Journal of Arbitration Studies, Vol. 24 No. 3
1 September, 2014, pp. 125~169

Received : 7 July, 2014
Revised : 18 August, 2014
Accepted : 28 August, 2014

Revising the Korean Arbitration Act From a Civil Law Jurisdiction Perspective: The Example of the French Arbitration Reform

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In France, arbitration, both domestic and international, has recently been subjected to a major reform. This article discusses the content of the 2011 reform and its aftermath, while putting into perspective the current arbitration act in South Korea, an arbitration-friendly jurisdiction that contemplates reforming its own law.

The two legal systems are characterized by their concern for efficiency and rationalization of the arbitration proceedings, through the codification of essential principles previously established by case law and through the promotion of the independence of this ADR vis-à-vis state courts.

The efficiency consideration is strengthened at every stage of the proceedings: from the arbitration agreement often considered valid and rarely challenged, through the proceedings for annulment, recognition and enforcement of the award, up to the judicial assistance of the French supporting judge towards the actual arbitral proceedings.

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Finally, new concerns are emerging: the increase of transparency and the arbitrability of disputes in some uncertain fields of law.

Key Words : French Arbitration Act, Korean Arbitration Act, Reform, Validity of Arbitration Agreement, Autonomy of Arbitrators, Role of State Judge, Codification, Rationalisation, Efficiency, Loyalty, Transparency

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Ⅰ. Introduction: a short history of arbitration over the past three decades

Paris remains one of the world's major arbitration places, still very frequently chosen for the resolution of international disputes,[1] mainly because of the neutrality of its judiciary, the security and efficiency of its arbitration system and case law, of the number and quality of specialized practitioners based therein and to the pro-arbitration position taken for decades by its courts.

There have been some substantive legal reforms before the elaboration of the new 2011 Arbitration Act, which can be summarized the following way:

Reforms in 1972, 1975 and 2001 of the Civil Code:

These reforms show, among other things, the evolution of the position of the French legislator towards the validity of arbitration agreements, from the nullity of arbitration agreements towards a much more liberal solution.[2]

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1) Paris was the first of the top ten cities selected in 2012 for ICC arbitrations: *ICC Bull*, 2012, vol. 24, n°1.
2) *Infra* III 2. (1)
* Decree No. 2011-48 dated 13 January 2011.

Decrees of 14 May 1980 and 12 May 1981:

The 2011 reform has come into force after three decades during which the 1980/1981 laws were applicable. Back in the early 1980s, this new and comprehensive reform was welcomed for having simplified arbitral proceedings and improved its efficiency, providing that:

- State judges were to act in a way not to interfere with rather but to support arbitral proceedings in order to guarantee its smooth functioning, and fair and equitable treatment.[3] In quite a premonitory way, the then very famous and late French Professor, Philippe Fouchard, stressed the necessity of a "*cooperation*" between arbitral tribunals and state judges, which was to become true;[4]
- Judicial review procedures were simplified in compliance with the 1958 New York Convention;
- The principle of competence-competence (article 1466 of the Code of Civil Procedure, hereinafter "CCP") and the autonomy of the arbitration as a whole were codified;
- The broad definition of international arbitration was confirmed: the criteria were economic rather than purely legalistic (article 1492 CCP)[5] and the new definition gave the possibility for arbitrators to simply apply general rules of international trade law rather than, more rigidly, a national law (article 1511 CCP);[6]

The 1980 law confirmed the idea that arbitration was independent from the judiciary and constituted a legal system of its own. With this reform, French arbitration law allowed Paris to confirm its rank as a leading international arbitration venue, through a liberal approach going even beyond the New York

3) Rapport du Premier ministre relatif au décret n° 2011-48 du 13 janvier 2011 portant sur la réforme de l'arbitrage, Journal Officiel de la République Française, 14 January 2011.
4) *Rev. arb.* 1985, p. 5.
5) Cass. civ. 1ère, 26 January 2011, n° 09-10.198, 15 February 2011, No. 3, § 9, p. 5.
6) See *infra*, II 3.

