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

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II. FRENCH INTERNATIONAL ARBITRATION LAW

A. Arbitration in France since the 2011 reform

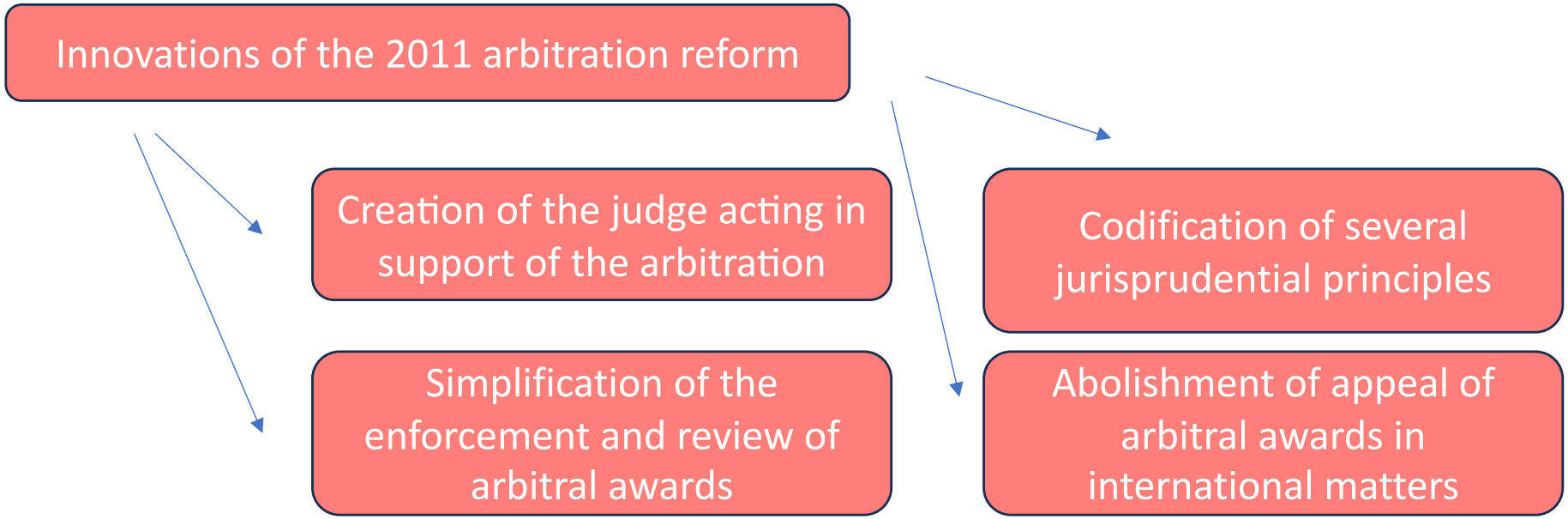
- **Important innovations of the 2011 arbitration reform (1)**

- **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 Judicial Tribunal of Paris** (*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 about the merits of the dispute itself or the validity of the arbitration agreement

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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 arti**cle 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(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)**

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A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

(2) Differences between domestic and international arbitration

	Domestic arbitration	International arbitration
Validity of the arbitration agreement	• Legal definition • The arbitration agreement is required in writing • The number of arbitrators must be uneven and they cannot be legal entities	• No definition • Legislator permits that arbitration agreement is not subject to any requirements as to its form

A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

(2) Differences between domestic and international arbitration

	Domestic arbitration	International arbitration
Confidentiality of the arbitration proceedings	• According to article 1464(4) CPC, arbitral proceedings shall be <u>confidential</u>	• <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

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A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

(2) Differences between domestic and international arbitration

	Domestic arbitration	International arbitration
Appeal of arbitral award	• The parties can appeal an award, if they have agreed upon it	• The parties can only set aside (action for annulment) but not appeal an arbitral award

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A. ARBITRATION IN FRANCE SINCE THE 2011 REFORM

(2) Differences between domestic and international arbitration

	Domestic arbitration	International arbitration
Effect of action for annulment	• The action for annulment of the arbitral award has a suspensive effect	• The action for annulment of an arbitral award does not have a suspensive effect • This means that the award is immediately enforceable even if an action for annulment is brought before a State court

