

Transnational Business Law

Part C.3 : INTERNATIONAL ARBITRATION

University of Strasbourg
Faculty of Law – Master 1

Prof. Jochen BAUERREIS
Avocat & Rechtsanwalt
Avocat spécialisé en droit de l'Arbitrage
Avocat spécialisé en droit international et de l'Union Européenne

PRESENTATION OUTLINE

- I. ARBITRATION & ADR IN INTERNATIONAL BUSINESS**
- II. INTERNATIONAL ARBITRATION SURVEY**
- III. FRENCH INTERNATIONAL ARBITRATION LAW**

PRESENTATION OUTLINE

- I. ARBITRATION & ADR IN INTERNATIONAL BUSINESS**
 - A. DEFINITION OF ARBITRATION & ADR**
 - B. SCOPE OF APPLICATION : ARBITRABILITY**
 - C. CLASSIFICATIONS OF ARBITRATION**
 - D. ADVANTAGES AND DISADVANTAGES OF ARBITRATION**
 - E. ARBITRAL PROCEEDINGS**

A. DEFINITION OF ARBITRATION & ADR

- **Definition of Arbitration**

« Arbitration is a method aimed at obtaining the answer to a question concerning the relationship between two or more persons, by one or more persons - the arbitrator or arbitrators - who derive their powers from a private agreement and who adjudicate on the basis of that agreement, without being entrusted with that task by the State. »

(René DAVID, L'arbitrage dans le commerce international, Economica, 1987, n° 2, p. 9)

« Arbitration is the institution by which a third party settles the dispute between two or more parties, exercising the jurisdictional mission entrusted to it by both parties. »

(Charles JARROSSON, La notion d'arbitrage, LGDJ, 1987, p. 372)

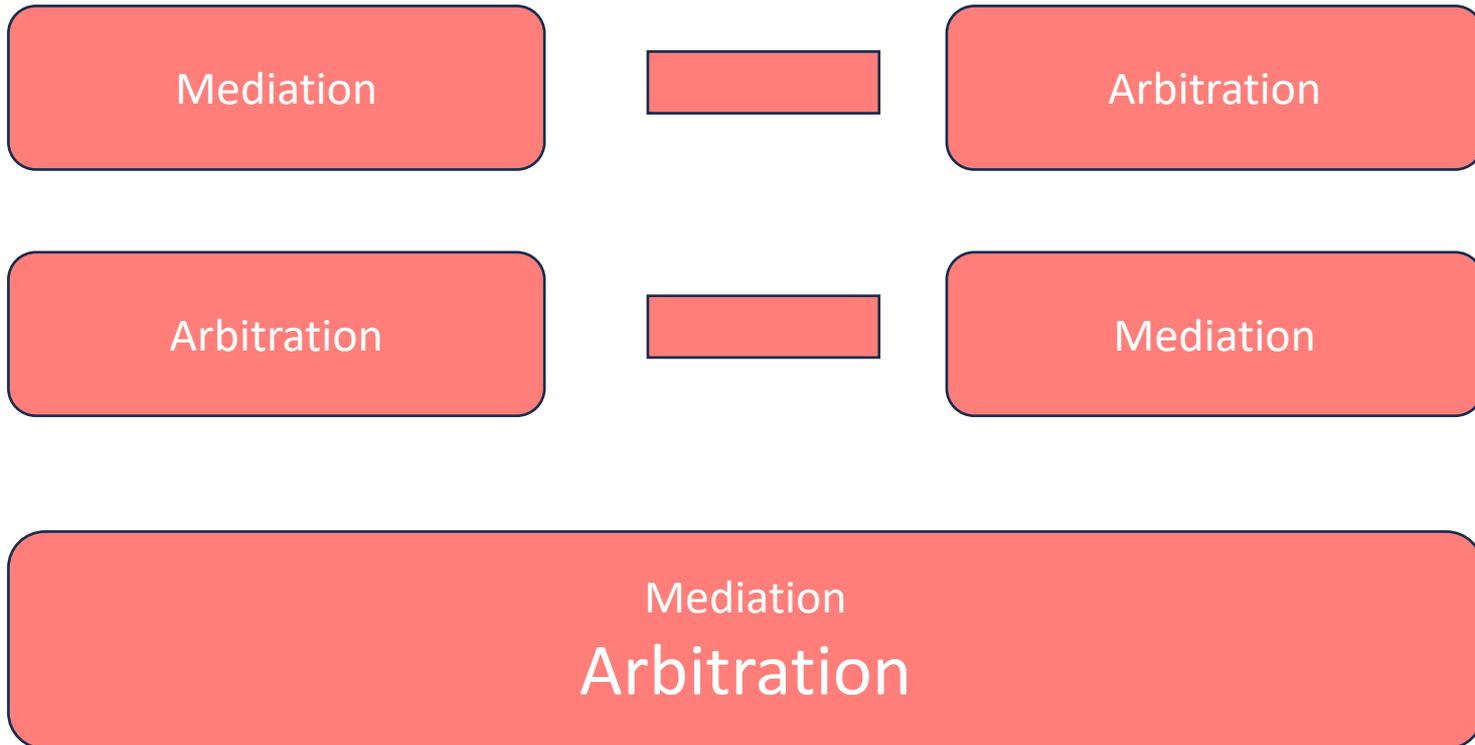
A. DEFINITION OF ARBITRATION

- **Definition of ADR**

- **Alternative dispute resolution** refers to procedures for settling disputes by means other than litigation before State courts
- The most frequent proceedings are **arbitration** and **mediation**
- They are **not mutually exclusive** : mediation is generally attempted before arbitration

A. DEFINITION OF ARBITRATION AND ADR

- Definition of ADR



A. DEFINITION OF ARBITRATION AND ADR

- Definition of ADR

	State justice	Private justice
Jurisdictional procedure	Traditional judicial litigation	Arbitration
Non-jurisdictional procedure	Judicial Mediation / Conciliation	Contractual mediation

A. DEFINITION OF ARBITRATION AND ADR

- **Definition of ADR**

- **Mediation:**

- Attempt to resolve a legal dispute through an amicable settlement by parties
- Through the active participation of a third party (mediator)
- Who works in order to help parties reach a conclusive and mutually satisfactory agreement

- **Arbitration:**

- By contractual means (arbitration clause) the dispute is submitted to arbitrators (= private judges with jurisdictional powers)
- The proceedings usually end with a decision called « award »
- The award has essentially the same value as an ordinary judicial judgment

B. SCOPE OF APPLICATION

- **Arbitrability of a dispute**

- Parties can submit their dispute to arbitration by an **agreement**, i.e.
 - **arbitration clause** (*clause compromissoire*) inserted in the initial contract,
 - **compromise** (*compromis*) concluded once the dispute has arisen
- Arbitration is mostly used for disputes resulting from legal relationships dealing with international commerce
 - Arbitration is generally used in complex trans-boarder transactions
 - Arbitration is in particular appropriate for CISG governed transactions

B. SCOPE OF APPLICATION

- **Arbitrability of a dispute**

- Please note : the dispute matter must be arbitrable:

- International conventions have not laid out the requirements for arbitrability
- Arbitrability has been left to national legislation of each State

B. SCOPE OF APPLICATION

- **Arbitrability of a dispute**

FRANCE

Domestic arbitration

A dispute is arbitrable when the matter concerns „disposable rights“, which excludes public policy related and legally protected matters (art. 2060 French Civil Code)

International arbitration

Almost all disputes are arbitrable, because the arbitration agreement is generally considered as being valid. The grounds for inarbitrability are exceptional and limited to international public policy issues

B. SCOPE OF APPLICATION

- **Arbitrability of a dispute**

- Some examples for public policy related matters (besides patrimonial aspects of these matters) :
 - Criminal law
 - Family law
 - Insolvency law
 - Intellectual property
 - Tax Law
- Some examples for legally protected matters :
 - Consumer law
 - Employment law

C. CLASSIFICATIONS OF ARBITRATION

- **Two main classifications**
 - Domestic vs. International arbitration
 - Ad hoc vs. Institutional arbitration

C. CLASSIFICATION OF ARBITRATION

- **Domestic vs. International arbitration**

Domestic vs. International arbitration

Domestic arbitration: deals exclusively with national or domestic matters: all the elements of the arbitration must be related to one country / State (Art. 1442 – 1503 CPC)

International arbitration: no uniform definition exists. Under rules and practices of arbitration institutions, a dispute may be regarded as international in reference to its nature or its parties (Art. 1502 – 1527 CPC)

- UNICITRAL model law combines both approaches
- In FRENCH law, article 1504 CPC is widely drafted: „*an arbitration is international when international trade interests are at stake*“.