Convention requirements, while offering flexibility and a high degree of legal certainty.

However, the need for a new reform arose in the early 2000s. There were several reasons for this new reform:

- The application of the decrees of 1980 and 1981 had shown over time some imperfections in the overall regime, such as the lack of powers of state judges to support the arbitral proceedings;
- The increasing necessity to detail and modernize the existent regime,[7] for example with respect to the rules governing the challenge of arbitrators; and
- The growing need to have a more readable law,[8] more simplified and incorporating the most significant improvements achieved by case law for thirty years;
- The intensification of international competition through the rise of new actors and cities, such as London, New York City, Dubai, Singapore or Hong Kong.

The elaboration on of the 2011 Arbitration Act has been a long process, spreading over a ten-year period. Many practitioners have participated in the making of the reform. They did not all have the same conception of arbitration. For example, Professor Philippe Fouchard, a late and very well known French law professor who shaped the modern state of French arbitration law, had a deterritorialized approach of arbitration, whereas Professor Pierre Mayer had a conception of arbitration more rooted into a conflict-of-law approach.

In September 2000, the national French committee of ICC-France charged Mathieu de Boisséson, a well-known practitioner in France, to think about a reform concerning the production of evidence in order to set up a system close to the Swiss system, with the specific aim to compel the other recalcitrant party to produce documents, in spite of the lack of *imperium* of the arbitral tribunal.

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7) J. El-Ahdab, M.K. Duval, "The 2011 French Arbitration Act: smooth move towards more Efficiency, Autonomy & Attractiveness", *The Institute of Transnational Arbitration* 2011, Vol. 25, No. 2, p. 5.

8) Ph. Fouchard, "Vers la réforme du droit français de l'arbitrage? – Quelques questions et suggestions", *Rev. arb.* 1992, Issue 2, pp. 199 – 208.

A commission was set up.

Later on, in 2001, the "*Comité Français de l'Arbitrage*", probably the most influential French arbitration organization, took over the project. A study commission was created divided into five groups: arbitration agreement, arbitral tribunal, arbitral proceedings and award, actions against the award and international arbitration.

It took years to merge the works and two or three years to discuss and work on a harmonized draft. As mentioned before, two different conceptions of arbitration continued to compete. As a result, the text was a compromise. In 2006, the project was published in "*la Revue de l'Arbitrage*", the renowned French arbitration journal.

The process suddenly accelerated, probably because of the fear of seeing the ICC headquarters leave Paris and move to Geneva.

The project was then proposed to the French Chancellery (the Minister of Justice at that time was Philippe Perben) and the final text was adopted in April 2010.

The new arbitration law was adopted on 13 January 2011. It was not a legislative reform (i.e. through Parliament), but one made by decree (i.e. a governmental decision as the past and new provisions are simply included in the Code of Civil Procedure and not the Civil Code). The reform did not make up a revolution in French arbitration law but it has dramatically simplified it and helped its large diffusion and acceptance in France and abroad. The new text is clearly in favor of both domestic and international arbitration.

Three guidelines have governed the reform,[9] apart from the preservation of the distinction between domestic and international arbitration:

- The codification and rationalization of case law and precedents, including from foreign countries, incorporated into some articles of the CCP, such as for example the principle of *estoppel;*
- The readability and simplification of the provisions applicable to arbitration,

9) E. Kleiman, J. Spinelli, "La réforme du droit de l'arbitrage, sous le double signe de la lisibilité et de l'efficacité", *Gazette du Palais*, 27 January 2011, No. 27, p. 9.

such as those regarding the annulment actions against arbitral awards; and

- The efficiency[10] of arbitration through less formalism, such as the minimum of form requirements imposed on the validity of arbitration clauses or the documents required to obtain a recognition order, and the abolition of the suspensive effect of actions for annulment on enforcement proceedings.

