

Table of Contents

Table of Abbreviations	xiii
Introduction	xv
Part I	
The Concept and Scope of Arbitration: The Nature of Arbitration in French Law	1
Chapter 1	
A Brief Survey of the History of Arbitration in France	3
Chapter 2	
French Arbitration Law Today and Its Sources	9
Chapter 3	
What Is Arbitration in French Law?	15
I. The General Concept of Arbitration in France	16
A. Existence of an Arbitration Agreement	17
1. A Legal Obligation Arises When It Is Contained in the Provisions of a Law or Decree of General Application	18
2. Is Arbitration Ordered by a Court a True Arbitration?	19
3. Arbitration Arising under By-Laws of Companies or Not-for-Profit Organizations	19
B. Appointment of a Third Party	21
C. The Duty to Adjudicate	21
II. The French Law Theory of International Arbitration	26
A. Characterization of 'International Arbitration' by French Courts	28
B. The Rule as to Subject-Matter under Article 1492 CPC	29

C.	The Meaning of 'Commerce' in the Context of International Transactions According to Article. 1492 CPC	31
Part II		
The Arbitral Process		35
Chapter 4		
Institution of Arbitral Proceedings		37
I.	The Arbitration Agreement: The Fundamental Requirement	37
A.	Arbitrability	38
1.	The Specific Cases of Inarbitrability under Article 2060 of the <i>Code Civil</i>	41
2.	Public Policy and Arbitrability in Domestic Arbitration	45
a.	Cases in Which the Effect of Adjudication of the Dispute Will Be Binding on the Public at Large ('Erga Omnes') and Which Thus Require Decisions by a National Court or Authority	46
b.	Cases Where Inarbitrability Arises from 'l'ordre public de protection' (Protection of the Weaker Party to a Contract)	47
c.	Cases Where the Decision Sought Would Infringe a General Rule of Public Policy	51
3.	Public Policy and Arbitrability in International Arbitration	53
B.	Arbitration Clauses and Party Autonomy	55
C.	Requirements for the Formation of an Arbitration Agreement	57
1.	Requirements as to Form and Content	58
2.	Subject-Matter and Substantive Basis	59
3.	Capacity of the Parties to an Arbitration Agreement	59
4.	Powers of Attorney	60
5.	Consent	62
a.	Existence of Consent	63
b.	Arbitration Clauses Incorporated by Reference	64
c.	'Pathological' Arbitration Clauses	65
D.	The Effect of an Arbitration Agreement on the Parties Thereto and on Third Parties	68
1.	Involvement of Third Parties: Groups of Companies or Contracts	70
2.	Successors in Title to the Parties: Assignment of the Arbitration Agreement	73
E.	The Consequences of an Arbitration Agreement for National Courts	77
II.	Implementation of the Arbitration Agreement	80
A.	Jurisdiction of the Supporting Court (<i>le juge d'appui</i>)	82
1.	Territorial Jurisdiction	82
2.	Cases in Which the ' <i>juge d'appui</i> ' May be Seised	83

a.	Where the Arbitration Agreement Is Incomplete, or Imprecise as to the Way In Which the Arbitral Tribunal Is to Be Constituted	84
b.	Appointment and Replacement of Arbitrators	85
c.	Challenge of Arbitrators	87
d.	Extension of Time for the Arbitration	88
B.	Procedure Before the <i>juge d'appui</i>	89
III.	The Arbitral Tribunal, Its Authority and Duties	91
A.	The Principle of Equal Treatment of the Parties as Applied to Constitution of the Arbitral Tribunal	92
B.	Ruling by the Arbitral Tribunal on Its Jurisdiction: The <i>Compétence-Compétence</i> Principle	93
C.	Liabilities of Arbitrators	94
1.	The Basis and Characteristics of Arbitrators' Obligations	95
2.	The Basic Obligations of Arbitrators and Their Extent	96
a.	Independence and Impartiality	97
b.	Availability and Diligence	98
c.	Confidentiality	100
3.	Consequences of and Remedies for Failure to Fulfil Arbitrators' Obligations	101
D.	Rights of Arbitrators	102