C. CLASSIFICATION OF ARBITRATION

- **Ad hoc vs. Institutional arbitration**

Ad hoc vs. Institutional arbitration

Ad hoc arbitration:

- Definition : Parties agree on **their own arbitration procedures** and are supposed to **carry out the proceedings themselves**: they choose not only the location, the language, the applicable law, the number of the arbitrators, but also the administrative rules
- The role of supporting judge (national courts) : if parties cannot agree on the administrative modalities for setting up the procedure, they can seek assistance from national Court („judge acting in support of the arbitration“ – *juge d'appui*) whose powers are imperatively limited to administration issues (no jurisdictional powers about the merits of the dispute!)

Institutional arbitration :

- Definition: Parties are supposed to choose an **arbitral institution** that shall
- **apply its institutional arbitration rules in order to administer the arbitration**
- The arbitral Institutions provide the Parties with purely administrative services (no jurisdictional powers about the merits of the dispute!)
- Examples of arbitral institutions : ICC, AAA, Beijing arbitration commission (BAC), AFA, CMAP, etc.

C. CLASSIFICATION OF ARBITRATION

- **Ad hoc vs. Institutional arbitration**

- Ad hoc vs. Institutional arbitration : advantages of institutional arbitration
 - **Often parties opt for institutional arbitration**, since ad hoc arbitration does not offer a sufficient organization framework for conducting the arbitration procedure efficiently: parties are in litigation and therefore do not agree any more on technical aspects related to the organization of the proceedings
 - **However ad hoc arbitration comes with several advantages**

C. CLASSIFICATION OF ARBITRATION

- **Ad hoc vs. Institutional arbitration**

- Advantages of ad hoc arbitration

- **Economical interest:**

- Ad hoc arbitration is generally less expensive than institutional arbitration
- Since the parties do not have to pay a private / commercial institution
- With regard to the assistance by the “supporting judge”: fees of national courts (if any) are rather low

C. CLASSIFICATION OF ARBITRATION

- **Ad hoc vs. Institutional arbitration**

- Advantages of ad hoc arbitration

- **Legal security :**

- In case of an Institutional Arbitration, the arbitral institution will decide the controversy purely provisionally between the parties, whereas in an *ad hoc* Arbitration the national « judge acting in support of the arbitration / *juge d'appui* » will make a definitive procedural decision
- Since the decision of the Arbitral Institution is not final (as opposed to a decision made by the national judge (supporting judge / *juge d'appui*) in case of the *ad hoc* Arbitration) there persists a real risk that one party brings an action for annulment (*recours en annulation*) of the award on one of the legal grounds for which the Arbitral Institution's administrative decision has no definitively binding character (whereas the same decision made by the “supporting judge” would have it).

D. ADVANTAGES AND DISADVANTAGES OF ARBITRATION

- **Advantages and disadvantages of Arbitration vs. Litigation before State Courts**
 - Advantages
 - Disadvantages

D. ADVANTAGES AND DISADVANTAGES OF ARBITRATION

- Advantages of Arbitration vs. Litigation before State Courts

- The parties can appoint the arbitrator(s) and ensure that arbitrator(s) is/are expert(s) in the legal area regarding the dispute
- Arbitration procedures are quicker compared to classic procedures in State courts which last longer
- The procedural timetable is set by the arbitrator and the parties depending on their availability -> the procedure is therefore very flexible

D. ADVANTAGES AND DISADVANTAGES OF ARBITRATION

- Advantages of Arbitration vs. Litigation before State Courts

- International Arbitral proceedings can be made confidential (even if art. 1464 (4) CPC is not applicable to international arbitration)
- The New York Convention of 1958 facilitates the enforceability of foreign arbitral awards at a global level
- International Arbitration is also characterized by its neutrality, predictability and legal efficiency

D. ADVANTAGES AND DISADVANTAGES OF ARBITRATION

- Disadvantages of arbitration

- **Cost argument:** Higher / additional costs for institutional arbitration and arbitrators
- **Procedural efficiency argument:** Involvement of third party into the arbitration proceedings (based on a contractual relationship)

D. ADVANTAGES AND DISADVANTAGES OF ARBITRATION

- Disadvantages of arbitration

- **Cost argument** : arbitration is considered as being more expensive than proceedings before national courts (arbitral institution – arbitrators)
 - However: national proceedings are often much longer and generally conducted in several instances (which is not the case in international arbitration where there is no appeal!)
 - State courts may require translation of all legal documents (submitted to the proceedings) in the court's official language :
 - Arbitration proceedings and hearings are more flexible (often no physical presence required)

D. ADVANTAGES AND DISADVANTAGES OF ARBITRATION

- Disadvantages of arbitration

- **Procedural efficiency** : the problem can arise in complex disputes that the arbitral tribunal cannot involve a third party (e.g., subcontractor, insurance company, mother company) in the proceedings:
 - The third party is not contractually bound by the arbitration agreement
 - In such case a parallel litigation before the State Courts shall be conducted with regard to the involvement of the third party
 - This bears the risk to face two different and potentially contradictory decisions made by the arbitral tribunal (between the contracting parties) and the State Courts (towards the third party)

D. ADVANTAGES AND DISADVANTAGES OF ARBITRATION

- Disadvantages of arbitration

- This **lack of procedural efficiency** may be resolved or attenuated by case law in different ways:
 - All entities are involved in the same dispute will hypothetically insert the same arbitration clause in each individual contract : in practice not very realistic
 - State judges can act in favor of arbitration while extending the scope of the individually concluded arbitration clause to other persons (third party) who shall be involved in the dispute
 - State judges can, on the express arbitral tribunal's invitation, order third-party to make available evidence to the benefit of the arbitral proceedings

E. ARBITRATION PROCEEDINGS

- **(1) Preliminary checks**
- **(2) Starting the Case**
- **(3) Appointment of Arbitrators**
- **(4) Procedural timeline**
- **(5) Written submissions (statements)**
- **(6) Oral Phase : Hearings**
- **(7) The award**
- **(8) Post award stage: enforcement and challenges**

E. ARBITRATION PROCEEDINGS

- (1) Preliminary checks

- Confirm the validity of the arbitration clause/agreement
- Verify the choice of forum :
 - Institutional arbitration : administered by bodies such as ICC, DIS, LCIA
 - Ad hoc arbitration : conducted by the parties with the assistance of the “supporting judge” and sometimes following agreed standard rules (e.g., UNCITRAL)

E. ARBITRATION PROCEEDINGS

- (2) Starting the Case

- Notice of Arbitration (request for arbitration)
 - Claimant files a request to institution or directly to respondent in ad hoc arbitration
- Response from respondent
 - Confirms participation and raises preliminary objections
- Possible jurisdictional objections

E. ARBITRATION PROCEEDINGS

- (3) Appointment of Arbitrators

- Generally, one or three arbitrators, as agreed in the arbitration agreement
- Appointment process under applicable rules
 - Either : Contractual rules of the Arbitral Institution chosen by the Parties
 - Or : Statutory rules of the applicable procedural law
- Independence and impartiality required : arbitrators must disclose conflicts of interest (obligation of disclosure)
- Confirmation of the arbitrators' appointment by institution

E. ARBITRATION PROCEEDINGS

- (4) Procedural timeline

- First procedural meeting (generally by videoconference)
- Procedural order issued by arbitral tribunal
 - Fixes deadlines for submissions, hearings, evidence
- That way, the arbitral tribunal and the parties design the roadmap of the arbitration

E. ARBITRATION PROCEEDINGS

- **(5) Written submissions (statements)**
 - Statement of Claimant with setting out facts, law, remedies
 - Statement of Defendant with responses (and counterclaims)
 - Further written submissions if needed and allowed
 - The written phase frames the dispute and defines the issues for the tribunal

E. ARBITRATION PROCEEDINGS

- **(6) Oral Phase - Hearings**
 - Witnesses and experts examined
 - Oral pleadings by counsel
 - Evidence tested through cross-examination

E. ARBITRATION PROCEEDINGS

- (7) The award

- Tribunal deliberates in private
- Final, binding award issued
- Allocation of costs and interest possible
- The arbitral award is the equivalent of a court judgment, but usually with no appeal

E. ARBITRATION PROCEEDINGS

- (8) Post award stage : enforcement and challenges

- Recognition and enforcement :
 - Governed by the New York Convention (1958)
 - Enforced like a Court judgment in most jurisdictions.
- Challenging the award :
 - Appeal on merits : in international arbitration excluded
 - Set aside/annulment : limited grounds (e.g., invalid agreement, due process violation, excess of mandate).

II. INTERNATIONAL ARBITRATION SURVEY

- International Arbitration Survey

- Survey 2018
 - Research conducted by White & Case International arbitration group, the School of International Arbitration and Queen Mary University of London
 - Main objectives : analyze the evolution of international arbitration and its future development according to the principal drivers and stakeholders
 - Participants : in-house counsels (10%), private practitioners (47%), arbitrators, representatives of arbitral institutions, academics, experts etc.