In a nutshell, the main characteristics of the 2011 decree[11] one should keep in mind are the following :

- The consolidation of thirty years of liberal case law, for example concerning the severability for the arbitration clause;
- Several provisions added to improve its efficiency, such as the principles of expediency of arbitral proceedings; and
- The incorporation of new mechanisms from other foreign laws, such as the principle of *estoppel* taken from the United Kingdom law or the possible waiver of the right to bring an action for annulment borrowed from the Swiss and Belgian laws.

Undisputedly, the new decree sends a strong message to the international community and in the direction of international companies considering arbitration as an option in their contract: the law is now more readable for all users who are or are not French.[12] The French legislature has reaffirmed its desire to see Paris as a place which continues to shine in the international arbitration arena,[13] even if the reform has still not abolished article 2060 of the Civil Code[14] which states that public policy matters cannot be subject to arbitration.

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10) P. Mayer, "Arbitrage: entrée en vigueur d'une procédure plus efficace", *Droit et Patrimoine*, May 2011, No. 203, pp. 30-34.

11) J. El-Ahdab, M.K. Duval, *op. cit.*, p. 122.

12) B. Le Bars, "Paris se donne les moyens d'une grande place d'arbitrage", *L'AGEFI Hebdo*, 31 March 2011, p. 6.

13) B. L'Hoir, "La Chancellerie replace l'arbitrage française au premier plan", *Droit & Communauté*, 19 January 2011, p. 5.

14) Th. Clay, "Simplification de la transaction et de l'arbitrage", *JCP éd. générale*, 21 April 2014, No. 6, pp. 810-816.

In Korea, the rapid growth of international business over the past decades has been accompanied by an increase in the use of arbitration by Korean companies as a means to resolve disputes,[15] especially in some areas, such as government procurement contracts, international construction transactions, and shipping disputes.

Institutional arbitration is more used (with a majority of ICC and Korean Commercial Arbitration Board (KCAB) arbitrations) than *ad hoc* arbitration, which remains scarce (often used however for maritime disputes)[16] and its increasing popularity, due in part to relatively lower costs, has become a reality.[17] Seoul has recently opened a new International Dispute Center, based mainly on the strong demand for a local venue as expressed by a number of South Korean companies resolving disputes with foreign companies through arbitration.[18] The Center hosted its first case in 2013, only two weeks after its opening.[19]

As for investment arbitration, South Korea has only faced two claims since it joined the ICSID Convention in 1967:[20] one in 1984, filed by a US company over a weapon-production contract, which was settled in 1990 and one more recently, in 2012, under the South Korea/Belgium Bilateral Investment Treaty over matters related to a banking company, engineering and construction services and a real estate agreement. The scarcity of those investment arbitration cases tends also to show, not only the rather welcoming attitude of Korea vis-à-vis foreign investments, but rather how Korean companies and investors have been active abroad.

The Republic of Korea is an arbitration-friendly jurisdiction:[21] for instance, Korean courts rarely refuse recognition or enforcement of foreign arbitral awards.[22]

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15) G. Kim, "The development of arbitration law and practice in the Republic of Korea", *International Arbitration Law Review*, Vol. 6, Issue 4, August 2003, p. 134.

16) *Ibid*, spe. p. 137.

17) K. Kim, South Korea, *Arbitration Guide IBA Arbitration Committee*, September 2012, spe. p.3.

18) A. Ross, "Seoul gets a hearing centre", *GAR*, Vol. 8, Issue 3.

19) D. Thompson, "Seoul centre hosts first case", *GAR*, 13 June 2013.

20) South Korea claim gallops ahead", *GAR*, 23 November 2012.

21) L. Kang, J. S. Lee, "Korea", *The Asia-Pacific Arbitration Review 2014*.

22) *Infra* 2.B.4)

The Korean Arbitration Act (hereinafter the "KAA") governs all arbitration proceedings seated in Korea and is applicable to domestic and international arbitrations. The KAA was enacted in 1966 and has been amended several time s[23] after Korea adopted the 1985 UNCITRAL Model Law.

