provisions
- Title 6 : transitional provisions
- Title 7 : relationship to council regulation (EC) No 44/ 2001b and other instruments
- Title 8 : final provisions

## ⑫ Lugano Convention

### 3. Key provisions

- Art. 2 : Applies to persons domiciled in a State bound by the Convention
- Art. 5 : Special Jurisdiction :
  - In matters of contracts = place of performance
  - In matters of tort = place of damage
- Art. 17 : Choice of court agreement



## II. EUROPEAN LAW

### B. Regulations / Conventions

#### B.2 Conflicts of law

⑬ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)

⑭ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)

## ⑬ Rome I

### 1. Scope of Application

- Regulation (EC) No 593/2008
- Based on Art. 81 TFEU
- Directly applicable in all EU MS (except Denmark)
- Applicable to contractual obligations in civil and commercial matters with cross-border elements
- Replaces Rome Convention of 19 June 1980

## ⑬ Rome I

### 1. Scope of Application

- Legal articulation between Hague Convention 1955 and Rome I Regulation of 15 June
  - Rome I Regulation does not apply if a previous international convention (like the 1955 Hague Conventions) is already in force
  - Under the condition that the Contracting States of this previous Convention are not exclusively MS of the EU (like Niger and Norway)
  - Consequences for the PIL-rules before a French Court :
    - Hague Convention 1955 is the specific choice-of-laws rule for the contract of sale of goods
    - Rome I Regulation is the general choice-of laws rule for all the other types of contract (besides the sale of goods)

## ⑬ Rome I

### 2. Legal structure

- Chapter 1 : scope (Art. 1-2)
- Chapter 2 : uniform rules (Art. 3-18)
- Chapter 3 : other provisions (Art. 19-28)
- Chapter 4 : final provisions (Art. 29)

## ⑬ Rome I

### 3. Key provisions

- Art. 3 : Freedom of choice of law
- Art. 4 : Default rules for determining applicable law (e.g., place of habitual residence)
  - § 1 : abstract definition
  - § 2 : standard contracts
  - § 3 : escape clause
  - § 4 : global clause
- Art. 9 : Overriding mandatory provisions

## ⑭ Rome II

### 1. Scope of Application

- Regulation (EC) No 864/2007 of the 31 July 2007
- Based on Art. 81 TFEU
- Directly applicable (except Denmark)
- Applicable to non-contractual obligations (torts, delicts) in cross-border cases

## ⑭ Rome II

### 2. Legal structure

- Chapter 1 : scope (Art. 1-3)
- Chapter 2 : torts / delicts (Art. 4-9)
- Chapter 3 : unjust enrichment, *negotiorum gestio* and *culpa contrahendo* (Art. 10-13)
- Chapter 4 : freedom of choice (Art. 14)
- Chapter 5 : common rules (Art. 15-22)
- Chapter 6 : other provisions (Art. 23-28)
- Chapter 7 : final provisions (Art. 29-32)

## ⑭ Rome II

### 3. Key provisions

- Art 3 : Universal application
- Art. 5 : Product liability
- Art. 12 : *Culpa in contrahendo* : sudden (and not communicated) breakdown of negotiations



## II. EUROPEAN LAW

### B. Regulations / Conventions

#### B.3 EU Company Regulations

⑮ Regulation (EC) No 2157/2001 on the Statute for a European Company (Societas Europaea - SE)

⑯ Proposal for a Council Regulation of 25 June 2008 on the Statute for a European Private Company (European Private Company)

## ⑮ Societas Europaea - SE

### 1. Scope of Application

- Council Regulation (EC) no. 2157/2001 (supplemented by Directive 2001/86/EC on the involvement of employees)
- Directly applicable (no transposition)
- National law applies to uncovered areas (e.g., insolvency)

