Dispute Resolution
France

1. INTRODUCTION TO FRENCH LAW

1.1 LEGAL SYSTEM

Strongly linked to French history, the French Legal system is responsible for maintaining public order based on respect for and application of the Law.

France's judicial system is divided into the administrative order (public law) and the judicial system (private law).

The French Legal system is based solidly on codified laws ("*Codes*"), i.e. written by the Legislative body.

The judicial system (private law) distinguishes between civil and criminal justice. Civil law applies to dealings between private individuals (personal matters and matters of property), and criminal law ensures that laws are enforced.

1.2 SOURCES OF LAW

1.2.1 Constitution and Constitutional Statutes

France is a Republic ruled by a Constitution (currently the Constitution of the Fifth Republic adopted on October 4, 1958).

The constitution recalls the Declaration of the Rights of the Man and the Citizen, and establishes France as a secular and democratic Republic, deriving its sovereignty from its people.

It provides elections with the organisation of State, elections of the President and Parliament, selection of government, and rules upon the power of each as well as the relations between them.

It also enables the ratification of international treaties, as well as those associated with the European Union.

The constitution can be amended by constitutional statutes.

The constitutionality of the law must be dealt with before it is promulgated and therefore before it reaches the status of "law".

However, starting March 1st, 2010, any person party of a trial can raise a preliminary ruling to the judge. The preliminary ruling must be about Human Rights and Freedom contained in the

Constitution. A filter is established until the law reaches the Constitutional Council. If the legislation is considered unconstitutional, it is repealed.

1.2.2 International and European law

Article 55 of the Constitution states that duly ratified or approved treaties and agreements have a superior authority to that of a parliamentary statute.

According to the European Court of Justice, European Law shall be applied directly by French Judges.

1.2.3 Statutes and regulations

Law ("*la loi*") – as opposed to regulations – refers to parliamentary statutes. Their domain is restricted to a limited number of matters, as set out in the Constitution. They shall establish the rules concerning civil rights, nationality, status and capacity of persons, inheritance, crimes and criminal procedure, taxes and currency. They shall also determine the fundamental principles of education, property rights, labor law, and social security.

In spite of the great mass of special statutes and regulations, the codes are still the basis of the French legal system. The five original Napoleonic codes were the Civil Code, Code of Civil Procedure, Code of Commerce, Criminal Code, and Code of Criminal Procedure.

All other legislation can be enacted by the executive by means of regulations ("*règlements*") which can be autonomous or taken to implement a statute.

In addition, the government can legislate within the legislative field of competence via ordinances and presidential decisions.

The regulations are called a "*décret*" if taken by the President or the Prime Minister, "*arrêté*" if taken by a minister, a prefect or a mayor, or a "*circulaire*".

1.2.4 Judicial Decisions

French case law is not an authoritative source of law and judges are prohibited from setting precedents (Art. 5 Civil Code). Nevertheless, case law exercises an important influence on the development of law.

1.3 Limitation Period

Limitation under French law is not governed by any general statute, but depends on the matters dealt with. If the relevant period of time elapses without proceedings being issued, the claim will be 'statute-barred'.

Since the 2008 limitation reform, for claims arising in civil law, this period will be 5 years (5 years for commercial issues as well), 10 years for personal injuries. Nevertheless, a lot of exceptions apply to particular matters.

Crimes shall be prosecuted in a limited period, depending on the gravity of the offence: 10 years for “crimes” (serious crimes), 3 years for “délits” (crimes), 1 year for “contraventions” (petty offences).

The general limitation period is 4 years for public matters, i.e. claims against the state.

2. ADMINISTRATION OF JUSTICE AND JUDICIAL FUNCTION

2.1 JURISDICTION

2.1.1 French Courts

According to the French Code of Civil Procedure, French courts have jurisdiction to hear any civil or commercial proceedings where :

- the defendant has its seat (for companies) or its residence (for individuals) in France;
- the dispute is about a contract which is / has been executed in France;
- a valid clause of a commercial contract gives jurisdiction to a designated French court;
- the dispute is about a real estate located in France;
- the damage (non-contractual disputes) is suffered in France;
- the defendant is a French national (company or individual) - but this criterion is not of public order thus French nationals may renounce to it.

