

BOOK IV – ARBITRATION*

Title II – International Arbitration¹

Article 1504

An arbitration is international when international trade interests are at stake.

Article 1505

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.**

Article 1506

Unless the parties have agreed otherwise, and subject to the provisions of the present Title, the following Articles shall apply to international arbitration:

- (1) 1446, 1447, 1448 (paragraphs 1 and 2) and 1449, regarding the arbitration agreement;
- (2) 1452 through 1458 and 1460 regarding the constitution of the arbitral tribunal and the procedure governing application to the judge acting in support of the arbitration;
- (3) 1462, 1463 (paragraph 2), 1464 (paragraph 3), 1465 through 1470 and 1472 regarding arbitral proceedings;
- (4) 1479, 1481, 1482, 1484 (paragraphs 1 and 2), 1485 (paragraphs 1 and 2) and 1486 regarding arbitral awards;
- (5) 1502 (paragraphs 1 and 2) and 1503 regarding means of recourse other than appeals or actions to set aside.

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¹ Provisions relating to domestic arbitration that apply to international arbitration are shown in boxed text. All text shown in bold indicates mandatory provisions.

CHAPTER I – INTERNATIONAL ARBITRATION AGREEMENTS

Article 1507

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

Article 1446

Parties may submit their dispute to arbitration even where proceedings are already pending before a court.

Article 1447

An arbitration agreement is independent of the contract to which it relates. It shall not be affected if such contract is void.

If an arbitration clause is void, it shall be deemed not written.

Article 1448 (paragraphs 1 and 2)

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.

Article 1449

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.

Article 1508

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.

Article 1452

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.

Article 1453

If there are more than two parties to the dispute and they fail to agree on the procedure for constituting the arbitral tribunal, the person responsible for

² Article 145 provides as follows: If, before legal proceedings commence, there is a legitimate reason to preserve or establish evidence upon which the resolution of a dispute may depend, measures relating to the taking of evidence may be ordered, upon the request of any concerned party, by way of a petition to a court or expedited proceedings.

administering the arbitration or, where there is no such person, the judge acting in support of the arbitration, shall appoint the arbitrator(s).

Article 1454

Any other dispute relating to the constitution of an arbitral tribunal shall be resolved, if the parties cannot agree, by the person responsible for administering the arbitration or, where there is no such person, by the judge acting in support of the arbitration.

Article 1455

If an arbitration agreement is manifestly void or manifestly not applicable, the judge acting in support of the arbitration shall declare that no appointment need be made.

Article 1456

The constitution of an arbitral tribunal shall be complete upon the arbitrators' acceptance of their mandate. As of that date, the tribunal is seized of the dispute.

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.

If the parties cannot agree on the removal of an arbitrator, the issue shall be resolved by the person responsible for administering the arbitration or, where there is no such person, by the judge acting in support of the arbitration to whom application must be made within one month following the disclosure or the discovery of the fact at issue.

Article 1457

Arbitrators shall carry out their mandate until it is completed, unless they are legally incapacitated or there is a legitimate reason for them to refuse to act or to resign.

If there is disagreement as to the materiality of the reason invoked, the matter shall be resolved by the person responsible for administering the arbitration or,

where there is no such person, by the judge acting in support of the arbitration to whom application must be made within one month following such incapacity, refusal to act or resignation.

Article 1458

An arbitrator may only be removed with the unanimous consent of the parties. Where there is no unanimous consent, the provisions of the final paragraph of Article 1456 shall apply.

Article 1460

Application to the judge acting in support of the arbitration shall be made either by a party or by the arbitral tribunal or one of its members.

Such application shall be made, heard and decided as for expedited proceedings (*référé*).

The judge acting in support of the arbitration shall rule by way of an order against which no recourse can be had. However, such order may be appealed where the judge holds that no appointment need be made for one of the reasons stated in Article 1455.

CHAPTER II – ARBITRAL PROCEEDINGS AND AWARDS

Article 1509

An arbitration agreement may define the procedure to be followed in the arbitral proceedings, directly or by reference to arbitration rules or to procedural rules.

Unless the arbitration agreement provides otherwise, the arbitral tribunal shall define the procedure as required, either directly or by reference to arbitration rules or to procedural rules.

Article 1510

Irrespective of the procedure adopted, the arbitral tribunal shall ensure that the parties are treated equally and shall uphold the principle of due process.

