France has always been at the forefront of commercial arbitration on both the domestic and international level. French law on arbitration, enshrined in Book IV of the Code of Civil Procedure (CCP), has created a very favourable legal environment for arbitrating disputes in France. French courts have also played an important role in promoting commercial arbitration by adopting a solid tradition of judicial non-interference in the arbitral process, and by recognising arbitral awards without accepting challenges that would amount to a review of the merits of a dispute. Therefore, for example, the courts will always allow the arbitrators to determine their own jurisdiction when there is prima facie an arbitration agreement. In some recent decisions, courts have again expressed their support for arbitration, by confirming awards dealing with issues and/or challenges based on public policy arguments (SNF case), extension of an arbitration clause to non-signatory parties (ABS case) or enforcement of awards annulled in their country of origin (Putrabali case).

The presence of the International Court of Arbitration of the ICC in Paris has also contributed to making France a leading venue for international arbitration. It is also for this reason that many international law firms with specialised arbitration practitioners of numerous nationalities have concentrated their arbitration practice in Paris.

The main advantages of arbitration over court litigation can be summarised as follows:

- Easier enforcement of arbitral awards through the large adoption worldwide of the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards 1958, which has no equivalent for court judgments.
- Arbitration hearings are held in private and awards often remain confidential, until a party chooses to enforce them before national courts.

Points which are sometimes considered as disadvantages compared to court litigation, but which may well be viewed as advantages for parties who do not wish to participate in an arbitration, are:

- Unlike in court litigation, the joinder of non-signatories to the arbitration agreement is possible only under narrow and very specific conditions, when allowed.
- Unlike in court litigation, tribunals do not normally have power to consolidate proceedings in the presence of different contracts, except where the contracts include arbitration agreements allowing for this possibility.

The issue of costs is undoubtedly critical in assessing the method of resolving disputes. There may be an inaccurate perception that arbitration is costly, since court litigation happens to be less cost-effective in some complex disputes that take several years to reach final judgment.

The ICC International Court of Arbitration is the world's leading institution for resolving international business disputes, and other disputes involving financial interests.

The total number of cases handled by the Court since it was founded is more than 16,000. In 2008 alone, 663 cases were filed, involving 1,758 parties from 120 countries. Several of these cases involve parties from one and the same jurisdiction.

Other Paris-based arbitration institutions, the caseload of which includes both domestic and international disputes, are the:

- French Arbitration Association (Association Française de l’Arbitrage or AFA).
Country Q&A France

- Paris Centre for Mediation and Arbitration (Centre de Médiation et d’Arbitrage de Paris or CMAP).
- Paris Arbitral Chamber (CAP).
- Paris Maritime Arbitration Chamber (Chambre arbitrale maritime de Paris).


France has not adopted the UNCITRAL Model Law in its original or amended version. There are a few differences between French international arbitration law and the Model Law. For instance, France has adopted a broad definition of international arbitration (Article 1492 of the CCP provides that it is international if it concerns interests of international trade), while the Model Law refers to the location in different states of the place of business of the parties, the place of arbitration or the place of performance of the contract.

4. Are there any mandatory legislative provisions (for example, relating to removal of arbitrators, challenge of awards and arbitrability)? If yes, please summarise their effect.

For the conduct of international arbitration proceedings, the French legislator has adopted a very flexible approach and does not impose mandatory rules. The Arbitral Tribunal is free to determine the rules of procedure applicable to arbitration proceedings unless the parties have agreed to some specific rules (Article 1494, CCP).

There are certain mandatory rules specific to France relating to the challenge of awards. For example, parties cannot agree to a review on the merits of international arbitral awards.

Certain matters are not arbitrable in France, such as matters related to personal status (capacity, marriage, divorce, judicial separation) or matters concerning public bodies or over which administrative agencies and national courts have exclusive jurisdiction, such as a dispute over the validity of a patent or trade mark or the finding of a violation of criminal law. Further, in domestic disputes, French public bodies and institutions cannot consent to arbitration, except by decree.