Chapter 5

Arbitral Proceedings: General Remarks on Arbitral Proceedings in French Law 105

I.	The Time Factor in the Conduct of Arbitral Proceedings and the Scope of the Arbitral Tribunal's Mandate	107
A.	The Time Factor	107
1.	Interruption of Arbitral Proceedings	108
2.	Suspension of Arbitral Proceedings	109
3.	Conclusion of Arbitral Proceedings	110
B.	The Scope of the Arbitral Tribunal's Mandate	112
1.	The Subject-Matter of the Dispute to Be Adjudicated	112
2.	Development of the Disputes to Be Decided	114
3.	Arbitration with Multiple Parties	115
II.	The Powers of the Arbitral Tribunal and Their Limits	116
A.	Authority and Powers of the Arbitral Tribunal Are Derived from the Will of the Parties	116
B.	Powers Circumscribed by the Private Nature of Arbitration: Interim and Conservatory Measures in the Context of Arbitration	117
C.	<i>Référé-Provision</i>	121

III. Conduct of the Arbitral Proceedings so as to Ensure Equal and Fair Treatment of the Parties	122
A. Basic Principles	122
B. Procedural Practice	124
IV. Tender and Reception of Evidence	127

Chapter 6

Arbitrators and the Law 131

I. Prescribed Substantive Rules of Law	133
A. Application of Substantive Rules of Law in French Domestic Arbitration	133
B. Application of the Rules of Law Chosen by the Parties in International Arbitration	136
1. Verification of the Existence of a Choice of Law	137
2. Content and Scope of the Rules of Law Chosen by the Parties	138
II. Ascertained Substantive Law in International Arbitration	142
A. Methodology	143
B. The Rules of Law Applicable to the Substance of the Dispute	145
III. Tempered Rules of Law: <i>Amiable Composition</i>	148
IV. Public Policy	153

Part III

Arbitral Awards: Their Essential Features and Effect, Enforcement by the Courts, and Challenges 159

Chapter 7

Making an Arbitral Award: Its Characteristics and Legal Effect 161

I. The Arbitral Award	162
A. The Salient Characteristics of the Award	162
1. The Purpose of the Award	162
2. The Form of the Award	165
3. Reasons in the Award	169
a. The Principle	169
b. Application of the Principle	171
B. Making the Award	173
1. The Period for Deliberations	173
a. Commencement	173
b. Duration	174
c. Extension of Time for the Arbitration	175
i. In Domestic Arbitration	175
ii. In International Arbitration	177
2. The Deliberations of the Arbitral Tribunal and Their Confidential Nature	178

a.	Deliberations of an Arbitral Panel	179
b.	The Confidential Nature of the Deliberations	181
3.	Signature and Notification of the Award	182
C.	The Immediate Effect and Consequences of the Arbitral Award	183
1.	Termination of the Arbitral Tribunal's Jurisdiction	184
2.	Res Judicata	187
II.	Order of the Court for Enforcement of the Award in France (<i>Exequatur</i>)	189
A.	The Procedure before the <i>juge de l'exequatur</i> Who Grants (or Refuses) Orders for Enforcement of Arbitral Awards	190
B.	Scope of the Powers of the <i>juge de l'exequatur</i>	192
C.	Contesting Orders of the <i>juge de l'exequatur</i>	194
1.	First Situation: The Judge Grants an Order for Enforcement (<i>Exequatur</i>)	194
2.	Second Situation: The Judge Makes an Order Refusing Enforcement	196
3.	Other Ways of Contesting the Order	196
Chapter 8		
Challenge of Arbitral Awards in French Cours d'Appel		199
I.	Applications to French Cours d'Appel for Annulment of Awards Made in France or to Contest Enforcement in France of Awards Made Abroad	202
A.	The Fundamental Characteristics Common to Proceedings Before the Cours d'Appel for Challenge of Awards	204
1.	The Right to Issue Proceedings before the Cours d'Appel Cannot Be Waived before the Award Is Made	204
2.	Applications for Annulment of Awards Made in France or Appeals against Orders for Enforcement of Foreign Awards Do Not Lead to Revision or Reversal of Decisions of the Arbitral Tribunal on the Substance of the Case	207
3.	The Grounds for Refusal of Recognition or Enforcement in France of Awards Made Abroad Take No Account of Foreign Proceedings or Judgments Relating Thereto	209
a.	Control by French Courts of Foreign Awards Is Exercised Exclusively by Reference to the Grounds Listed in Article 1502 CPC, Because They Are More Advantageous, as a Whole, to the Party Seeking Recognition or Enforcement Than Are Those Permitted by the New York Convention, 1958, as Grounds for Refusal of the Same	212