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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	• The action for annulment is only permitted for a limited number (**6**) of specific reasons (Art. 1492 CPC) ○ 1° The arbitral tribunal wrongly upheld or declined jurisdiction ○ 2° The arbitral tribunal was not properly constituted	• The action for annulment is only permitted for a limited number (**5**) Art.1520 CPC): ○ 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

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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	○ 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° 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.	• 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 agreement : arbitration clause (*clause compromissoire*) / submission agreement (*compromis*)

Art. 1442 CPC

« *An arbitration agreement may be in the form of an arbitration clause or a submission agreement.*
An arbitration clause is an agreement by which the parties to one or more contracts undertake to submit to arbitration disputes which may arise in relation to such contract(s).
A submission agreement is an agreement by which the parties to a dispute submit such dispute 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 I bis:**

Art. 25(5) Brussels I bis

"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 Sate 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 universal / 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(1) Brussels I bis + 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

« Article 1443 In order to be valid, an arbitration agreement shall be in writing. It can result from an exchange of written communications or be contained in a document to which reference is made in the main agreement. »

  - **International arbitration : no formal requirements**

Art. 1507 CPC

« An arbitration agreement shall not be subject to any requirements as to its form. »

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

« An arbitration agreement may designate the arbitrator(s) or provide for the procedure for their appointment, directly or by reference to arbitration rules or to procedural rules. »

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**

« The arbitration clause must have been accepted by the party against whom it is asserted, unless that party has succeeded to the rights and obligations of the party who initially accepted it.
Where one of the parties has not contracted in the course of his professional activity, the clause cannot be asserted against him. »

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 to its jurisdiction. »

B. ARBITRATION CLAUSE

- **Principle of « competence-competence »**

  - Negative effect of the « competence-competence » principle

Art. 1448(1), (2), 1506 CPC

« When a dispute subject to an arbitration agreement is brought before a court, such 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. »

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Practical case n°1

I. FACTS

A French company and an Italian company conclude an international distribution contract containing an arbitration clause providing that any dispute shall be settled by arbitration.

A dispute later arises, and the French company brings an action before a French State court instead of initiating arbitration proceedings. The Italian company argues that the court has no jurisdiction because of the arbitration clause.

II. QUESTION

Should the French State court accept jurisdiction over the dispute under the French Code of Civil Procedure (Article 1448 CPC)?



Guiding question n°1

- **Art. 1448 CPC:** What must a French State court do when the parties have concluded an arbitration agreement?

C. PROPOSAL AND APPOINTMENT OF THE ARBITRATOR

- **Qualifications required for an arbitrator**

  - The qualities of independence and impartiality

  - The duty of disclosure (*obligation de révélation*)

Art. 1456(2), 1506 CPC

« Before accepting a mandate, an arbitrator shall disclose any circumstance that may affect his or her independence or impartiality. He or she also shall disclose promptly any such circumstance that may arise after accepting the mandate. »

C. PROPOSAL AND APPOINTMENT OF THE ARBITRATOR

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

Art. 1452, 1506 CPC

« If the parties have not agreed on the procedure for appointing the arbitrator(s):
(1) Where there is to be a sole arbitrator and if the parties fail to agree on the arbitrator, he or she shall be appointed by the person responsible for administering the arbitration or, where there is no such person, by the judge acting in support of the arbitration;
(2) Where there are to be three arbitrators, each party shall appoint an arbitrator and the two arbitrators so appointed shall appoint a third arbitrator. If a party fails to appoint an arbitrator within one month following receipt of a request to that effect by the other party, or if the two arbitrators fail to agree on the third arbitrator within one month of having accepted their mandate, the person responsible for administering the arbitration or, where there is no such person, the judge acting in support of the arbitration, shall appoint the third arbitrator. »