922
respondents
to the
questionnaire

II. INTERNATIONAL ARBITRATION SURVEY

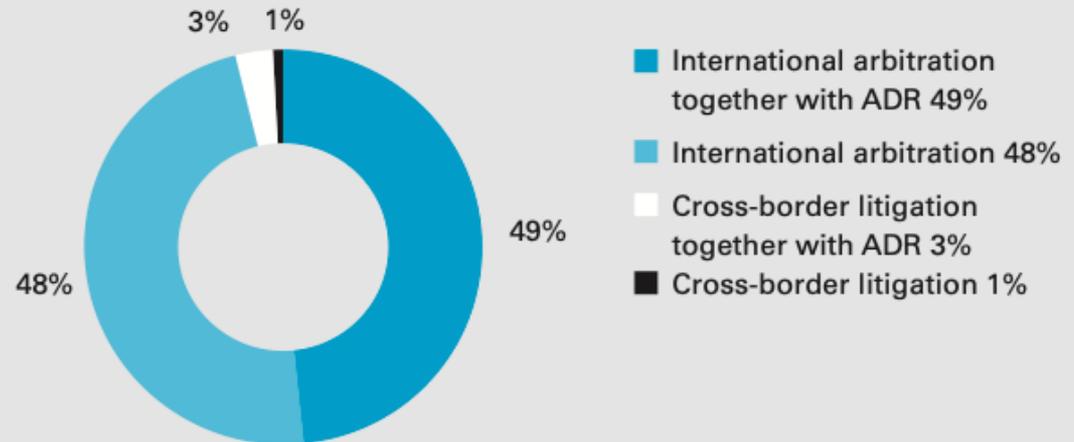
- International Arbitration



97%

of respondents expressed that **international arbitration** is their preferred method of resolving cross-border disputes

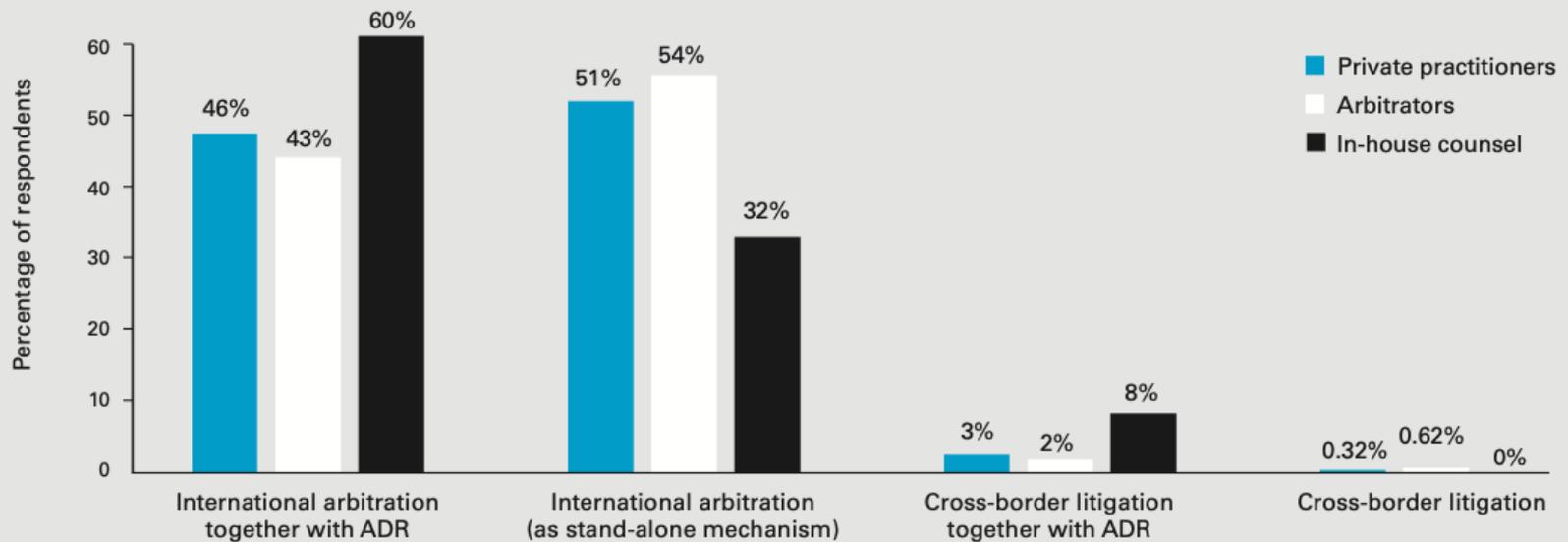
Chart 1: What is your preferred method of resolving cross-border disputes?



II. INTERNATIONAL ARBITRATION SURVEY

- International Arbitration

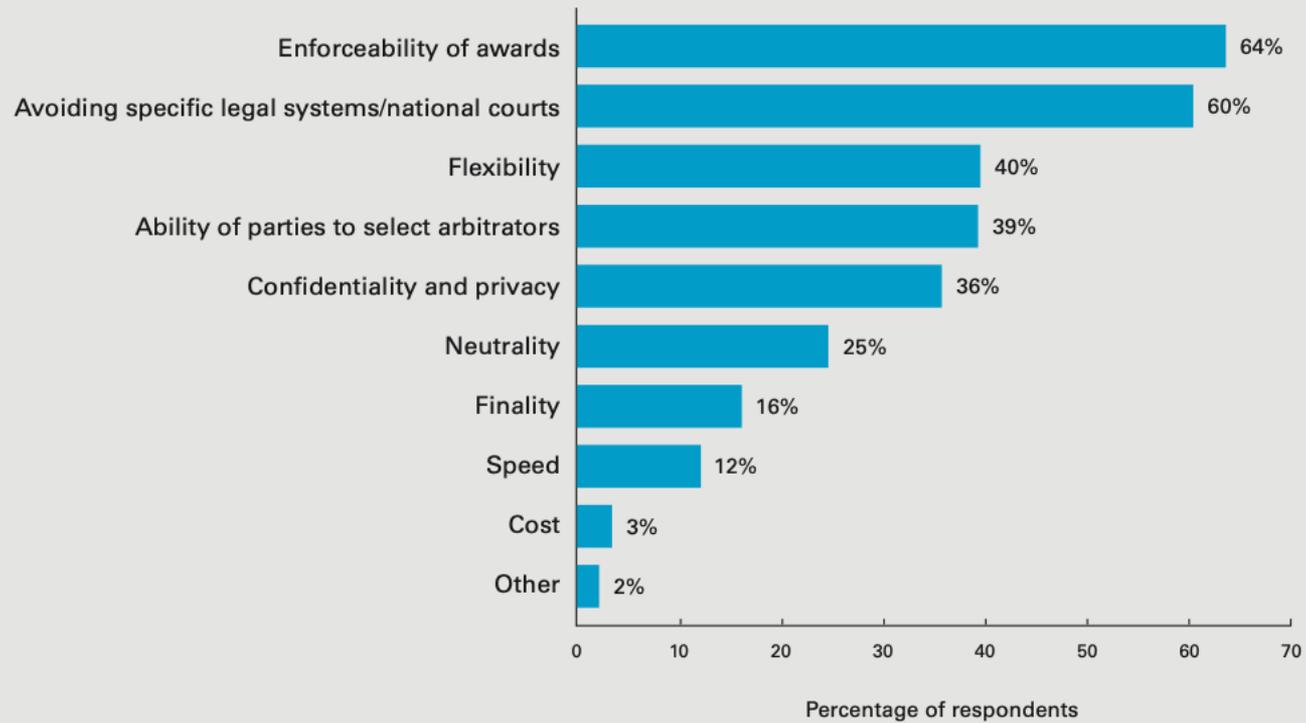
Chart 2: Preferred method of resolving cross-border disputes – subgroups based on primary role