Article 1462

A dispute shall be submitted to the arbitral tribunal either jointly by the parties or by the most diligent party.

Article 1463 (paragraph 2)

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.

Article 1464 (paragraph 3)

Both parties and arbitrators shall act diligently and in good faith in the conduct of the proceedings.

Article 1465

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

Article 1466

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.

Article 1467

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.

The arbitral tribunal may call upon any person to provide testimony. Witnesses shall not be sworn in.

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.

Article 1468

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. However, only courts may order conservatory attachments and judicial security.

The arbitral tribunal has the power to amend or add to any provisional or conservatory measure that it has granted.

Article 1469

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

Articles 42 through 48 shall determine which *Tribunal de grande instance* has territorial jurisdiction in this regard.

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

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.

Article 1470

Unless otherwise stipulated, the arbitral tribunal shall have the power to rule on a request for verification of handwriting or claim of forgery in accordance with Articles 287 through 294 and Article 299.

Where an incidental claim of forgery of official documents is raised, Article 313 shall apply.

Article 1472

Where necessary, the arbitral tribunal may stay the proceedings. The proceedings shall be stayed for the period of time set forth in the stay order or until such time as the event prescribed in the order has occurred.

The arbitral tribunal may, as the circumstances require, lift or shorten the stay.

Article 1511

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.

Article 1512

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

Article 1513

Unless the arbitration agreement provides otherwise, the award shall be made by majority decision. It shall be signed by all the arbitrators.

However, if a minority among them refuses to sign, the others shall so state in the award.

If there is no majority, the chairman of the arbitral tribunal shall rule alone. Should the other arbitrators refuse to sign, the chairman shall so state in the award, which only he or she shall sign.

An award made under the circumstances described in either of the two preceding paragraphs shall have the same effect as if it had been signed by all the arbitrators or made by majority decision.

Article 1479

The arbitral tribunal's deliberations shall be confidential.

Article 1481

The arbitral award shall state:

- (1) the full names of the parties, as well as their domicile or corporate headquarters;
- (2) if applicable, the names of the counsel or other persons who represented or assisted the parties;
- (3) the names of the arbitrators who made it;
- (4) the date on which it was made;
- (5) the place where the award was made.

Article 1482

The arbitral award shall succinctly set forth the respective claims and arguments of the parties.

The award shall state the reasons upon which it is based.

Article 1484 (paragraphs 1 and 2)

As soon as it is made, an arbitral award shall be *res judicata* with regard to the claims adjudicated in that award.

The award may be declared provisionally enforceable.

Article 1485 (paragraphs 1 and 2)

Once an award is made, the arbitral tribunal shall no longer be vested with the power to rule on the claims adjudicated in that award.

However, on application of a party, the arbitral tribunal may interpret the award, rectify clerical errors and omissions, or make an additional award where it failed to rule on a claim. The arbitral tribunal shall rule after having heard the parties or having given them the opportunity to be heard.

Article 1486

Applications under Article 1485, paragraph 2, shall be filed within three months of notification of the award.

Unless otherwise agreed, the decision amending the award or the additional award shall be made within three months of application to the arbitral tribunal. This time limit may be extended in accordance with Article 1463, paragraph 2.

The decision amending the award or the additional award shall be notified in the same manner as the initial award.

CHAPTER III – RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS MADE ABROAD OR IN INTERNATIONAL ARBITRATION

Article 1514

An arbitral award shall be recognised or enforced in France if the party relying on it can prove its existence and if such recognition or enforcement is not manifestly contrary to international public policy.

Article 1515

The existence of an arbitral award shall be proven by producing the original award, together with the arbitration agreement, or duly authenticated copies of such documents.

If such documents are in a language other than French, the party applying for recognition or enforcement shall produce a translation. The applicant may be requested to provide a translation by a translator whose name appears on a list of court experts or a translator accredited by the administrative or judicial authorities of another Member State of the European Union, a Contracting Party to the European Economic Area Agreement or the Swiss Confederation.

Article 1516

An arbitral award may only be enforced by virtue of an enforcement order (*exequatur*) issued by the *Tribunal de grande instance* of the place where the award was made or by the *Tribunal de grande instance* of Paris if the award was made abroad.

***Exequatur* proceedings shall not be adversarial.**

Application for *exequatur* shall be filed by the most diligent party with the Court Registrar, together with the original award and arbitration agreement, or duly authenticated copies of such documents.