According to these criteria, it may happen that several courts have jurisdiction for the same dispute. In such situation, the claimant has an option and can elect “his” court. This option does not exist when a valid jurisdiction clause has been stipulated in a commercial contract or when the dispute involves real estate.

Some special jurisdiction rules also exist in Family Law, Labour Law, Bankruptcy Law, Criminal Law, etc.

2.1.2 French Courts and EU

French courts have jurisdiction, in civil and commercial disputes between a French national and a national of other EU countries, according to criteria enacted in EC Council Regulation 44/2001 of December 22nd 2000 and EU Regulation 1215/2012 of December 12nd 2012, which are similar to criteria enacted in the French Code of Civil Procedure (jurisdiction clause, seat of Defendant, …).

2.1.3 French Courts and the Rest of the World

France has signed several international conventions concerning jurisdiction and enforcement of judgments in civil and commercial disputes.

In particular, France has signed the Lugano Convention dated September 16th, 1988, which also enacts similar criteria to the ones enacted in the French Civil Procedure Code.

According to article 14 of French Civil Code, a foreigner may be served in France in relation to obligations contracted with a French national (individual or company) even though these obligations were contracted in a foreign country.

Also, according to article 14 of the French Civil Code, a French national (individual or company) may be served in France in relation with obligations contracted in a foreign country with a foreign party.

Both article 14 and article 15 are not of public order, i.e. it is always possible to renounce to their application, expressly or tacitly.

3. LEGAL PROCEEDINGS

3.1 COURT SYSTEM

France has a two degree jurisdiction system, under the control of two Supreme Courts.

3.1.1 First Degree of Jurisdiction

The normal Court is the *Tribunal de Grande Instance* (Main Proceeding Court), which hears any case that should not be judged by a specialised court.

About 165 of those exist.
Each *Tribunal de Grande Instance* is divided into several divisions, according to the case which has to be judged (real estate, civil liability, criminal cases, family law, …).

Some have particular jurisdiction for technical matters like patents, sudden break of established business relationships or maritime law.

The main specialised courts are :

- *Tribunal de Commerce* (Commerce Court), for commercial disputes.
- *Tribunal d'Instance* (Proceeding Court) for disputes under € 10.000 and many special matters like custom law cases.
- *Conseil de Prud'Hommes* (Industrial Tribunal), for employment contracts disputes.
- *Tribunal administratif* (Administrative Court), for disputes with the administration (tax, town planning, etc.)

3.1.2 Second Degree of Jurisdiction

All decisions given by first degree courts save administrative courts may be submitted to a *Cour d'Appel* (Court of Appeal, 35 exist as of today). Each *Cour d'Appel* is divided into specialized divisions (civil, commercial, criminal, labour, etc.).

Decisions given by the administrative court may be submitted to the *Cour Administrative d'Appel* (Administrative Court of Appeal, 7 exist as of today).

3.1.3 Supreme Courts

Decisions given by the Courts of Appeal may be submitted to the *Cour de Cassation*, which is divided into civil, commercial, labour and criminal divisions and is the "judge of the law". This court determines if the law has been correctly enforced or interpreted by the Courts of Appeal.

Decisions given by the Administrative Courts of Appeal may be submitted to the *Conseil d'Etat* (Council of State), which has several remits and has one litigation division in order to verify decisions given by the Administrative Courts of Appeal.

Also, as all other EU countries, France and decisions given by French courts may be submitted to the European Court of Justice and to the European Court of Human Rights.

3.2 PROCEDURE (ORDINARY ACTION)

Litigations in front of French courts, except criminal cases, is governed by the *Code de Procédure Civile* (Code of Civil Procedure) and, in some areas, by specific dispositions of other Codes (Labour Code, General Tax Code, etc.).

3.2.1 Service

A trial starts whether with the delivery of a writ to the defendant, or with the registration of a petition to the court (almost all trials start with the notification of a writ).

It is compulsory that the writ explains, in fact and in law, the reasons of the trial and precisely presents the claims.

3.2.2 Seizure of Goods

The claimant may be authorized, by a judge, to seize some goods of the defendant before the trial begins.

The authorization of a judge is sometimes not necessary, when a claimant already has a legal decision which is not enforceable as such (like foreign judgements before exequatur or like judgments submitted to the Court of Appeal), when the claimant asks for the payment of an unpaid cheque or an accepted bill of exchange, when the claimant asks for payment of a rent.