II. INTERNATIONAL ARBITRATION SURVEY

- International Arbitration

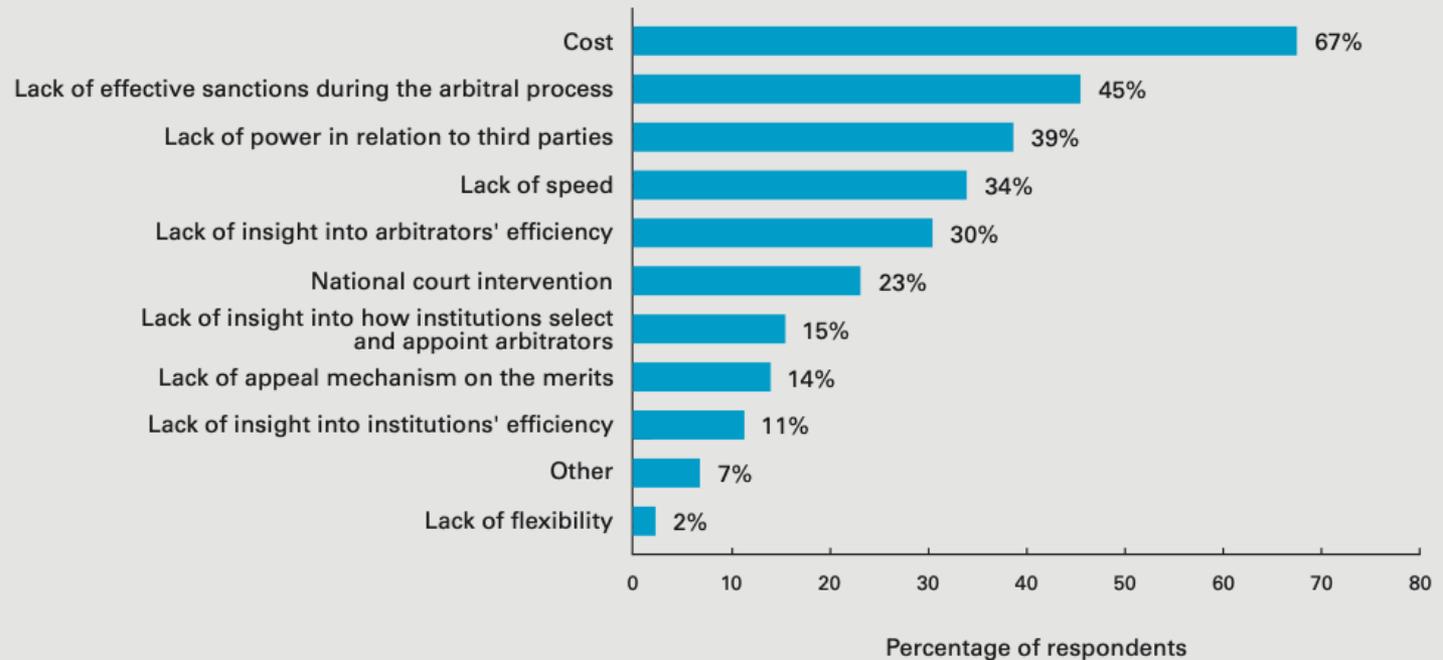
Chart 3: What are the three most valuable characteristics of international arbitration?



II. INTERNATIONAL ARBITRATION SURVEY

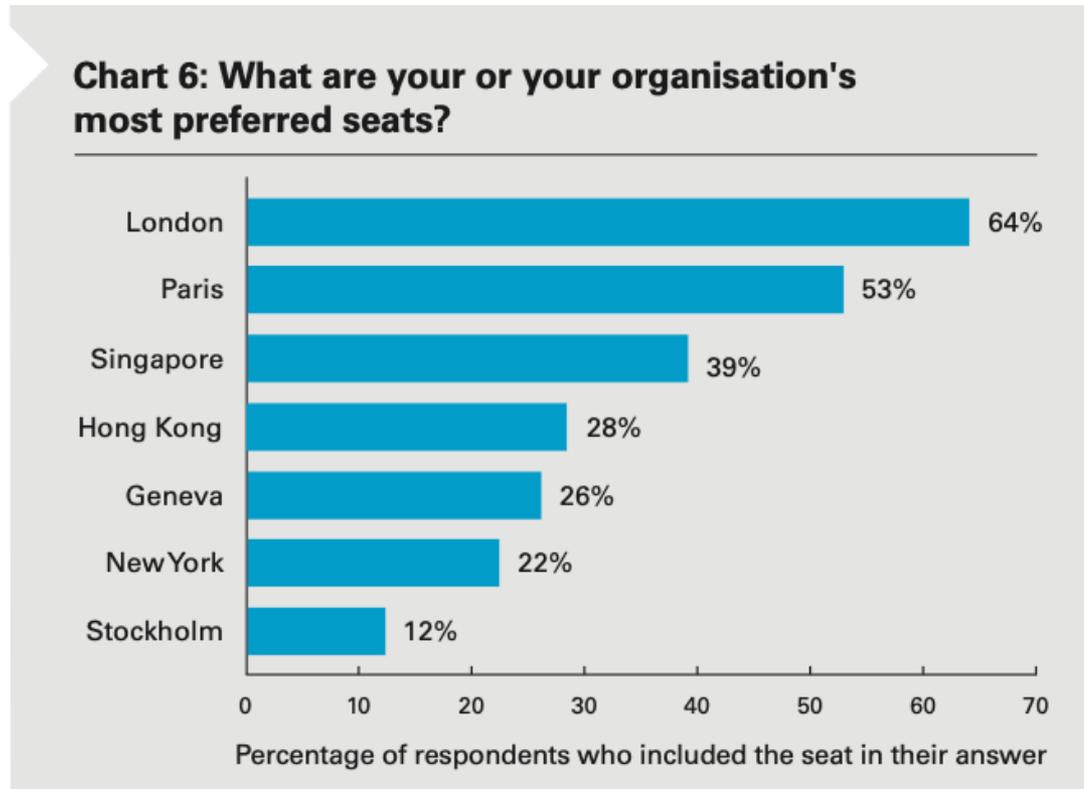
- International Arbitration

Chart 4: What are the three worst characteristics of international arbitration?



II. INTERNATIONAL ARBITRATION SURVEY

- Evolution of seats and institutions



II. INTERNATIONAL ARBITRATION SURVEY

- Evolution of seats and institutions

- London was selected as the most preferred seat by respondents in all regions



55%

of respondents think that **Brexit** is unlikely to impact the use of London as a seat



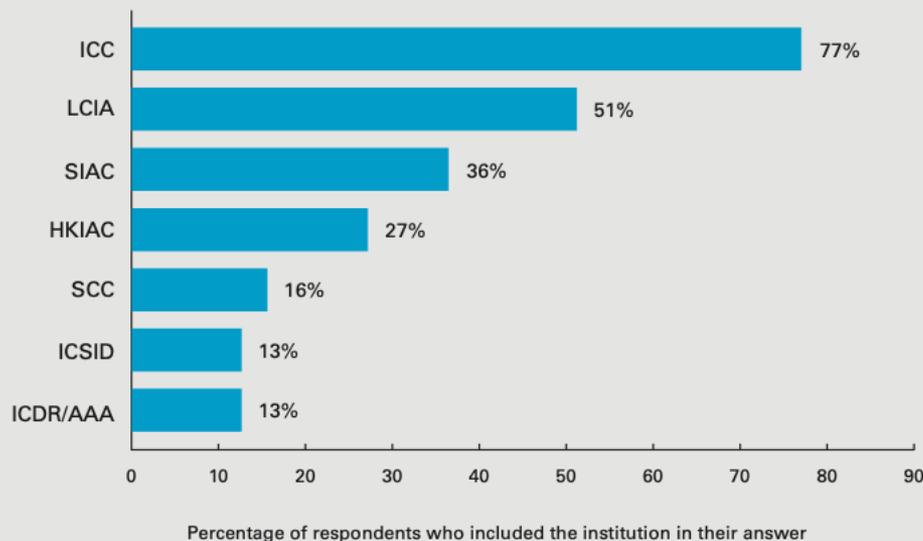
70%

of respondents think **Paris** is the seat that will most benefit from the impact of Brexit

II. INTERNATIONAL ARBITRATION SURVEY

- Evolution of seats and institutions

Chart 12: What are your or your organisation's most preferred institutions?

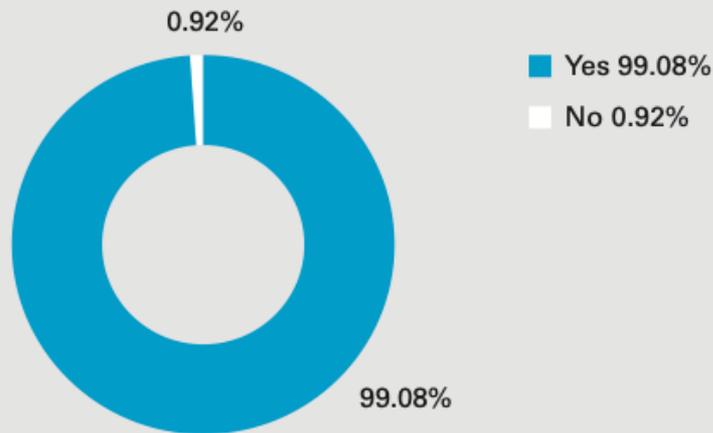


- Preference determined by general reputation and recognition, followed by a high level of administration and the previous experience of the institution
- Parties are likely to select an institution capable of handling arbitrations conducted in a multiple of locations around the world

II. INTERNATIONAL ARBITRATION SURVEY

- Future of international arbitration

Chart 5: Are you likely to choose or recommend international arbitration to resolve cross-border disputes in the future?



- The use of arbitration is likely to increase in the Energy, Construction/Infrastructure, Technology, and Banking and Finance sectors

II. INTERNATIONAL ARBITRATION SURVEY

- Future of international arbitration



80%

of respondents would welcome arbitration rules regulating the **conduct of arbitrators**



73%

of respondents think that the **conduct of the parties and their counsel** should be subject to specific arbitration rules

- Parties in factually and legally uncomplicated cases have a desire for a more rapid resolution
- The idea of imposing deadlines for issuing awards enjoyed a particular popularity among respondents.