The adoption of the 2006 Model Law is currently being discussed, and any changes resulting from there will be reflected in further amendments to the KAA. We were asked, through this presentation, to give an overview of the French arbitration reform, back in 2011, to help bring forward a few useful ideas that could be incorporated in the forthcoming reform of the KAA.

Ⅱ. General overview of the 2011 French Arbitration Act

Unlike the KAA, the French has kept the dichotomy between domestic arbitration and international arbitration.[24] However, the two systems – domestic and international – share some common provisions and principles under the French Act.

1. Common Principles to Domestic and International Arbitration

(1) Codification

Different principles have been codified into the Code of Civil Procedure.

The autonomy and severability principle are now mentioned in article 1447 CCP. It was first established by the French Court of cassation in the famous and now old *Gosset* decision dated 7 May 1963.

The same principle applies in Korea. Indeed, pursuant to article 17(1) of the

23) Act no 6083, 31Dec. 1999; Act no 6465, 7April 2001; Act no 6626, 26 Jan. 2002; Act no 10207, 31 March 2010.

24) Y. Broussolle "Réforme de l'arbitrage: le décret du 13 janvier 2011", *Petites Affiches*, 6 April 2011, No. 68, p. 15.

KAA, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other provisions of the contract. Hence, any amendment, rescission, termination, and nullity of the contract, unless directly related to the arbitration clause itself, shall not affect the validity of the arbitration agreement.[25)]

In France, the competence-competence principle is provided for in article 1465 CCP in its positive effect and in its negative effect set out in article 1448 CCP. The positive effect of the principle actually means a priority given to the arbitral tribunal to decide on its jurisdiction, before a state court is to rule on the matter. According to the negative effect, state judges do not have jurisdiction over the dispute and should dismiss any arbitration-related case, except to support the arbitration process or if the arbitration clause is obviously void or inapplicable (an exception which remains narrowly construed).

The KAA has adopted the same solution and provides that the arbitral tribunal may rule on assertions made with respect to the existence or validity of an arbitration agreement or on its own jurisdiction.[26)] If a party raises a plea that the arbitral tribunal does not have jurisdiction, the arbitral tribunal may treat that plea as a preliminary question or rule on it in an arbitral award on the merits.[27)] If the arbitral tribunal issues an independent ruling that it has jurisdiction, any party may, within thirty days of receipt of notice of such ruling, request that the courts review the matter.[28)] Accordingly, article 9 KAA provides that a court "*before which an action is brought in a matter which is the subject of arbitration agreement shall [···] reject the action*" unless the arbitration agreement is "*null and void, inoperative or incapable of being performed*". Typically, it is our view that the caveat introduced by the word "unless" can be subject to uncertain interpretations: through the reform, it could thus be either subjected to clarifications or narrowed to reaffirm the principle of compete-competence under

25) D. Thomson, "Know How - Commercial Arbitration –Korea", *GAR*, 9 June 2013, available at http://globalarbitrationreview.com/know-how/topics/61/commercial-arbitration/

26) Article 17 (1) KAA.

27) Article 17 (5) KAA.

28) Article 17 (6) KAA.

Korean law.

Regarding the independence and impartiality of arbitrators in France, obligations of disclosure are imposed upon arbitrators and mentioned in article 1456 CCP. French case law is becoming stricter and more demanding concerning these principles.[29)]

The same principle of disclosure applies in the KAA,[30)] though apparently with less demanding requirements from courts and practitioners. Indeed, "challenges against arbitrators are rare in Korea and there is no trend to suggest that they are increasing. Indeed, the KCAB has not had a single challenge filed in recent years".[31)] A couple of cases are worth being mentioned here. In one instance,[32)] the Supreme Court of Korea has set aside an award rendered in a domestic arbitration matter on the ground that the attorney appointed as an arbitrator represented a party during the course of the arbitration in other matters with the same legal and factual issues at stake, and thus lacked impartiality and independence. However, in another case, the Supreme Court of Korea refused to set aside an arbitral award in a case where a party was put on notice of a fact that gave rise to justifiable doubts as to the impartiality or independence of the arbitrator, but failed to raise an objection during the arbitration.[33)]

New principles and requirements of expediency and loyalty are provided for at article 1464-3 CCP.