Seizure of goods should only be made when a claimant is able to justify that his debt appears well-founded and that he fears for its recovery. Otherwise, the defendant can ask the judge to cancel the seizure.

3.2.3 Summary Proceedings

Summary proceedings exist in almost all courts and are used:

- in case of emergency, to order any measure that is not running up a "serious contestation" or that is justified by the existence of a conflict ;
- to order any conservatory measure, whether to avoid an imminent damage, whether to end a particularly illegal trouble ;
- when the existence of an obligation is not seriously criticisable, to grant to a creditor a provision on the payment he requests;
- before the trial, to appoint an expert in order to establish the facts that may have an effect on the solution of the dispute (frequently used for industrial and technical disputes)

A summary proceeding usually last 3 to 16 weeks, but may also last a few hours or a couple of days in case of extreme emergency and with the authorization of the President of the court to shorten the deadlines.

3.2.4 Ordinary proceeding

After a writ has been registered by the clerk to the court, an ordinary trial progresses every 2 or 3 months through "procedure audiences", where a designated judge or the court asks or enforces a party to communicate its writings and evidence.

Each party also has the possibility to – and in some situations must, during the trial, present summary claims to this designated judge (such as the communication of evidence, to allow a provision, to settle procedure exception such as jurisdiction matters, to designate a technical expert).

Evidence should be written evidence in front of the Tribunal de Grande Instance (Emails are allowed), whereas Tribunal de Commerce allows all kind of evidence. The court cannot and will not accept evidence that has not been communicated to the other party during the trial.

When the case is ready to be judged – or when a party is inactive, the court sets the date for pleadings. The decision is given a few weeks later and communicated to lawyers by the clerk to the court.

3.2.5 Enforcement and Appeal

A legal decision, to be enforceable, must be first notified by a party to the other one(s) by a bailiff.

This notification is the starting point of the term to file an appeal, which is usually of 1 month (15 days in case of summary proceedings). At the term's expiry, if none of the parties had filed an appeal, the legal decision is enforceable.

It is also more and more common that first degree courts decide that their decisions will be enforceable even though an appeal is filed.

The decision of the first degree court can thus be enforced, but this is only temporary, until the court of appeal gives its decision.

4. ARBITRATION

4.1 GENERAL FRAMEWORK FOR INTERNATIONAL ARBITRATION IN FRANCE

France has been an important place for international arbitration for nearly 60 years. It has always encouraged this particular alternative dispute resolution, notably by ratifying immediately the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Over the years, the specific applicable rules to international arbitration, as set out by case law (and especially by the 1st chamber of the French Court of Cassation and the 1st Civil chamber of the Court of Appeal in Paris), and those formalised by the Decree of 12 May 1981modified by the Decree of 13 January 2011, which was incorporated into Articles 1504 to 1527 of the French Code of Civil Procedure (CPC), have improved arbitral proceedings conducted in France by combining legal security with the efficient enforcement of awards.

The French rules for international arbitration are more liberal than those applying to domestic arbitration. International arbitration is defined in a broad sense by Article 1504 of CPC as "any arbitration which involves international trade interests". In concrete terms, the economic relation subject to arbitration must include a foreign element, whatever such foreign element may be (place of establishment of the parties, place of contract performance, place of payment etc.).

International arbitration proceedings conducted in France (which do not require a specific link to French territory so long as France was chosen by the parties or designated by the arbitrators) can be either independent ("*arbitrage ad hoc*") or subject to one of the many arbitration centres operating in France; the three most prestigious arbitration centres are:

i. the International Chamber of Commerce (ICC), whose global headquarters are in Paris,

ii. the Paris Centre for Mediation and Arbitration (*Centre de médiation et d'arbitrage de Paris – CMAP*), which was founded under the aegis of the Paris chamber of commerce,

iii. and the French Arbitration Association (*Association française d'arbitrage – AFA*). Not only has the growing number of international arbitration proceedings conducted under the aegis of the ICC in Paris favoured the development of a jurisprudence specially adapted to international arbitration, it has also enabled many arbitrators and lawyers to gain a lot of experience with respect thereto.