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 judge acting in support of the arbitration shall be the President of a Tribunal de grande instance.
However, the President of a Tribunal de commerce shall have jurisdiction to rule on applications made on the basis of Articles 1451 through 1454 if there is an express provision to that effect in the arbitration agreement. In that case, he or she may apply Article 1455.
The arbitration agreement shall determine which court has territorial jurisdiction, failing which, jurisdiction shall lie with the court of the place where the seat of the arbitral tribunal has been set. Where the arbitration agreement is silent, territorial jurisdiction shall lie with the court of the place where the party or one of the parties resisting the application resides or, if that party does not reside in France, with the court of the place where the applicant resides. »

D. ARBITRATION PROCEDURE

- **The « juge d'appui » (supporting judge)**

  - **<u>International arbitration</u> :** 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 Tribunal de grande instance 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; or

(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 Tribunal de grande instance or of the Tribunal de commerce who shall rule on the measures relating to the taking of evidence in accordance with the provisions of Article 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(1), 1506 CPC)**
      - Evidence held by a party **(Art. 1467(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(1), (3), 1506 CPC

« The arbitral tribunal shall take all necessary steps concerning evidentiary and procedural matters, unless the parties authorise 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(1) phrase 1, 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 measure 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(1) phrase 2, 1506 CPC

« […]
However, only courts may order conservatory attachments 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 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

- **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(3), 1506 CPC)**
  - Principle of celerity / promptness **(Art. 1464(3), 1506, 1463, 1477 CPC)**
  - Principle of contradiction **(Art. 1464(2), 1510 CPC)**
  - Principle of confidentiality **(Art. 1464(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(1-4) CPC

« Unless otherwise agreed by the parties, the arbitral tribunal shall define the procedure to be followed in the arbitration.
It is under no obligation to abide by the rules governing court proceedings.
However, the fundamental principles governing court proceedings set forth in Articles 4, 10, Article 11, paragraph 1, Article 12, paragraphs 2 and 3, Articles 13 through 21, 23 and 23-1 shall apply.
Both parties and arbitrators shall act diligently and in good faith in the conduct of the proceedings. Subject to legal requirements, and unless otherwise agreed by the parties, arbitral proceedings shall be ***confidential****. »*

D. ARBITRATION PROCEDURE

- **The main principles of arbitration procedure**

  - The **deadlines to be respected** (with respect to domestic arbitration)

Art. 1463 CPC

*« If an arbitration agreement does not specify a time limit, the duration of the arbitral tribunal's mandate shall be limited to **six months** as of the date on which the tribunal is seized of the dispute.*
*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

« Arbitral proceedings shall come to an end upon expiration of the time limit set for the arbitration. »

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 (procedural rules vs. material/substantive rules)**

  - **Domestic arbitration**

    - Mandatory French procedure law (Art. 1442 – 1503 CPC)

    - Material / substantive rules applicable to the merits of the dispute

      - Principle : **French material / substantive rules of law**

      - Exception : mission to rule as an amiable compounder (***amiable compositeur***)

Art. 1478 CPC

« The arbitral tribunal shall decide the dispute in accordance with the law, unless the parties have empowered it to rule as amiable compositeur. »

D. ARBITRATION PROCEDURE

- **Applicable law (procedural rules vs. material substantive rules)**

  - **International arbitration : procedural rules**

    - Choice of a state law (e.g. French) for the **procedure of arbitration**

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 Tribunal de grande instance of Paris when:

(1) […]

(2) the parties have agreed that French procedural law shall apply to the arbitration; […] »

D. ARBITRATION PROCEDURE

- **Applicable law (procedural rules vs. material substantive rules)**

  - **International arbitration : material / substantive rules**

    - Mission to rule as an **amicable compounder ("*amiable compositeur*")**

Art. 1512 CPC

« The arbitral tribunal shall rule as amiable compositeur if the parties have empowered it to do so. »

D. ARBITRATION PROCEDURE

- **Applicable law (procedural rules vs. material substantive rules)**

  - **International arbitration : material / substantive rules**

    - **Rules of law** to be applied by arbitrators to the **merits of the dispute**

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 usages into account. »

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

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Practical case n°2

I. FACTS

A French company and a Polish company conclude an international sales contract. The contract contains an arbitration clause like Paris as place of arbitration but does not specify which material / substantial rules of the law shall apply the dispute.