(2) Effectiveness of the arbitral proceedings

The principle of efficiency of the arbitral proceedings now raises at various stages of the arbitration process.

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29) M. Henry, "Les obligations d'indépendance et d'information de l'arbitre à la lumière de la jurisprudence récente", *Rev. arb.* 1999, Issue 2, pp. 193 – 224.

30) Article 13 (1) and 13 (2) KAA.

31) K. Kim, J. Bang, "Arbitration Law of Korea practice and procedure", Juris publishing 2012, at p. 154.

32) Supreme Court Decision 2003Da21995, 12 March 2004.

33) Supreme Court Decision 2004Da47901, 29 April 2005.

It is very telling first to note that the new Act is characterised by much less requirements from a formal standpoint: the form of the arbitration agreement only has only to meet minimum standards,[34] the group-of-contracts theory is now explicitly admitted[35] and the recognition proceedings require fewer formalities (or formal documents).

The arbitral tribunal's powers have also increased in a manner that eases the process' efficiencys the arbitrators have now the possibility to decide measures of investigations,[36] order provisory and conservatory measures,[37] hear witnesses,[38] etc.

As to the award, it can now be rendered and signed by the chairman alone – although this rule applies only to international arbitration[39] – and a mere email notification (if not through judicial means) may become sufficient to trigger deadlines. Also, the *res judicata* of the award is clearly asserted such that a legal issue ruled during an arbitration cannot be raised again, neither before the same court nor before a different court.

In Korea, the arbitration awards have the same legal effect as final and conclusive Korean court judgments.[40] Therefore, the principle provided by French law appears to be similar in Korea, except that arbitration awards must be recognized and enforced by a Korean court before producing any legal effect.[41]

A supporting judge – or "*juge d'appui*" in French – is now expressly provided for by the CCP: the French state judge's role is to assist and support the entire arbitral proceedings, even before the proceeding starts, when the arbitral tribunal must be constituted and until the recognition and enforcement phases. The *juge d'appui* may adopt investigatory measures *in futurum,*[42] take provisional or

34) Article 1443 CCP.
35) Article 1507 CCP.
36) Article 1467 CCP.
37) Article 1468 CCP.
38) Article 1469 CCP.
39) Article 1513 CCP.
40) Y. S. Lee, "Korean Arbitration and ROC arbitration awards", Op. cit., esp. p.2.
41) It is true however that there is a debate amongst scholars in Korea on that very point. See for instance: *NDS Ltd. v. KT Skylife company Ltd.*, 2012, Ga Hap 5979 (31 Jan., 2014)

conservatory measures,[43] and facilitate judicial conservatory seizures.[44]

Regarding the recognition and annulment actions, no remedy is available against an international award other than the annulment request, which can even be waived up now: no appeal (even for domestic arbitration, unless otherwise agreed), no *tierce opposition*, while the requirements to file a *recours en revision* (in case of fraud) are restrictive.[45] Furthermore, the filing of an annulment request does not any longer trigger the suspension of the enforcement and a copy of the award suffices[46] to bring an action for annulment, no sworn translation is required.

Finally, the principle of *estoppel,*[47] based on the famous *Golshani* decision of 2005,[48] provides that a party who does not timely raise an objection concerning a procedural/jurisdictional irregularity in front of the arbitral tribunal shall be deemed to have waived its right to raise it further before a state court after the award is rendered.

(3) Rationalisation

The reforms have also rationalized different aspects of the arbitration in France.