III. FRENCH INTERNATIONAL ARBITRATION LAW

A. Arbitration in France since the 2011 reform

B. Arbitration clause

C. Proposal and appointment of the arbitrator

D. Arbitration procedure

E. Memorandums and arbitral awards

F. Enforcement and appeal possibilities

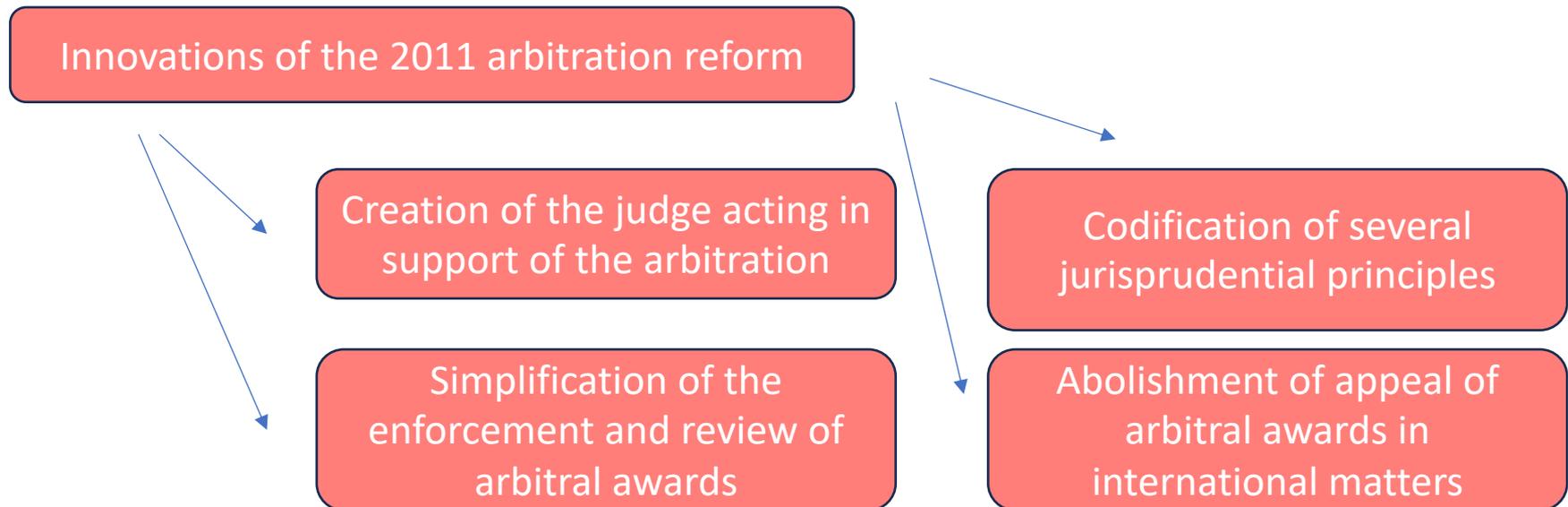
II. FRENCH INTERNATIONAL ARBITRATION LAW

A. Arbitration in France since the 2011 reform

- Important innovations of the 2011 arbitration reform (1)
- Differences between domestic and international arbitration (2)

A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

- (1) Important innovations of the 2011 arbitration reform



A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

- The creation of the judge acting in support of the arbitration
 - The role of the judge acting in support of the arbitration :

It is a concept originally borrowed from Swiss law

- But already known by the French doctrine and jurisprudence
- In France the « *judge acting in support of the arbitration* » is generally the President of the Paris Judicial Tribunal (*Tribunal Judiciaire*)
- The supporting judge (*juge d'appui*) assists the parties in case they do not agree upon certain administrative matters, such as the constitution of the arbitral tribunal, challenge of arbitrators etc.

A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

- The creation of the judge acting in support of the arbitration
 - The scope of the assistance of the judge
 - According to article 1452 of the French Code of civil procedure, the judge will only intervene on a subsidiary basis, if the parties have not opted for an institutional arbitration.
 - In case of an institutional arbitration, only the institution has the authority to hear and decide on challenges brought against arbitrators
 - The supporting judge is limited to giving assistance for merely administrative matters, for instance to appoint an arbitrator, and will not give any legal appreciation and decision on the dispute itself or the validity of the arbitration agreement

A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

- The creation of the judge acting in support of the arbitration
 - The areas of intervention of the judge (Art. 1505 CPC)
 - The supporting judge intervenes when the parties have selected
 - ✓ France as the place of arbitration (n° 1),
 - ✓ French law as the applicable procedural law (n° 2), or
 - ✓ French courts (*juge d'appui*) for administrative matters (n° 3)
 - But the supporting judge also has an universal competence, if one of the parties is exposed to the risk of a denial of justice, even if the dispute is not linked to the French legal order (n° 4)

A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

- Simplification of the enforcement and review of arbitral awards
 - According to article 1526 CPC, in international arbitration, an award rendered in France will always be **immediately** enforceable even if a party has filed an action to set aside the award (action for annulment = *recours en annulation*)
 - In practice, this rule has a great impact: the losing party will not be able to file an action to set aside the award (action for annulment) for the only purpose of delaying the award's enforcement : the action to set aside the award (action for annulment) has **no more a suspensive effect**

A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

- Codification of several jurisprudential principles
 - The 2011 arbitration reform has also asserted some important principles that have already been established by the jurisprudence before, such as :
 - **The competence-competence principle** : according to this principle, the arbitral tribunal rules on its own jurisdiction (Art. 1465 CPC)
 - **The principle of procedural estoppel** : according to this principle, a party who has not objected in due time a procedural irregularity during the arbitration proceedings is no more entitled to invoke this irregularity before a State court (Art. 1466 CPC)
 - **The principle of celerity** : according to this principle, the arbitral tribunal, as well as the parties and their legal advisors shall act efficiently and without delay (Art. 1464 par. 3 CPC)
 - **The principle of independence and impartiality** : according to this principle, the arbitrators are obliged to disclose potential conflicts of interest to the parties (Art. 1456 CPC)

A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

- Domestic arbitration provisions applicable to international arbitration

Article 1506 French CPC

« Unless otherwise agreed by the parties and subject to the provisions of this Title, the following articles shall apply to international arbitration:

1° Articles 1446, 1447, 1448 (paragraphs 1 and 2) and 1449, relating to the arbitration agreement;

2° Articles 1452 to 1458 and 1460, relating to the constitution of the arbitral tribunal and the procedure applicable before the supporting judge;

3° Articles 1462, 1463 (paragraph 2), 1464 (paragraph 3), 1465 to 1470 and 1472, relating to the arbitral proceedings;

4° Articles 1479, 1481, 1482, 1484 (paragraphs 1 and 2), 1485 (paragraphs 1 and 2) and 1486, relating to the arbitral award;

5° Articles 1502 (paragraphs 1 and 2) and 1503, relating to remedies other than appeal and annulment proceedings. »

A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

(2) Differences between domestic and international arbitration

	Domestic arbitration	International arbitration
Validity of the arbitration agreement	<ul style="list-style-type: none"> • Legal definition • The arbitration agreement is required <u>in writing</u> • The number of arbitrators must be uneven and they cannot be legal entities 	<ul style="list-style-type: none"> • No definition • Legislator permits that arbitration agreement is not subject to <u>any requirements as to its form</u>

A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

(2) Differences between domestic and international arbitration

	Domestic arbitration	International arbitration
Confidentiality of the arbitration proceedings	<ul style="list-style-type: none"> According to article 1464(4) of the French code of civil procedure, arbitral proceedings shall be <u>confidential</u> 	<ul style="list-style-type: none"> <u>No equivalent article in the international arbitration</u> This means that the arbitral proceedings are not necessarily confidential Reason: international public investment issues are often governed by transparency rules However, the parties can expressly stipulate in the arbitration agreement that they wish the procedure to be confidential

A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

(2) Differences between domestic and international arbitration

	Domestic arbitration	International arbitration
Appeal of arbitral award	<ul style="list-style-type: none"> The parties <u>can appeal</u> an award, if they have <u>agreed</u> upon it 	<ul style="list-style-type: none"> The parties can only set aside (action for annulment) but <u>not appeal</u> an arbitral award

A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

(2) Differences between domestic and international arbitration

	Domestic arbitration	International arbitration
Effect of action for annulment	<ul style="list-style-type: none"> The action for annulment of the arbitral award has a <u>suspensive effect</u> 	<ul style="list-style-type: none"> The action for annulment of an arbitral award <u>does not have a suspensive effect</u> This means that the award is immediately enforceable even if an action for annulment is brought before a State court