While Article 2060 of the Civil Code provides that matters involving public policy are not arbitrable, French courts make a limited and narrow interpretation of this provision for international arbitration disputes. The growing trend is an extension of the scope of arbitrability in international arbitration. French courts have recently recognised an arbitral award holding that a contract was null and void because it violated European competition law, was null and void because it violated European competition law, and more generally international public policy (see SNF case and commentary by Pierre Heitzmann and Jacob Grierson in Stockholm International Arbitration Review 2007-2).

5. Are there any requirements relating to independence or impartiality?

An arbitrator must disclose any circumstances that may give rise to justifiable doubts as to his independence and impartiality (Article 1452(2), CCP). French case law has decided that this general duty applies to arbitrators serving in domestic and international arbitration proceedings (Paris, 28 June 1991, Rev. arb. 1992 p. 568, note P. Bellet). Full disclosure is expected when the arbitrator accepts his appointment and continues throughout the arbitration proceedings.

6. Does the law of limitation apply to arbitration proceedings? If yes, briefly state the usual length of limitation period(s) and what triggers or interrupts it in the context of commercial arbitration.

In France, the law on limitation is a matter of substantive law and is not considered as a matter of procedural law (unlike in common law jurisdictions). There has been a reform of the French law of limitation in 2008, which has changed the length of the limitation period applicable to civil matters from 30 years to five years (Article 2224, Civil Code). Accordingly, a party initiating arbitration must do so within five years after the facts giving rise to the dispute were or should have been known to him. The filing of a request for arbitration interrupts the limitation period. The applicable limitation period to enforce an award is now ten years after the award was rendered.

ARBITRATION AGREEMENTS

7. For an arbitration agreement to be enforceable:

- What substantive and/or formal requirements must be satisfied?
- Is a separate arbitration agreement required or is a clause in the main contract sufficient?

There is no specific requirement as to the form and the content of an international arbitration agreement, except that the parties must have the legal capacity to conclude the agreement and the subject matter must be arbitrable. The arbitration agreement is therefore valid and binding as a result of the parties’ agreement to refer the dispute to arbitration.

For domestic arbitrations, French law is more restrictive. The CCP requires that the arbitration agreement be agreed in writing. If the arbitration agreement (clause compromissoire) is made before the dispute arises, it must be inserted in the main contract or in a separate document clearly identified as such (Article 1443, CCP). If it is concluded after the dispute arises, it must be signed by the parties in a submission agreement (compromis) describing the subject matter of the dispute (Article 1447, CCP).
8. Do statutory rules apply to the arbitration agreement? For example, are there restrictions on the number, qualifications/characteristics or selection of arbitrators?

In international arbitration, while no specific mandatory rule regarding the appointment of the arbitrators exists, there is a general principle according to which all parties will have equal rights in the constitution of the Arbitral Tribunal (Cass. Civ 1re, 7 January 1992, Dutco case, Rev. arb. 1992 p. 470, note P. Bellet). As a result of this rule, if the claimant appoints an arbitrator and two respondents cannot agree to appoint their arbitrator, then all the arbitrators should be appointed by a neutral institution or court, depending on the terms of the arbitration clause. Otherwise, parties are free to agree on the number and identity of the arbitrators. The arbitration agreement can either refer to arbitration rules or directly provide for the terms of the arbitrators’ appointment.

In domestic arbitration, there needs to be an uneven number of arbitrators (Article 1453, CCP) who must be physical persons in full possession of their civic rights (Article 1451, CCP). In addition, the arbitration agreement must either designate the arbitrators or provide for the manner of appointment of the arbitrators in order to be valid (Article 1443, CCP).

9. In what circumstances can a third party be joined to an arbitration, or otherwise be bound by an arbitration award? Please give brief details.

The following circumstances may justify the joinder of a third party to an arbitration:

- When a party has participated substantially in the negotiations but did not sign the contract containing the arbitration clause, French courts have held that such involvement from the non-signatory party may give rise to a presumption that the contracting parties’ true intention was for the non-signatory to be bound by the arbitration clause (see Paris, 7 December 1994, V 2000 case, Rev. arb. 1996 p. 245, note E. Gaillard; Paris, 21 October 1983, Dow Chemical, Rev. arb. 1984 p. 98);

- Parties that are directly involved in the performance of a contract may be bound by the arbitration clause in a contract (Cass. civ 1re, 27 March 2007, ABS case, Bulletin 2007 I.129).