Article 1517

The enforcement order shall be affixed to the original or, if the original is not produced, to a duly authenticated copy of the arbitral award, as per the final paragraph of Article 1516.

Where an arbitral award is in a language other than French, the enforcement order shall also be affixed to the translation produced as per Article 1515.

An order denying enforcement of an arbitral award shall state the reasons upon which it is based.

CHAPTER IV – RECOURSE

SECTION 1 – AWARDS MADE IN FRANCE

Article 1518

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

Article 1519

An action to set aside shall be brought before the Court of Appeal of the place where the award was made.

Such recourse can be had as soon as the award is rendered. If no application is made within one month following notification of the award, recourse shall no longer be admissible.

The award shall be notified by service (*signification*), unless otherwise agreed by the parties.

Article 1520

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.**

Article 1521

The first president or, once the matter is referred to him or her, the judge assigned to the case (*conseiller de la mise en état*) may grant enforcement (*exequatur*) of the award.

Article 1522

By way of a specific agreement the parties may, at any time, expressly waive their right to bring an action to set aside.

Where such right has been waived, the parties nonetheless retain their right to appeal an enforcement order on one of the grounds set forth in Article 1520.

Such appeal shall be brought within one month following notification of the award bearing the enforcement order. The award bearing the enforcement order shall be notified by service (*signification*), unless otherwise agreed by the parties.

Article 1523

An order denying recognition or enforcement of an international arbitral award made in France may be appealed.

The appeal shall be brought within one month following service (*signification*) of the order.

If the order is appealed, and if one of the parties so requests, the Court of Appeal shall rule on an action to set aside unless the parties have waived the right to bring such action or the time limit to bring such action has expired.

Article 1524

No recourse may be had against an order granting enforcement of an award, except as provided in Article 1522, paragraph 2.

However, an action to set aside an award shall be deemed to constitute recourse against the order of the judge having ruled on enforcement or shall bring an end to said judge's jurisdiction, as regards the parts of the award which are challenged.

Article 1502 (paragraphs 1 and 2)

Application for revision of an arbitral award may be made in the circumstances provided in Article 595 for court judgments,³ and under the conditions set forth in Articles 594, 596, 597 and 601 through 603.

Application shall be made to the arbitral tribunal.

Article 1503

No *opposition*⁴ may be filed against an arbitral award, nor may the Cour de Cassation be petitioned to quash the award.

SECTION 2 – AWARDS MADE ABROAD

Article 1525

An order granting or denying recognition or enforcement of an arbitral award made abroad may be appealed.

The appeal shall be brought within one month following service (*signification*) of the order.

However, the parties may agree on other means of notification when an appeal is brought against an award bearing an enforcement order.

The Court of Appeal may only deny recognition or enforcement of an arbitral award on the grounds listed in Article 1520.

³ Article 595 provides as follows:

An application for revision of a judgment may be made only where:

1. it comes to light, after the judgment is handed down, that it was obtained fraudulently by the party in whose favour it was rendered;
2. decisive evidence that had been withheld by another party is recovered after the judgment was handed down;
3. the judgment is based on documents that have since been proven or have been held by a court to be false;
4. the judgment is based on affidavits, testimonies or oaths that have been held by a court to be false.

In all four cases, an application for revision shall be admissible only where the applicant was not able, through no fault of his or her own, to raise such objection before the judgment became *res judicata*.

⁴ *Opposition* is a form of recourse under French law, available when a judgment is rendered by default because a defendant was not properly notified of a hearing. The defendant can then “oppose” the judgment.

SECTION 3 – AWARDS MADE IN FRANCE AND ABROAD – COMMON PROVISIONS

Article 1526

Neither an action to set aside an award nor an appeal against an enforcement order shall suspend enforcement of an award.

However, the first president ruling in expedited proceedings (*référé*) or, once the matter is referred to him or her, the judge assigned to the matter (*conseiller de la mise en état*), may stay or set conditions for enforcement of an award where enforcement could severely prejudice the rights of one of the parties.

Article 1527

Appeals against orders granting or denying enforcement and actions to set aside awards shall be brought, heard and decided in accordance with the rules applicable to adversarial proceedings set forth in Articles 900 through 930-1.

A decision denying an appeal or application to set aside an award shall be deemed an enforcement order of the arbitral award or of the parts of the award that were not overturned by the court.