A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

(2) Differences between domestic and international arbitration

	Domestic arbitration	International arbitration
Scope of application of action for annulment	<ul style="list-style-type: none"> • The action for annulment is only permitted for a <u>limited number (6) of specific reasons</u> (Art. 1492 French CPC) <ul style="list-style-type: none"> ○ 1° The arbitral tribunal wrongly upheld or declined jurisdiction ○ 2° The arbitral tribunal was not properly constituted 	<ul style="list-style-type: none"> • The action for annulment is only permitted for a <u>limited number (5) French CPC</u>: <ul style="list-style-type: none"> ○ 1° The arbitral tribunal wrongly upheld or declined jurisdiction ○ 2° The arbitral tribunal was not properly constituted ○ 3° The arbitral tribunal ruled without complying with the mandate conferred upon it ○ 4° Due process was violated

A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

(2) Differences between domestic and international arbitration

	Domestic arbitration	International arbitration
Scope of application of action for annulment	<ul style="list-style-type: none"> ○ 3° The arbitral tribunal ruled without complying with the mandate conferred upon it ○ 4° The principle of adversarial proceedings was not respected; or ○ 5° The award is contrary to public policy; or ○ 6° <u>The award is not reasoned or does not indicate the date on which it was rendered or the name of the arbitrator or arbitrators who rendered it, or does not bear the required signature or signatures, or was not rendered by a majority vote.</u> 	<ul style="list-style-type: none"> • 5° Recognition or enforcement of the award is contrary to international public policy

B. ARBITRATION CLAUSE

- **Legal definition**
- **Autonomy of the arbitration agreement**
- **Form of the arbitration agreement**
- **Scope of the arbitration agreement**
- **Transmission of the arbitration agreement**
- **Principle of “competence-competence”**

B. ARBITRATION CLAUSE

- **Legal definition**
 - **Domestic arbitration : Art. 1442 CPC**
 - Arbitration clause
 - Compromise

Art. 1442 CPC

« The arbitration agreement shall take the form of an arbitration clause or a compromise.

An arbitration clause is an agreement by which the parties to one or more contracts undertake to submit to arbitration any disputes that may arise in relation to that or those contracts.

The compromise is the agreement by which the parties to an existing dispute submit it to arbitration. »

B. ARBITRATION CLAUSE

- **Legal definition**
 - **International arbitration :**
 - The legal definition provided in Art. 1442 CPC does not apply (Art. 1506 CPC)
 - The concept of « arbitration agreement » is presumed in international arbitration (Art. 1507-1508 CPC)

B. ARBITRATION CLAUSE

- **Autonomy of the arbitration agreement**
 - Domestic arbitration
 - Autonomy with regard to the **main contract**
 - International arbitration
 - Autonomy with regard to the **main contract**
 - Autonomy from State regulations (**applicable law**)
 - Autonomy according to a general/universal "**principle of validity**"

B. ARBITRATION CLAUSE

- **Autonomy of the arbitration agreement**

- Autonomy with regard to the **main contract**: Art. 1447 CPC

- Substantive autonomy, independence, severability

- Case law « **Gosset** » of **7 May 1963** regarding international matters

- « *with regard to international arbitration, the arbitration agreement, whether concluded separately or included in the legal act to which it relates, shall always, save in exceptional circumstances which are not alleged in the case, have full legal autonomy, thus excluding that it may be affected by the possible invalidity of the act.* ».

- Rule recognized by a vast majority of foreign laws

B. ARBITRATION CLAUSE

- **Autonomy of the arbitration agreement**
 - Compare this autonomy of the arbitral agreement (form the main contract) with the jurisdiction clause under art 25(5) of Brussels 1bis:

Art. 25 (5) Brussels 1bis Regulation

”An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.”

B. ARBITRATION CLAUSE

- **Autonomy of the arbitration agreement**
 - Autonomy with regard to State laws (only international arbitration)
 - Autonomy from any **applicable State laws**

Case law « **Dalico** » of 20 Dec. 1993:

« pursuant to a substantive rule of international arbitration law, the arbitration clause is legally independent of the main contract in which it is directly or by reference included and (...) its existence and effectiveness are to be assessed, subject to the overriding mandatory rules of French law and international public policy, according to the common will of the parties, without the necessity to refer to a State law. »

B. ARBITRATION CLAUSE

- **Autonomy of the arbitration agreement**
 - Autonomy with regard to State laws (only international arbitration)
 - Autonomy from any applicable State law
 - Enshrinement of a **substantive rule of international private law**
 - ☑ Consent (common will) between the parties
 - ☑ Respect of international public order
 - Waiver of the conflict-oriented method (cf. art. 1.2. lit. e) Reg. Rome I)
 - Case law « **Uni-Kod** » of **30 March 2004** : suppletive nature of the rule (the parties may choose a State law in respect of the arbitration clause)

B. ARBITRATION CLAUSE

- **Autonomy of the arbitration agreement**

- Autonomy with regard to State laws

- Autonomy according to a general « **principle of validity** ».

- Case law « **Zanzi** » of **5 January 1999**

- Principle: the arbitration agreement is always valid (without any formal requirements),

- Exception: unless it is contrary to international public order.

- Cf. the European rules regarding attributive jurisdiction clauses (Art. 25 para. Brussels I Regulation + Recital 20)

« (...) unless the validity of the agreement conferring jurisdiction is null and void as to its substance under the law of that Member State. ».

B. ARBITRATION CLAUSE

- **Form of the arbitration agreement**

- Domestic arbitration : written form

Art. 1443 CPC

« Under penalty of invalidity, the arbitration agreement must be drafted in written form. It may result from an exchange of written correspondence or a document referred to in the main agreement. »

- International arbitration : no formal requirements

Art. 1507 CPC

« The arbitration agreement is not subject to any formal requirements ».

B. ARBITRATION CLAUSE

- **Scope of the arbitration agreement**

- Domestic arbitration :

- Compromise: determines the subject matter of the dispute, under penalty of invalidity (Art. 1443 CPC), since the dispute has arisen
- Arbitration clause: designates (prior to the dispute arisen) the arbitrator(s) or provides for the modalities of their appointment, where applicable by reference to arbitration rules (Art. 1444 CPC)

- International arbitration : contractual freedom

Art. 1508 CPC

« The arbitration agreement may, directly or by reference to arbitration rules or procedural rules, appoint the arbitrator or arbitrators or provide for the conditions of their appointment. »

B. ARBITRATION CLAUSE

- **Transmission of the arbitration agreement**

- Mechanisms of obligation law

- Assignment of receivables (“*cession de créances*”)
- Subrogation,
- Accessory theory (domestic law): “direct action” in contractual supply chain

- Art. 2061 CC (version of the Law of November 18, 2016)

« The arbitration clause must have been accepted by the party to whom it is opposed, unless the latter has replaced the party who initially accepted in its rights and obligations.

Where one of the parties has not contracted in the course of its professional activity, the clause may not be invoked against it»

B. ARBITRATION CLAUSE

- **Principle of « competence-competence »**
 - Positive effect of the « competence-competence » principle

Art. 1465, 1506 CPC

« The arbitral tribunal has exclusive jurisdiction to rule on objections relating to its jurisdiction. »

B. ARBITRATION CLAUSE

- **Principle of « competence-competence »**
 - Negative effect of the « competence-competence » principle

Art. 1448 al. 1 and 2, 1506 CPC

« When a dispute subject to an arbitration agreement is brought before a court, such a court shall decline jurisdiction, except if an arbitral tribunal has not yet been seized of the dispute and if the arbitration agreement is manifestly void or manifestly not applicable.

A court may not decline jurisdiction on its own motion. »

C. PROPOSAL AND APPOINTMENT OF THE ARBITRATOR

- **Qualifications required for an arbitrator**
 - The qualities of independence and impartiality
 - The duty of disclosure

Art. 1456 para. 2, 1506 CPC

« It is the arbitrator's responsibility, before accepting his mission, to disclose any circumstance likely to affect his independence or impartiality. He is also required to disclose without delay any circumstances of the same nature that may arise after the acceptance of his mission. »

C. PROPOSAL AND APPOINTMENT OF THE ARBITRATOR

- Appointment of the sole arbitrator
- Appointment of a panel (three) of arbitrators

Art. 1452, 1506 CPC

« In the absence of agreement between the parties on the modalities of the appointment of the arbitrator(s):

1° In the event of arbitration by a sole arbitrator, if the parties do not agree on the choice of the arbitrator, the latter shall be appointed by the person responsible for organizing the arbitration or, if no such person is appointed, by the supporting judge;

2° In the event of arbitration by three arbitrators, each party shall choose one and the two arbitrators so chosen shall appoint the third arbitrator; if one party does not choose an arbitrator within a period of one month from receipt of the other party's request or if the two arbitrators do not agree on the third within a period of one month from the date on which they accept their appointment, the person responsible for organizing the arbitration or, failing that, the supporting judge shall make such appointment. »

D. ARBITRATION PROCEDURE

- The « *juge d'appui* » (supporting judge)
 - Domestic arbitration : President of the High Court / Judicial Tribunal (*Tribunal Judiciaire*) (in principle)

Art. 1459 CPC

« The competent supporting judge is the president of the High Court. However, if it is expressly provided for in the arbitration agreement, the President of the Commercial Court hall have jurisdiction to hear claims brought pursuant to Articles 1451 to 1454. In such a case, he or she may apply article 1455.