## ⑮ Societas Europaea - SE

### 1. Scope of Application

- EU public limited company form
- Formed by at least 2 existing companies from different EU States (e.g. by merger, creation of a holding or subsidiary, or conversion)
- Applies to companies from different Member States
- Main advantage: exceptional international prestige and legal label (“SE”) as a corporate form for globally acting groups

## ⑮ Societas Europaea - SE

### 2. Legal structure

- Title 1 : General provisions
- Title 2 : Formation
  - Section 1 : General
  - Section 2 : Formation by merger
  - Section 3 : Formation of a holding SE
  - Section 4 : Formation of a subsidiary SE
  - Section 5 : Conversion of an existing public limited-liability company into an SE

## ⑮ Societas Europaea - SE

### 2. Legal structure

- Title 3 : Structure of the SE
  - Section 1 : Two-tier system
  - Section 2 : The one-tier system
  - Section 3 : Rules common to the one-tier and two-tier systems
  - Section 4 : General meeting
- Title 4 : Annual accounts and consolidates accounts
- Title 5 : Winding up, liquidation, insolvency and cessation of payments
- Title 6 : Additional and transitional provisions
- Title 7 : Final provisions

## ⑮ Societas Europaea - SE

### 3. Key provisions

- Art. 1(2): SE is a company limited by shares and shareholders liable only up to subscribed capital
- Art. 2 : formation of a SE
  - By merger
  - Holding
  - Subsidiary
  - By conversion

## ⑮ Societas Europaea - SE

### 3. Key provisions

- Art. 4 : minimum subscribed capital → €120,000
- Art. 7 : Seat : within the Community, in the same Member State as the head office → statutory seat and real seat must be established in the same Member State
- Art. 8 : transfer of registered office to another Member State → no liquidation, no new legal entity

## ⑮ Societas Europaea - SE

### 3. Key provisions

- Art. 9 : applicable legal regime
  - this regulation
  - statutes (if authorized by the Regulation)
  - if not regulated by this regulation :
    - Laws adopted by the MS relating to SEs
    - Laws adopted by the MS relating to public limited-liability company
    - Provisions of its statutes in the same way as for a public limited-liability company
- Art. 11 : name must include abbreviation “SE” before or after



## ⑩ Private Company

### 1. Scope of Application

- Proposed EU private limited company for SMEs
- Simplifies cross-border start-ups and group structures
- 2008 proposal (Council Regulation) → **not adopted**
- Formation by one or more natural persons or companies (incl. SE or national company)
- Statutory seat and real seat can be situated in different MS (important difference to the SE Regulation)

## ⑩ Private Company

### 3. Key provisions

- Art. 5 : shareholder liability = limited to subscribed amount capital = unquoted shares (no public offer)
- Art. 6 : Name must include abbreviation “SPE”
- Art. 7 : Seat of the company : statutory seat (= registered office) and real seat (= central administration) can be situated in different MS
- Art. 19(4) : minimum capital = €1
- Art. 35(1) : Seat transfer to another MS allowed

## II. EUROPEAN LAW

### C. Directives

⑰ Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Mobility Directive – Company Law Package)

## ⑪ Mobility Directive – Company Law Package

### 1. Scope of Application

- Public and private limited-liability companies
- Cross-border reorganization (framework for cross-border conversions, cross-border mergers, cross-border divisions)
- Legal seat transfer to another MS → no dissolution or new company → retains legal personality
- Requires real economic presence in home State

## ⑪ Mobility Directive – Company Law Package

### 2. Legal structure

- Directive (EU) 2019/2121 → amends Directive 2017/1132
- Adopted in 2019, transposition deadline: Jan 2023
- EU-wide (EEA) application
- Based on freedom of establishment (TFEU Art. 49–54)

### **III. NATIONAL LAW (FRENCH LAW)**

#### **A. MATERIAL LAW**

#### **B. PROCEDURAL LAW**

## A. MATERIAL LAW

⑱ Civil Code (Code civil)

⑲ Commercial Code (Code de commerce)