4.2 CHARACTERISTICS OF INTERNATIONAL ARBITRATION PROCEEDINGS CONDUCTED IN FRANCE

It is a constant fact that at all stages of the international arbitration proceedings conducted in France the applicable rules seek to create equilibrium between security and efficacy of the proceedings.

4.2.1 The Systematic Validity of the Arbitration Clause

Assessment of the validity of the arbitration clause is clearly set in favour of the systematic validity thereof; as a consequence, the arbitration clause cannot be challenged by either of the contracting parties. By way of example, an international arbitration clause is valid even if one of the contracting party is a non-merchant, a consumer, a state or a public authority (with the hypothesis of the international employment contract currently still in dispute). In the same way, the arbitration clause is valid even if it does not specify the place of arbitration, the number of arbitrators or the applicable rules. Lastly, arbitration clauses remain in force even where the contract is voided or even deemed to be non-existent. So long as both contracting parties have given their consent to the arbitration clause they undertake to have their dispute settled by one or several arbitrators.
However, when the arbitration clause is void, it is deemed unwritten.

When assessing the type of dispute liable to be subject to international arbitration, the same flexibility is displayed: any subject of law may be subject to international arbitration, save for matters of family law and matters of international public order policy rules (*ordre public international*). Any international contract may therefore be subject to arbitration proceedings in France even where the object of the dispute involves competition law or intellectual property law (with certain reservations and limitations).

4.2.2 The Arbitration Proceedings are Freely Organised by Arbitrators

Arbitrators may organise the arbitration proceedings as they see fit, provided they comply with the rules agreed upon by the parties and the basic principles of procedure (e.g. due process).

First of all, the arbitrators may determine freely the applicable procedural law (1509 of CPC), which need not necessarily be French procedural law; it can also be the procedural law of another country or a combination of several different procedural laws. The arbitrators may also use the UNCITRAL Arbitration Rules, which are a true mini code of arbitration procedure.

Moreover, the arbitrators are also free to determine the substantive law applicable to the dispute. Thus Article 1511of CPC provides that “the arbitrator settles the dispute in accordance with the rules of law chosen by the parties or, failing such a choice, with the rules of law which the arbitrator deems appropriate. In any case, the arbitrator takes into account the standard

commercial practices". Since they are not likened to judicial judges belonging to the French public judicial authority, the arbitrators are not under the obligation to apply French law to the settlement of a dispute which is the subject of arbitration proceedings in France. The substantive law applicable to the dispute may be determined either directly by the arbitrators or indirectly by way of a conflict of laws rule which the arbitrators have chosen themselves. In any case, the standard practices applicable to international trade (and especially the *lex mercatoria*) are very regularly turned to, thus creating an "*arbitration jurisprudence*".

However, the arbitrators must observe minimum rules entailing security for the parties: there must always be an odd number of arbitrators appointed (1451 of CPC), and the latter are subject to absolute secrecy as regards hearings. French courts scrupulously check the independence of the arbitrators.

4.2.3 The Limited Powers of Intervention of French Courts

French law limits the powers of intervention of French courts to that which is strictly necessary for the purpose of furthering the proceedings or carrying out subsequent checks on same (see § 4.3).

On the one hand, in view of the double effect of the arbitration clause – a 'positive' effect conferring near exclusive jurisdiction to the arbitrators (Article 1465 of CPC) and a 'negative' effect stripping the judicial judges of (nearly) all powers (Article 1448 of CPC) – the power to decide themselves on whether they have jurisdiction (known as the "*Kompetenz-Kompetenz*" principle) to rule on the merits of the dispute and to order provisional or protective measures is the sole arbitrators'. Therefore, a contracting party may not refer a dispute to a French court for a ruling on the merits except if the arbitration clause is obviously null and void. Thus, French law grants the arbitrators absolute priority for the purpose of settling the dispute.

On the other hand however, the French judge – as known as '*le juge d'appui*' - may be petitioned for the purpose of appointing an arbitrator where one of the parties defaults with respect thereto (1452 and 1453 of CPC) or any French court may be petitioned within the framework of urgent proceedings for the purpose of appointing an expert or ordering fact-finding measures up to the moment when the dispute is referred to the arbitrators (1449 of CPC). As soon as this happens the arbitrators have sole jurisdiction for the purpose of ordering expert appraisal measures. In case of urgency, French courts may also grant an advance payment to the creditor of a sum of money within the framework of summary proceedings for the purpose thereof (see Article 809, paragraph 2 of CPC) when the creditor's claim cannot seriously be disputed and no arbitration board has yet been appointed. French law ensures the protection of the creditors which wish to attach the French assets of their debtors prior to initiating arbitration proceedings.