The territorially competent judge shall be the one designated by the arbitration agreement or, in the absence of such a designation, the one within whose jurisdiction the seat of the arbitral tribunal has been fixed. In the absence of any provision in the arbitration agreement, the judge having territorial jurisdiction shall be the judge of the place where the defendant or defendants to the incident reside or, if the defendant does not reside in France, the place where the plaintiff resides. »

D. ARBITRATION PROCEDURE

- **The « juge d'appui » (supporting judge)**
 - International arbitration : President of the TJ of Paris

Art. 1505 CPC

« In international arbitration, and unless otherwise stipulated, the judge acting in support of the arbitration shall be the President of the High Court of Paris when:

1° The arbitration takes place in France; or

2° The parties have agreed that French procedural law shall apply to the arbitration; or

3° The parties have expressly granted jurisdiction to French courts over disputes relating to the arbitral procedure;

4° One of the parties is exposed to a risk of a denial of justice. »

D. ARBITRATION PROCEDURE

- **Precautionary and temporary measures – evidence**
 - Before the constitution of the arbitral tribunal

Art. 1449, 1506

« The existence of an arbitration agreement, insofar as the arbitral tribunal has not yet been constituted, shall not preclude a party from applying to a court for measures relating to the taking of evidence or provisional or conservatory measures.

Subject to the provisions governing conservatory attachments and judicial security, application shall be made to the President of the High Court or of the Commercial Court who shall rule on the measures relating to the taking of evidence in accordance with the provisions of Article 1452 and, where the matter is urgent, on the provisional or conservatory measures requested by the parties to the arbitration agreement. »

D. ARBITRATION PROCEDURE

- **Precautionary and temporary measures – evidence**
 - After the constitution of the arbitral tribunal
 - Jurisdiction of the **arbitral tribunal**
 - Measures of investigation (Art. 1467, para. 1, 1506 CPC)
 - Evidence held by a party (Art. 1467 al. 3, 1506 CPC)
 - Conservatory (precautionary) or provisional (temporary) measures (Art. 1468, 1506 CPC)

D. ARBITRATION PROCEDURE

- **Precautionary and temporary measures – evidence**
 - After the constitution of the arbitral tribunal
 - Jurisdiction of the **arbitral tribunal**

Art. 1467 al. 1 et 3, 1506 CPC

« The arbitral tribunal shall take all necessary steps concerning evidentiary and procedural matters, unless the parties authorize it to delegate such tasks to one of its members.
If a party is in possession of an item of evidence, the arbitral tribunal may enjoin that party to produce it, determine the manner in which it is to be produced and, if necessary, attach penalties to such injunction. »

Art. 1468 al. 1 phrase 1, al. 2, 1506 CPC

« The arbitral tribunal may order upon the parties any conservatory or provisional measures that it deems appropriate, set conditions for such measures and, if necessary attach penalties to such order.
The arbitral tribunal has the power to amend or add to any provisional or conservatory measures that it has granted »

D. ARBITRATION PROCEDURE

- **Precautionary and temporary measures – evidence**
 - After the constitution of the arbitral tribunal
 - Jurisdiction of the « **State Court** »
 - Conservatory (precautionary) seizures (*saisie conservatoire*)
 - Judicial securities

Art. 1468 al. 1 phrase 2, al. 2, 1506 CPC

« *However, only courts may order precautionary seizure and judicial security.* »

D. ARBITRATION PROCEDURE

- **Precautionary and temporary measures – evidence**
 - After the constitution of the arbitral tribunal
 - Competence of the **President of the TJ** : non-party deed and evidence held by a third party

Art. 1469, 1506 CPC

« If one of the parties to arbitral proceedings intends to rely on an official (acte authentique) or private (acte sous seing privé) deed to which it was not a party, or on evidence held by a third party, it may, upon leave of the arbitral tribunal, have that third party summoned before the President of the Judicial Tribunal for the purpose of obtaining a copy thereof (expédition) or the production of the deed or item of evidence.

Articles 42 through 48 shall determine which Judicial Tribunal has territorial jurisdiction in this regard.

Application shall be made, heard and decided as for expedited proceedings (référé).

(...)

D. ARBITRATION PROCEDURE

- **Precautionary and temporary measures – evidence**

- After the constitution of the arbitral tribunal

- Competence of the **President of the TJ** : evidence held by a third party

Art. 1469, 1506 CPC

« ...

If the president considers the application well-founded, he or she shall order that the relevant original, copy or extract of the deed or item of evidence be issued or produced, under such conditions and guarantees as he or she determines, and, if necessary, attach penalties to such order.

Such order is not readily enforceable.

It may be appealed within fifteen days following service (signification) of the order. ».

D. ARBITRATION PROCEDURE

- **The main principles of arbitration procedure**
 - Principle of loyalty (Art. 1464 para. 3, 1506 CPC)
 - Principle of celerity / promptness (Art. 1464 (3), 1506, 1463, 1477 CPC)
 - Principle of contradiction (Art. 1464 para. 2, 1510 CPC)
 - Principle of confidentiality (Art. 1464 para. 4 CPC)
 - Principle of estoppel (Art. 1466, 1506 CPC)

D. ARBITRATION PROCEDURE

- **The principal of arbitration procedure**
 - The **guiding principles** of arbitral proceedings in **domestic arbitration**

Art. 1464 para. 1-4 CPC

« Unless the parties have agreed otherwise, the arbitral tribunal shall determine the arbitral procedure without being bound by the rules established for State courts.

However, the trial guidelines set out in Articles 4 to 10, the first paragraph of Article 11, the second and third paragraphs of article 12 and Articles 13 to 21, 23 and 23-1 shall always apply.

The parties and the arbitrators shall act expeditiously and fairly in the conduct of the proceedings.

*Subject to legal obligations and unless otherwise provided by the parties, the arbitral proceedings shall be subject to the **principle of confidentiality**. »*

D. ARBITRATION PROCEDURE

- **The main principles of arbitration procedure**
 - The **deadlines to be respected** (with respect to domestic arbitration)

Art. 1463 para. 1 CPC

*« If the arbitration agreement does not set a time limit, the duration of the arbitral tribunal's mission shall be limited to **six month** from the date of its referral. »*

Art. 1463 para. 2, 1506 CPC

*« The statutory or contractual time limit may **be extended by agreement** between the parties or, where there is no such agreement, by the judge acting in support of the arbitration. »*

Art. 1477 CPC

« The expiry of the arbitration period shall result in the termination of the arbitral proceedings. »

D. ARBITRATION PROCEDURE

- **The main principles of arbitration procedure**
 - **The principle of estoppel**

Art. 1466, 1506 CPC

« A party which, knowingly and without a legitimate reason, fails to object to an irregularity before the arbitral tribunal in a timely manner shall be deemed to have waived its right to avail itself of such irregularity »

D. ARBITRATION PROCEDURE

- **Applicable law (procedure vs. underlying dispute)**
 - **Domestic arbitration**
 - Mandatory French procedure law
 - Material / substantive rules of law applicable to the underlying dispute
 - Principle : French material / substantive rules of law
 - Exception : mission to rule as an amicable composition

Art. 1478 CPC

« The arbitral tribunal shall settle the dispute in accordance with the rules of law, unless the parties have entrusted it with the task of ruling in amicable composition. »

D. ARBITRATION PROCEDURE

- **Applicable law (procedure vs. underlying dispute)**
 - **International arbitration**
 - Choice of a state law (e.g. French) for the procedure

Art. 1505 n°2 CPC

« In international arbitration, and unless otherwise stipulated, the judge acting in support of the arbitration shall be the President of the Judicial Tribunal of Paris when:

1° (...)

2° The parties have agreed that French procedural law shall apply to the arbitration; (...)»

D. ARBITRATION PROCEDURE

- **Applicable law (procedure vs. underlying dispute)**
 - **International arbitration**
 - Mission to rule as an **amicable compounder** (“*amiable compositeur*”)

Art. 1512 CPC

« *The arbitral tribunal shall rule as amicable compounder if the parties have empowered it to do so.* »

D. ARBITRATION PROCEDURE

- **Applicable law (procedure vs. underlying dispute)**
 - **International arbitration**
 - Rules of law to be applied by arbitrators

Art. 1511 CPC

« The arbitral tribunal shall decide the dispute in accordance with the rules of law chosen by the parties or, where no such choice has been made, in accordance with the rules of law it considers appropriate.