Regarding the order and organization of the statutory provisions, there is one common section applicable to both domestic and international arbitration and a system of cross-reference between the provisions applicable in international arbitration and the others.[49]

With respect to the definitions, there is now one single definition of the arbitration agreement, incorporating the definition of the submission agreement.[50]

Concerning the shared competences between arbitral tribunals and state courts,

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42) Article 145 CCP.
43) Article 1449 CCP.
44) Article 1468 CCP.
45) Article 1502 CCP.
46) Article 1487 CCP.
47) Article 1466 CCP.
48) Cass., civ.1ère, 6 July 2005, *Rev. arb.* 2005, Issue 4, p. 994, comm. by Ph. Pinsolle.
49) Article 1506 CCP.
50) Article 1442 CCP.

an exclusive jurisdiction is given to the judge of the *Tribunal de grande instance* (hereinafter the "TGI") regarding the resignation and challenge of arbitrators and the extension of arbitration time-limits in *ad hoc* cases. For example, in the hypothesis of an arbitrator's resignation, the TGI may asked to rule on the reasons of his resignation.[51] The TGI has also exclusive competence to decide on whether the production of a document in the possession of a third person, is necessary.[52]

2. Main Characteristics of Domestic arbitration rules

Different features characterize domestic arbitration rules.

The requirement of a written agreement in domestic arbitration is tempered.[53] The writing requirement is still a condition for arbitration clauses, but electronic means are already (since 2000) satisfying this formal requirement in France,[54] which is also the case in Korea since the 1990s.

The KAA provides that an arbitration agreement must be in writing, such as a document signed by all parties, letters or telegrams exchanged between the parties, or the like. In principle, under Korean law, only an exclusive arbitration clause is valid, i.e. one which allows disputes to be resolved only through arbitration and not litigation.[55] Hence, selective arbitration clauses, allowing a party to choose between arbitration and litigation, are not valid under the KAA. This issue has, however, been controversial in Korea. The Korean Supreme Court has held that general optional arbitration clauses may be considered valid if a party elects and proceeds with arbitration without the other party expressing any objection in response.[56]

Moving back to French domestic arbitration, arbitration agreements by reference continue, now expressly, to be valid.[57] Even more remarkably,

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51) Article 1457 CCP.
52) Article 1469 CCP.
53) Article 1443 CCP.
54) Article 1316-1 of the Civil Code.
55) Y. S. Lee, "*Arbitration and ROC arbitration awards*", *op. cit.*, spec, p.2.
56) Korean Supreme Court Decision 2003Da318 delivered on August 22, 2003

arbitration agreements may now be applicable to groups of contracts.[58] This means that if a dispute arises with respect to two related contracts, one containing an arbitration clause and another none, an arbitral tribunal could still hear the case on both contacts.

If the arbitration agreement is "*white*" – the clause does not stipulate how the arbitral tribunal should be constituted – this does not invalidate it *per se* as state courts can now explicitly save it.[59]

Further, confidentiality applies now to domestic arbitration proceedings as a matter of principle.[60]

As the KAA is silent on the matter of confidentiality, some authors have considered it was not possible to presume that arbitrations were governed by confidentiality.[61]

In France, the supporting judge or "*juge d'appui*" is the president of the TGI or the president of the commercial court if the parties decide to choose him.[62] He has jurisdiction to assist the arbitral tribunal throughout the proceedings.

Parties can also opt out from a heavy judicial service process: true, the award continues to have to be notified by a judicial officer, but parties may agree otherwise.[63]

Appeal has now been only allowed if parties have expressly stipulated it in the clause.[64] By contrast, the right of the parties to appeal a domestic award used to be an ordinary law remedy under the previous regime.

The KAA even went further: there is no right to appeal an arbitration award issued in Korea. Therefore, arbitral awards may not be appealed before Korean courts.