According to article 1505 of CPC, '*le juge d'appui*' is the President of the *Tribunal de grande instance de Paris* when:

i. the arbitration takes place in France
ii. parties have chosen French law as the applicable procedural law
iii. parties agreed to give competence to French Courts in case of disputes relating to the applicable procedural law

iv. one party is exposed to a risk of denial of justice

4.3 ENFORCEMENT OF ARBITRATION AWARDS IN FRANCE

French law has gone further than the New York Convention of 1958 and has seen the development of a system whose aim is to ensure the efficient enforcement of arbitration awards by distinguishing between international awards rendered in France and foreign awards, whereby French law is more favourably disposed towards both types of awards than towards foreign judgements and rejects any petition seeking the review, both in fact and in law, of the entire dispute. As a consequence, there are only a limited number of remedies available under CPC.

International awards rendered in France can only be the subject of an action for avoidance ("*recours en annulation*") before the Court of Appeal of the place where the award was rendered, the grounds for which must be one of only 5 grounds provided for by Article 1520of CPC:

(i) the arbitration tribunal has wrongly accepted or declined jurisdiction;
(ii) the arbitration tribunal was irregularly appointed;
(iii) the arbitration tribunal has violated the task with which same was entrusted;
(iv) due process was violated; or
(v) the recognition of the arbitration award would contravene the international public order policy (*ordre public international*).

Awards rendered abroad (whether relating to a domestic contract or to an international one) cannot be avoided in France under French law because they lack in principle a link with French territory; French law provides for a remedy only in the case that the foreign award is recognised or enforced in France. In such a case, the judicial decision ruling that the foreign arbitration award is enforceable ("*ordonnance d'exequatur du Tribunal de grande instance*") may only be appealed against within one month before the Court of Appeal on one of the 5 aforementioned grounds only (Article 1525). An arbitration award rendered abroad may therefore easily be recognised and ruled to be enforceable in France save in serious and limited cases. Lastly, the particularity of French law is that French courts rule that a foreign arbitration award is enforceable in France even if same award was voided in the country where it was rendered (see Hillmarton, 1994; Chromalloy, 1997; and Bechtel, 2005). This particular rule, which is more liberal than the rule contained in Article V 1).e) of the New York Convention of 1958, favours yet a little more the enforcement in France of arbitration awards rendered abroad.

5. ALTERNATIVE EXTRA- JUDICIAL DISPUTE RESOLUTION

Mediation (or conciliation) is another alternative dispute resolution (ADR) formalised by the Decree of 20 January 2012 which was incorporated into Articles 1530 et seq. of CPC. The parties may usefully turn to this ADR instead of or prior to judicial or arbitration proceedings. Mediation is similar to arbitration in that both require the contracting parties' prior agreement and prescribe secrecy as regards discussions and the appointment of a neutral third party specialising in the field which the dispute pertains to. However, mediation differs from arbitration chiefly in that it is not binding for the parties, which therefore are not required to follow the mediation proceedings nor to comply with the solution recommended by the mediator except if endorsed by the Court (articles 1534 and 1541). Mediation proceedings are also quicker and cheaper than arbitration proceedings.

The CPC allows the parties already involved in proceedings before a judicial court to request from the judge that the latter appoint a mediator within the framework of "judicial" mediation. Besides, various arbitration centres, such as the ICC and CMAP, also offer rules pertaining to "contractual" mediation proceedings, with an effective articulation between mediation and arbitration. In an effort to favour contractually agreed-to mediation, French case law has notably laid down that the parties which have signed a mediation clause must start with the mediation proceedings and appoint a mediator, the case being referred to the courts or to arbitration only if the mediation proceedings fail to resolve the dispute.

In fact, mediation proceedings are above all suited to complex contracts (industrial contracts, turnkey contracts etc.) as well as cases where business secrets must not be revealed or where there is a chance still of partly maintaining the parties business relationship.

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