In either case, the arbitral tribunal shall take trade practices into account. »

- **“Rules of law” (= hard and soft law)**
- **Chosen by parties or considered appropriate**
- **Taking into account trade practices / international commercial usages**

E. MEMORANDUMS AND ARBITRAL AWARDS

- **Arbitral award**
 - **Domestic and international arbitration**
 - Majority vote (Art. 1480, 1513 CPC)
 - Mandatory statements of the award (Art. 1481, 1506 CPC)
 - Statement of claims and means + motivation (Art. 1482, 1506 CPC)
 - Ability to interpret the award and to remedy material errors and omissions (Art. 1485, 1486, 1506 CPC)
 - The award has the authority of *res judicata* and may be subject to provisional enforcement (Art. 1484 (1) – (2), 1506 CPC)

E. MEMORANDUMS AND ARBITRAL AWARDS

- **Arbitral award**
 - **Discrepancies between domestic and international arbitration**
 - **Signing of the award**
 - Domestic arbitration : dissenting votes by minority of arbitrators do not impede signing of award (Art. 1480 CPC)
 - International arbitration : even in the case of the lack of majority → the President rules and can sign (Art. 1513 para. 3-4 CPC)
 - **Mandatory content** (Art. 1483 CPC)
 - Domestic arbitration : Art. 1480-1482 CPC are compelling law (in case of infringement: nullity of the award)
 - International arbitration : Art. 1483 not applicable under Art. 1506 CPC → derogation possible by the parties

E. MEMORANDUMS AND ARBITRAL AWARDS

- **Arbitral award**
 - **Discrepancies between domestic and international arbitration**
 - **Notification of the award**
 - Domestic arbitration: notification through formal notice (“*signification formelle*”) unless otherwise agreed by the parties (Art. 1484 para. 3 CPC)
 - International arbitration: Art. 1484 para. 3 CPC is not applicable under Art. 1506 CPC → any kind of notification method is permitted

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Exequatur**

- Domestic arbitration

- Exequatur order issued by the High Court in whose jurisdiction the award was issued (Art. 1487 para. 1 CPC)
- Request for exequatur : non-adversarial procedure (Art. 1487 para. 2 CPC)
- Filing of a request by the most diligent party at the registry of the High Court with the following documents (Art. 1487 para. 3 CPC) :
 - The original or authentic copy of the award
 - The original or authentic copy of the arbitration agreement.

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Exequatur**
 - Domestic arbitration (Art. 1487-1488, 1499-1500 CPC)
 - Exequatur is granted unless the award is in clear violation of public policy (Art. 1488 para. 1 CPC)
 - The exequatur is affixed to the original or authentic copy of the award (Art. 1487 para. 4 CPC)
 - The order granting exequatur is not subject to any appeal (Art. 1499 para. 1 CPC)
 - The order rejecting the exequatur is motivated (Art. 1488 para. 2 CPC)
 - An order refusing exequatur may be appealed within one month of its notification (Art. 1500 para. 1 CPC)

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Exequatur**

- International arbitration (Art. 1514-1517, 1518-1527 CPC)
 - Order of exequatur issued by the High Court in whose jurisdiction the award was made or by the Judicial Tribunal of Paris if the award was issued abroad (Art. 1516 para. 1 CPC)
 - Request for exequatur: non-adversarial procedure (Art. 1516 para. 2 CPC)
 - Filing of a request by the most diligent party at the registry of the High Court with the following documents (Art. 1516 para. 3, 1515 para. 2 CPC):
 - The original or authentic copy of the award
 - The original or authentic copy of the arbitration agreement
 - If applicable : translation of the award (established by a translator authorized for this purpose)

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Exequatur**
 - International arbitration (Art. 1514-1517, 1518-1527 CPC)
 - The award is recognized or enforced in France (Art. 1514 CPC) if :
 - Its existence is established by the person who avails herself of it and that
 - Recognition or enforcement is not manifestly contrary to international public policy
 - The exequatur is affixed to the original or authentic copy of the award and, where applicable, also to the translation (Art. 1517 para. 1 and 2 CPC)

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Exequatur**

- International arbitration (Art. 1514-1517, 1518-1527 CPC)
 - Execution of an award issued in France (vs. domestic arbitration)
 - The order granting exequatur is not subject to any appeal (Art. 1524 para.1 CPC) unless the parties have validly waived their right to an annulment appeal against the award (Art. 1522 para. 2 CPC)
 - The order refusing exequatur shall state the reasons on which it is based (Art. 1517 para. 3 CPC)
 - An order refusing exequatur (or a decision refusing recognition) may be appealed against within one month of its notification (Art. 1523 para. 1-2 CPC)

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Exequatur**

- International arbitration (Art. 1514-1517, 1518-1527 CPC)

- Enforcement of an award issued abroad

→ *N.B. The New York Convention is not applicable before French Courts since French statutory rules are more favorable in respect of recognition and enforcement*

- The order refusing exequatur shall state the reasons on which it is based (Art. 1517 para. 3 CPC)
- A decision on a request for exequatur may be appealed within 1 month of its notification (Art. 1525 para. 1 CPC)
- The Court of appeal may refuse recognition or exequatur of the award only in accordance with the criteria applicable with respect to an appeal for annulment (Art. 1525 para. 4 1520 CPC)

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Legal (judicial) remedies**
 - Appeal
 - Appeal against the award (reformation vs. annulment of the award)
 - Appeal against the order refusing exequatur
 - Appeal against the order granting recognition or exequatur
 - Action for annulment (Art. 1492 vs. Art. 1520 CPC)

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Legal (judicial) remedies**

- **Appeal against the award**

- Domestic arbitration : no appeal unless the parties agree otherwise

Art. 1489 CPC

« The award is not subject to appeal unless otherwise agreed by the parties. »

- International arbitration : no appeal at all

Art. 1518 CPC

« The award issued in France with respect to international arbitration may only be the subject of an action for annulment. »

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Legal (judicial) remedies**
 - **Appeal against the order ruling on a request for exequatur**
 - Domestic arbitration :
 - The order granting exequatur is not subject to any appeal (Art. 1499 para. 1 CPC)
 - An order refusing enforcement may be appealed (Art. 1500 para. 1 CPC)

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Legal (judicial) remedies**
 - **Appeal against the order ruling on a request for exequatur**
 - International arbitration
 - Award issued in **France**
 - The order granting exequatur is not subject to any appeal (Art. 1524 para. 1 CPC) – unless the parties have waived their right to an action for annulment (Art. 1522 para. 2 CPC)
 - The decision refusing recognition or exequatur may be appealed within one month (Art. 1523 para. 1-2 CPC)
 - Award issued **abroad**: such a decision is always subject to appeal within one (Art. 1525 CPC)

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Legal (judicial) remedies**
 - **Appeal for annulment**
 - Domestic arbitration
 - Unless the parties have elected to appeal (Art. 1491 CPC)
 - Limited number (**6**) of grounds (art. 1492 CPC)
 - Erroneous jurisdiction of the arbitral tribunal (n° 1)
 - Improper constitution of the arbitral tribunal (n° 2)
 - Violation of the missions conferred to the arbitral court (n° 3)
 - Non-compliance with the adversarial principle (n° 4)
 - Award in violation of public policy (n° 5)
 - Formal irregularity of the award : motivation, signature, date, names, vote (n° 6)

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Legal (judicial) remedies**

- Action for annulment

- Domestic arbitration

- In the event of annulment of the award : the Court of Appeal rules on the substance within the limits of the arbitrator's mission, unless otherwise agreed by the parties (Art. 1493 CPC)
 - Principle : suspensive effect of the award (Art. 1496 CPC)
 - between the period of appeal
 - after filing the appeal
 - unless the statement of provisional enforcement

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Legal (judicial) remedies**

- Action for annulment

- International arbitration

- No appeal → solely the action for annulment is possible (Art. 1518 CPC)
- Must be exercised before the Court of Appeal within the jurisdiction in which the award was issued within one month of notification of the award (Art. 1519 CPC)
- The parties may waive the right to make an action for annulment (Art. 1522 CPC)
 - « *by special agreement* »
 - Appeal against the exequatur order remains possible under the same conditions

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Legal (judicial) remedies**

- Action for annulment

- International arbitration

- Action for annulment automatically entails an appeal against the order ruling on exequatur (Art. 1524 para. 2 CPC)
- In principle, no suspensive effect of the action for annulment or the appeal against the order granting exequatur, unless in the case of provisional execution (Art. 1526 CPC)

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Legal (judicial) remedies**
 - Action for annulment
 - International arbitration
 - Limited number (5) of grounds

Art. 1520 CPC

« *The annulment appeal may only be filed if:*

1° The arbitration tribunal has wrongly declared itself competent or incompetent; or

2° The arbitral tribunal was improperly constituted ; or

3° The arbitral tribunal has ruled without complying with the mission entrusted to it; or

4° The principle of contradiction has not been respected; or

5° The acknowledgement or enforcement of the award is contrary to international public policy. »

Thank you for your attention !



Sans limites.

Ohne Grenzen.

Without limits.

ABC International Selarl
ABCI Rechtsanwaltsgesellschaft mbH
jochen.bauerreis@abci-avocats.com
www.abci-avocats.com