- In a chain of contracts involving transfer of contractual rights, the arbitration clause is automatically transferred as an accessory to the substantive rights transferred, regardless of the homogenous or heterogeneous character of the different contracts involved (Cass. civ 1re, 27 March 2007, ABS case, Bulletin 2007 I.129).

10. Does the applicable legislation provide default rules governing the appointment and removal of arbitrators, and the start of arbitral proceedings?

In both domestic and international arbitration agreements that do not refer to an arbitral institution, the President of the Court of First Instance in Paris (Tribunal de Grande Instance) can, on request, assist the parties if difficulties arise in the constitution of the arbitral tribunal (Article 1444, CCP and Article 1493, CCP). The President can also act on challenges to the appointment or replacement of an arbitrator.

In relation to the start of the arbitral proceedings, no statutory default rule exists. French courts have ruled that the proceedings are deemed to start on the day when the arbitral tribunal is constituted, that is, when all the arbitrators have accepted their appointment, except for the purpose of interrupting the relevant statute of limitation (Cass. civ. 1re, 30 March 2004, Rambour case, Rev. arb. 2005 p. 977, note Pellerin). This applies to both domestic and international arbitrations.

11. What procedural rules are arbitrators likely to follow? Can the parties determine the procedural rules that apply? Does the legislation provide any default rules governing procedure?

The parties are free to determine the procedural rules that apply in international arbitration. If the arbitration agreement is silent, the arbitrators determine the procedural rules (Article 1494, CCP). Under Article 1495 of the CCP, where an international arbitration is submitted to French law, French procedural rules on arbitration contained under Articles 1442 through 1480 of the CCP apply only in default of specific agreements (unless the parties have referred to a domestic procedural law or to a set of arbitration rules in the arbitration agreement).

The flexibility relating to determination of the procedural rules is particularly important in ad hoc arbitrations, where parties or arbitrators can refer directly to a domestic law or to a set of arbitration rules. On the other hand, parties that have agreed to conduct an institutional arbitration, under the ICC Rules for instance, are bound by the procedure contained in such rules. This procedure will still be subject to any other mandatory rules of the country where the arbitration has its seat.

For any arbitration having its seat in France, any choice of procedure must comply with the principles of equal treatment of the parties, due process and international public policy. Any breach of these principles is a ground for annulment of an award.

French legislation provides default rules but these rules only apply if an international arbitration is subject to French procedural law.
12. What procedural powers does the arbitrator have? If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

Arbitrators enjoy broad procedural powers including the right to order production of documents, but the enforcement of such procedural powers is limited in practice. In particular, they have no statutory power to order pecuniary fines, known as astreintes, to have a party comply with an order.

Arbitrators can request, but not compel, the attendance of witnesses. They do not administer oaths (Article 1461, CCP).

13. What documents must the parties disclose to the other parties and/or the arbitrator(s)? Can the parties determine the rules on disclosure? How, in practice, does the scope of disclosure compare with disclosure in litigation?

In international arbitration proceedings, the parties usually present their case through their respective statement of claim and statement of defence, which contain all the relevant evidence that they intend to rely on. A party can request that documents be produced by the opposing party. Arbitrators can direct a party to produce a document (Article 1460(3), CCP) or appoint an expert at a party’s request, or on their own initiative. In practice, the arbitrators issue a procedural order directing the party to produce documents. In case of non-compliance, the arbitrators can draw the conclusions that they consider appropriate, including an adverse inference against the party refusing to produce the requested documents.

In case of urgency, a party can apply for an order from a French judge to oblige the other party to disclose certain documents and preserve evidence before the constitution of the arbitral tribunal. The party requesting the order must prove that the documents are relevant to the outcome of the dispute.

Litigation before French courts does not foresee discovery. The CCP allows very limited disclosure of documents. On request from a party or from a court-appointed expert, French courts can order a party to produce documents which appear to be relevant, including with financial fines (astreintes) payable to the party requesting the documents if a party refuses to comply with the court order.

14. Is arbitration confidential?

There are no statutory provisions dealing with the issue of confidentiality in arbitration proceedings. However, French courts have confirmed the general principle of confidentiality of arbitration proceedings (see Paris, 22 January 2004, Nafimco case, Rev arb. 2004 p. 657, note E. Loquin; Paris, 18 February 1986, Alta case, Rev. arb. 1986 p. 583, note G. Flécheux), subject to the duty of disclosure of material information by listed companies.