A dispute arises concerning the quality of the goods delivered. The case is submitted to an international arbitral tribunal.

II. QUESTION

How should the international arbitrator determine the applicable rules of law under Article 1511 of the French Code of Civil Procedure?



Guiding question n°2

- **Art. 1511 CPC:** In the absence of a choice of law by the parties, how should the arbitrator determine the applicable rules of law?

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 arguments + reasons **(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)**

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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(3-4) CPC)**
    - **Mandatory content (Art. 1483 CPC)**
      - Domestic arbitration : **Art. 1480-1482 CPC** are mandatory provisions (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(3) CPC)**
      - International arbitration: **Art. 1484(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(1) CPC)**
    - Request for exequatur : non-adversarial procedure **(Art. 1487(2) CPC)**
    - Filing of a request by the most diligent party at the registry of the High Court with the following documents **(Art. 1487(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(1) CPC)**
    - The exequatur is affixed to the original or authentic copy of the award **(Art. 1487(4) CPC)**
    - The order granting exequatur is not subject to any appeal (**Art. 1499 (1) CPC)**
    - The order rejecting the exequatur is motivated **(Art. 1488(2) CPC)**
    - An order refusing exequatur may be appealed within one month of its notification **(Art. 1500(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(1) CPC)**

    - Request for exequatur: non-adversarial procedure **(Art. 1516(2) CPC)**

    - Filing of a request by the most diligent party at the registry of the Court of Appeal (*Cour d'Appel*) with the following documents **(Art. 1516(3), 1515(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(1), (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 court 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 (2) CPC)**
      - The order refusing exequatur shall state the reasons on which it is based **(Art. 1517(3)CPC)**
      - An order refusing exequatur (or a decision refusing recognition) may be appealed against within one month of its notification **(Art. 1523(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(3) CPC)**
      - A decision on a request for exequatur may be appealed within 1 month of its notification **(Art. 1525(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(4), 1520 CPC)**

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Legal (judicial) remedies**
  - Appeal
    - Appeal against the award
    - Appeal against the court order refusing exequatur
    - Appeal against the court 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

« An arbitral award shall not be subject to appeal, unless otherwise agreed by the parties. »

- International arbitration : no appeal at all

Art. 1518 CPC

« The only means of recourse against an award made in France in an international arbitration is an action to set aside. »

F. ENFORCEMENT AND APPEAL POSSIBILITIES

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

F. ENFORCEMENT AND APPEAL POSSIBILITIES

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

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Legal (judicial) remedies**
  - **Action for annulment**
    - Domestic arbitration
      - Unless the parties have opted for the remedy of appeal **(Art. 1491 CPC)**
      - Limited number **(6)** of grounds **(Art. 1492 CPC)**
        - Wrongly upheld or declined jurisdiction **(n° 1)**
        - Improper constitution of the arbitral tribunal **(n° 2)**
        - Non-compliance with the mandate **(n° 3)**
        - Violation of due process **(n° 4)**
        - Award contrary to public policy **(n° 5)**
        - Formal irregularity of the award : reasons which the award is based on, 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 (*Cour d'Appel*) rules on the merits of the dispute 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 of provisional enforcement is ordered

F. ENFORCEMENT AND APPEAL POSSIBILITIES

- **Legal (judicial) remedies**
  - **Action for annulment**
    - <u>International arbitration</u>
      - 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**
    - <u>International arbitration</u>
      - Action for annulment automatically entails an appeal against the order ruling on exequatur **(Art. 1524(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 enforcement **(Art. 1526 CPC)**

F. ENFORCEMENT AND APPEAL POSSIBILITIES

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

Art. 1520 CPC

« An award may only be set aside where:
(1) the arbitral tribunal wrongly upheld or declined jurisdiction; or
(2) the arbitral tribunal was not properly constituted; or
(3) the arbitral tribunal ruled without complying with the mandate conferred upon it; or
(4) due process was violated; or
(5) recognition or enforcement of the award is contrary to international public policy. »

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Thank you for your attention !



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