b.	French Courts Do Not Take into Consideration Decisions of Foreign Courts That Suspend or Annul Arbitral Awards Whose Recognition or Enforcement Is Sought in France	218
B.	Grounds for Annulment of Awards Made in France or Appeals against the <i>Exequatur</i> Granted in Respect of Awards Made Abroad	237
1.	Four Grounds Common to Annulment of Awards Made in France (Whether in Domestic or International Arbitration) and to Appeals against the <i>Exequatur</i> in Respect of Awards Made Abroad	240
a.	First Ground: There Was No Arbitration Agreement or the Arbitration Agreement Was Void or Had Expired (Articles 1484-1° and 1502-1° CPC)	240
b.	Second Ground: The Arbitral Tribunal Was Not Properly Constituted (Articles 1484-2° and 1502-2° CPC)	245
c.	Third Ground: Failure by the Arbitral Tribunal to Comply with the Terms of the Mandate Conferred on It (Articles 1484-3° and 1502-3° CPC)	247
d.	Fourth Ground: Failure to Give Each Party an Opportunity to Present Its Case and Answer That of Its Opponent (Articles 1484-4° and 1502-4°)	253
2.	Infringement of a Rule of French Domestic or International Public Policy (Articles 1484-6° and 1502-5° CPC)	254
3.	The Only Ground for Annulment Which Applies Specifically to Awards Made in French Domestic Arbitration: Non-compliance with Certain Requirements as to Form (Article 1484-5° CPC)	260
C.	Challenge Procedures before the French Courts	262
D.	The Legal Effects of Applications for Annulment of Awards Made in France, or Appeals against the <i>Exequatur</i> Granted in Respect of Awards Made Abroad	266
1.	Enforceability of Awards Pending Challenge and Its Outcome	267
a.	The Meaning of 'Enforcement' of an Award	267
b.	Enforcement of Awards Notwithstanding Their Challenge	268
2.	The Respective Consequences of Annulment of an Award Made in France, or a Successful Appeal against the <i>Exequatur</i> Granted in Respect of an Award Made Abroad	271
II.	Appeal: A Procedure for Challenging Awards Only Available in French Domestic Arbitration	273

<i>Table of Contents</i>	xi
III. What Other Procedures in the Courts Are Available or Prohibited for Challenging Arbitral Awards?	275
Part IV	
Satisfaction of Awards by Processes of Execution: Enforcement of Awards against the French State or Foreign States	283
Chapter 9	
Enforcement of Awards against the French State or French Public Law Bodies	285
Chapter 10	
Enforcement in France of Awards against Foreign States and Entities under Their Control	287
Appendix 1	
Extracts from the French <i>Code Civil</i> (Arts 2059-2061)	291
Appendix 2	
Extracts from the French Code of Civil Procedure ('CPC') (Arts 1442-1507)	293
Appendix 3	
Extracts from the French Code of Civil Procedure ('CPC') (Arts 4-11 and 13-21)	315
Appendix 4	
The Convention on the Execution of Foreign Arbitral Awards, 26 September 1927 (The Geneva Convention 1927)	319
Appendix 5	
The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958 (The New York Convention, 1958)	323
Appendix 6	
The Convention on International Commercial Arbitration, 21 April 1961 (The Geneva Convention, 1961)	335
Appendix 7	
Bibliography	355
Index	359