15. Will the local courts intervene to assist arbitration proceedings? For example, by granting an injunction or compelling witnesses to attend?

There is a strong tradition of non-interference of the courts in the arbitral procedure in France, but French courts have always shown their support to arbitration when required. For example, they can intervene to resolve difficulties concerning the constitution of the arbitral tribunal (Article 1493(2), CCP, applicable to an international arbitration) (Cass. civ. 1re, 1 February 2005, NIOC case, Stockholm International Arbitration Review 2005:1 p. 230, note E.-X. Train). However, there is no case law reporting the granting of an order compelling witnesses to appear in arbitration proceedings.

16. What is the risk of a local court intervening to frustrate the arbitration? Can a party delay proceedings by frequent court applications?

There is a general principle of non-interference of the courts in arbitral proceedings (see Question 15).

Delay in arbitration due to frequent applications of a party to court is also reduced, as a court will normally decline its jurisdiction in favour of the arbitral tribunal where an arbitration agreement exists prima facie.

17. What remedies are available where proceedings are started in the local court in breach of an arbitration agreement?

Where a dispute, referred to an arbitration tribunal pursuant to an arbitration agreement, is brought before a court of law, the court must decline jurisdiction. Where the case has not yet been brought before an arbitration tribunal, the court must also decline jurisdiction, unless the arbitration agreement is patently null. In both cases, the court cannot raise sua sponte its lack of jurisdiction (Article 1458, CCP).

If parties have agreed to submit their dispute to arbitration, the arbitration can proceed even if a party refuses to participate in the proceedings. In addition, the assistance of the court can be sought by a party on certain aspects of the procedure, for example, constitution of the arbitral tribunal (see Question 10), or provisional measures.

18. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

French courts have traditionally been reluctant to order anti-suit injunctions or similar measures.
The European Court of Justice ruled in February 2009 that courts in the EU cannot grant an injunction to prevent a party to an arbitration agreement from pursuing legal proceedings in breach of that agreement (Case C-185/07, Allianz v West Tankers), holding that such an injunction is incompatible with Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation).

19. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction accept the concepts of separability and/or kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?


REMEDIES

20. What interim remedies are available from the tribunal? Can the tribunal award:
- Security for costs?
- Security or other interim measures?

Security for costs is a mechanism designed to ensure that if a party loses the arbitration and is ordered by the arbitral tribunal to pay the legal costs and the expenses of the prevailing party, there will be funds available to the prevailing party to satisfy the award on costs.

There is no specific statutory provision addressing security for costs. However, French law allows arbitral tribunals to order security for costs, as other interim measures (directed, for example, to the preservation of evidence or the status quo) by way of a procedural order or an award for purpose of enforcement. (See ICC case no. 13070 (2006) (interim award) cited in Bühler/

21. What final remedies are available from the tribunal? For example, can the tribunal award damages, injunctions, declarations, costs and interest?

A dispute submitted to arbitration is resolved by a final award unless the parties settle their dispute before the award is made. Although there are no specific requirements in French law, the award must be in writing, signed and contain reasons to meet the parties’ legitimate expectations.
APEALS

22. Can arbitration proceedings and awards be appealed or challenged in the local courts? If yes, please briefly outline the grounds and procedure. Can the parties effectively exclude any rights of appeal?

In an international arbitration, French law does not allow parties the right to file an appeal against the award. This is a mandatory provision (see Cass. civ. 1re, 13 March 2007, Chefaro case, Rev. arb. 2007 p. 349, note L. Jaeger).

The parties can only file an application for the annulment of an international arbitral award on the basis of five limited grounds before the Court of Appeal of the place where the award was made (Articles 1502 and 1504, CCP):

- The arbitral tribunal has decided the case in the absence of an arbitration agreement or on the basis of an agreement which is void or has expired.
- The arbitral tribunal was improperly constituted.
- The arbitral tribunal has decided the case ultra petita, that is, by exceeding the scope and/or terms of its mission.
- Breach of the general rule of due process.
- Recognition and enforcement of the award would be contrary to French international public policy.