## A. MATERIAL LAW

### ⑱ Civil Code (Code civil)

#### 1. Scope of Application

- Civil Code adopted in 1804
- Continuously updated (notably contract law reform in 2016)
- Primary source for private law in France



## ⑱ Civil Code (Code civil)

### 1. Scope of Application

- General law of obligations : material / substantive rules
- May be suppletive rules to CISG if French law is the applicable law of the international contract of sale of goods (Art. 1, 4, 7 CISG)
- Governs contracts, capacity, legal personality
- Applies to business and non-business legal relations

## ⑱ Civil Code (Code civil)

### 3. Key provisions

- Art. 1101 CC : contract = agreement creating obligations
- Art. 1103 CC : Pacta sunt servanda principle
- Art. 1104 CC : Principle of good faith

## ⑱ Civil Code (Code civil)

### 3. Key provisions

- Art. 1128 CC : 3 validity conditions = consent, capacity, lawful content
- Art. 1343-3 CC : obligations payable in euros unless international contract
- Relevance to cross-border contracts & transnational elements if international contract is governed by French law (Rome I Regulation)
- Art. 2061 CC : conditions of validity of an arbitration clause (scope in domestic vs. international matters)

## ①⑨ Commercial Code (Code de commerce)

### 1. Scope of Application

- Lex specialis for commercial activities
- Applies to commercial transactions, merchants, and companies
- Also applies to insolvency, competition, and corporate governance

## ①⑨ Commercial Code (Code de commerce)

### 1. Scope of Application

- May contain material provisions that raise PIL-rules aspects:
  - French “sudden termination rule” (Art. 442 II 1 Code de com.)
  - PIL-rules aspects in practice:
    - Contractual qualification
      - ✓ Art. 7(1) Brussels I bis Regulation
      - ✓ Rome I Regulation
    - Extra-contractual qualification
      - ✓ Art. 7(2) Brussels I bis Regulation
      - ✓ Rome II Regulation
    - Qualification as a “mandatory overruling provision” (*Loi de police*)

## ① Commercial Code (Code de commerce)

### 2. Legal structure

- Code adopted in 2000 (from former Napoleonic Commercial Code)
- Includes both substantive and procedural rules
- Complements the Civil Code in business context

## ⑲ Commercial Code (Code de commerce)

### 3. Key provisions

- Art. L.110-1 : defines commercial acts (e.g., sale, banking, brokerage)
- Art. L.123-1 to L.123-16 : obligations of traders (e.g., bookkeeping, accounting)
- Art. L.222-1 to L.228 : company law
- Art. L.223-1 to L.223-43 : rules on limited liability company (SARL)
- Art. L.225-1 to L.225-102 : rules on société anonyme (SA)

## ① Commercial Code (Code de commerce)

### 3. Key provisions

- Art. L.225-102-4 : duty of vigilance for parent companies (cross-border impact)
- Art. L.227-1 to L.227-20 : rules on sociétés par actions simplifiées (SAS)
- Art. L.210-1 : defines commercial companies (SARL, SA, etc.)
- Art. L.229-1 to L.229-15 : rules on société européenne (SE)
- Art. L.442-1 : prohibition of sudden termination of established business relations



## B. PROCEDURAL LAW

② Code of Civil Procedure (CPC) – General Jurisdiction Rules & Arbitration Law (Decree 2011 – Art. 1442–1527 CPC)

N.B: Link for the English translation of the Decree 2011:

<https://share.google/tNeDsU6pNzpZFmvtW>

## B. PROCEDURAL LAW

### ② Code of Civil Procedure (CPC) – General Jurisdiction Rules

#### 1. Scope of Application

- Procedural rules for civil and commercial disputes
- Determines jurisdiction venue and proceedings (Art. 42-48)
- Applies to domestic and international cases