The challenge against the award must be filed within one month (three months if the challenging party resides abroad). However, this time limit only starts to run from the date of official notification of the award bearing the order granting leave for enforcement (exequatur) (Article 1486, CCP).

Unlike international arbitration, the parties are allowed to file an appeal against an award in a domestic arbitration, unless they have waived that right (Article, 1482 CCP).

COSTS

23. What legal fee structures can be used? For example, hourly rates and task based billing? Are fees fixed by law?

There is no specific provision under French law governing legal fees. Lawyers can be remunerated on an hourly rate basis or a lump sum basis.

24. Does the unsuccessful party have to pay the successful party’s costs? How does the tribunal usually calculate any costs award and what factors does it consider when awarding costs?

There is no specific provision under French law governing the allocation of costs. The arbitral tribunal has a discretionary power to decide on final allocation of the arbitration costs. Generally, the prevailing party will be awarded all or part of the arbitration costs. In doing so, the arbitral tribunal can also take into account the behaviour of the parties during the proceedings.

ENFORCEMENT

25. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts? Please briefly outline the enforcement procedure.

An award, whether made in France or abroad, must be presented to the Court of First Instance (Tribunal de grande instance) sitting as a single judge, to be enforceable in France.

The judge will usually grant (or refuse) leave for enforcement (exequatur), therefore making the award enforceable, provided the existence of the arbitral award is established by production of the original with the arbitration agreement, or copies of them that satisfy the conditions required for their authenticity. If the award and/or the arbitration agreement are not in French, a certified translation by a translator registered on the list of experts of French courts is required. No other action or document is required from the successful party.

The award bearing the exequatur can then be served on the party against whom enforcement is sought. Also, the prevailing party can seek to attach assets to secure enforcement of the award.

26. To what extent is an arbitration award made in your jurisdiction enforceable in other jurisdictions? Is your jurisdiction party to international treaties relating to this issue such as the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

Awards rendered in France are recognised and enforced in other jurisdictions in accordance with their local law.

France has ratified the New York Convention, as well as the European Convention on International Commercial Arbitration 1961 (Geneva Convention).

27. To what extent is a foreign arbitration award enforceable in your jurisdiction? Please briefly outline the enforcement procedure.

A foreign arbitral award is recognised and enforced in France if its existence is proven, unless it is contrary to French international public policy (see Question 25). Basically, the party seeking enforcement of the award submits an ex parte application to the Court of First Instance, which reviews the award and the arbitration agreement on a prima facie basis. The Court will then grant or refuse leave for enforcement of the foreign award, which is refused only in very exceptional cases. This decision is then notified to the other party, and can then be appealed. The appeal suspends enforcement of the award (Article 1506, CCP), unless provisional enforcement of the award was ordered by the arbitral tribunal. A party obtaining an award from an arbitral tribunal in France is therefore normally well advised to request its provisional enforcement.
France has adopted a very liberal approach regarding the enforcement of awards. As an illustration, the French Supreme Court (Cour de cassation) has consistently ruled that actions to set aside an award pending before a court of the place of arbitration, or even the annulment of an award by a foreign court at the place of arbitration, do not prevent the recognition and enforcement of such awards in France (Article 1502, CCP) (see namely Cass. civ. 1re, 23 March 1994, Hilmarton case, Yearbook 1995 Vol XX p. 663; Paris, 14 January 1997, Chromalloy case, Rev. arb. 1997 p. 395, note Ph. Fouchard; Paris, 29 September 2005, Bechtel case, Rev. arb. 2006 p. 695, note H. Muir Watt; Cass. civ. 1re, 29 June 2007, Putrabali case, Rev. arb. 2007 p. 517, note E. Gaillard; Cass. civ. 1re, 4 June 2008, SNF case, Rev. arb. 2008 p. 346).

28. How long do enforcement proceedings in the local court take? Is there any expedited procedure?

Obtaining an exequatur order to enforce an arbitral award from the Court of First Instance generally takes ten to 14 days. When such an order is notified to the party against whom enforcement is sought, the party can challenge the order before the Court of Appeal on limited grounds (see Questions 22 and 27). Enforcement proceedings usually take one to two years depending on the complexity of the case. There is no expedited procedure unless provisional enforcement of the award has been ordered by the arbitral tribunal.

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