## B. PROCEDURAL LAW

### ②⑩ Arbitration Law (Decree 2011 – Art. 1442–1527 CPC)

#### 1. Scope of Application

- Distinction between internal and international arbitration
- Aligned with UNCITRAL & NY Convention
- Applies to both domestic and international arbitration
- Covers the entire arbitral process (agreement → award → enforcement)

## ②⑩ Code of Civil Procedure (CPC) – General Jurisdiction Rules

### 2. Legal structure

- CPC governs procedural matters
- Rules on jurisdiction : Art. 42 - 48
- Interpretation of Art. 42-48 CPC in accordance with EU Brussels I bis Regulation for international disputes
- Decree 2011 → introduces Art. 1442–1527 into the CPC (Title V)

## ②⑩ Code of Civil Procedure (CPC) – General Jurisdiction Rules

### 3. Key provisions

- Art. 42 CPC : jurisdiction = defendant's domicile
- Art. 43 CPC : exception for real property
- Art. 46 CPC : specific jurisdiction rules for contractual / tort matters

## ②⑩ Code of Civil Procedure (CPC) – General Jurisdiction Rules

### 3. Key provisions

- Art. 48 CPC : jurisdiction clauses
  - Domestic contracts : solely valid if two conditions fulfilled
    - Apparently specified in the contractual text
    - Concluded between commercial entities
  - International contracts :
    - Priority of Brussels I bis Regulation in EU-context
      - ✓ Art. 4 Brussels I bis (vs. Art. 42 CPC)
      - ✓ Art. 7 Brussels I bis (vs. Art. 46 CPC)
      - ✓ Art. 25 Brussels I bis (vs. Art. 48 CPC)
    - Outside the EU : no specific conditions for Art. 48 CPC

## ②⑩ Arbitration Law (Decree 2011 – Art. 1442–1527 CPC)

### 3. Key provisions

- Art. 1442 : arbitration agreement = arbitration clause or compromise
- Art. 1447 : clause is independent from main contract
- Art. 1448 : courts must decline jurisdiction if valid arbitration agreement
- Art. 1453 : If disagreement, the arbitrators are designated by the arbitral institution or the judge acting in support of the arbitration (*juge d'appui*).
- Art. 1454 : Any other dispute regarding the constitution of the arbitral tribunal is settled by the arbitral institution or by the supporting judge

## ②⑩ Arbitration Law (Decree 2011 – Art. 1442–1527 CPC)

### 3. Key provisions

- Art. 1464 : guiding principles = loyalty, confidentiality, equality
- Art. 1465 : arbitral tribunal has jurisdiction to decide on its own jurisdiction
- Art. 1466 : estoppel (waiver by silence)
- Art. 1467 : investigation powers of the arbitral tribunal
- Art. 1468 : interim or protective measure can be taken by the arbitral tribunal



## ②⑩ Arbitration Law (Decree 2011 – Art. 1442–1527 CPC)

### 3. Key provisions

- Art. 1469 : a party may summon a third party before the judicial court's president to obtain the delivery or production of a document.
- Art. 1503 : no appeal or opposition to the supreme court
- Art. 1504 : international arbitration = involves interests of international trade.
- Art. 1505 : international arbitration principle : supporting judge (*juge d'appui*) is president of the judicial court (*Tribunal Judiciaire*) from Paris

## ②⑩ Arbitration Law (Decree 2011 – Art. 1442–1527 CPC)

### 3. Key provisions

- Art. 1506 : application of domestic arbitration rules to international matters (domestic rules may have a suppletive character)
- Art. 1507 : no formal requirement for international arbitration clause
- Art. 1511 : international arbitrator shall
  - apply rules of law chosen by the parties, and in the default of choice,
  - apply rules of law that seem appropriate to the case, and
  - take trade usages into account
- Art. 1520 : limited grounds to annul arbitral award

# Thank you for your attention !



**Sans limites.**

**Ohne Grenzen.**

**Without limits.**

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