The initial proceeding to grant recognition of the award (*exequatur*) remains

57) Article 1443 CCP.
58) Article 1442 CCP and see *Infra* III 1. (2) 1)
59) *Infra* III 1. (2) 1)
60) Article 1464-4 CCP.
61) K. Kim, "South Korea", *Arbitration Guide IBA Arbitration Committee*, September 2012, spec. p. 12; see further on this point: *infra* section II on "Specific and Constant Trends".
62) Article 1459 CCP.
63) Article 1484-3 CCP.
64) Article 1489 CCP.

non adversarial in France (as opposed to the appellate stage).[65] When granting the *exequatur* or if the award is subject to an annulment request, the judicial review of the award operated by the TGI remains very minimal: the award will not be enforced or shall be void if it does not state the reasoning, the name of the arbitrators and the date of issuance, or if it violates public policy.

3. Main Characteristics of International Arbitration Rules

Similarly, certain specificities characterised the international arbitration legal framework.[66]

When defining whether a dispute is international or not, the "objective" criterion provided for in the former article 1492 CCP[67] remains unchanged. Indeed, is international an arbitration that "*involves the interests of international trade*". In particular, it has been held by French courts that this definition requires "*flows of goods, services, or assets, beyond and through national borders*".[68] Precedence is thus given to the economic dimension whereas it is ordinarily the legal criterion (i.e. existence of points of connection between a contract and/or a state) which applies.

The definition also demonstrates that international arbitration follows its own set of rules. The rationale beneath this broad definition is to encompass as many disputes as possible and to apply a liberal regime thereto.

Only judges may decide whether a dispute is international or not.[69]Thus, this is not a matter upon which parties may stipulate.

Regarding the supporting judge or "*juge d'appui*",[70] it is remarkable to note that the latter may now expressly have jurisdiction to assist in the constitution of the arbitral tribunal simply if there is a risk of denial of justice,[71] even if the

65) Article 1487 CCP.
66) S. Bollé, "Le droit français de l'arbitrage international après le décret n° 2011-48 du 13 janvier 2011", *RCDIP*, 2011, No. 3, p. 553.
67) Now article 1504 CCP.
68) Cass. civ. 1ère, 26 January 2011, No. 09-10.198, *Bull. civ.* I, 2011, p. 13.
69) Cass. civ. 1ère, 20 November 2013, No. 12-25-681, *Bull. civ.* I, 2013, p. 221.
70) Article 1505 CCP.
71) Cass. civ. 1ère, 1 February 2005, *Nioc, Bull. civ. I*, n° 53.

arbitration clause does not state that Paris as the seat of arbitration.

Even less demanding than in domestic arbitration, international arbitration agreements are not subject to *any* formal requirement, [72] which is quite a remarkable statement as well.

To be most effective within the arbitration process, the president of the arbitral tribunal may render the decision alone if there is no majority within the arbitral tribunal.[73]

Turning to the recognition of the award, there is no longer the need for a sworn translation of the award: a copy thereof will be sufficient.[74] Also, when the recognition of the award is denied, the court has to expressly state the reasons for refusal.[75] It was already the case under the former regime. As to awards rendered abroad, the recognition proceeding remains non-adversarial.[76] Yet, the parties may lodge an appeal against the decision refusing recognition within one month from the notification of the award.[77]

With respect to remedies against international awards rendered in France, the only way to challenge them is to bring an action for annulment in front of the competent Appellate Court (the Paris Court of Appeal) within one month from the notification of the award by judicial officer, unless the parties have agreed on another means of notification.[78] The parties have the possibility to waive their right to bring an action for annulment but, in that case, it has to be clearly and expressly stated.[79]

The action for annulment against the award or the order granting recognition has no longer any suspensive effect.[80] The aim of this rule is to increase the efficiency of the arbitral awards as parties cannot use the action to delay enforcement.

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72) Article 1507 CCP.
73) Article 1513 CCP.
74) Article 1515 CCP.
75) Article 1517 CCP.
76) Article 1516 CCP.
77) Article 1525 CCP.
78) Articles 1518, 1579 and 1520 CCP.
79) Article 1522 CCP.
80) Article 1526 CCP.

Ⅲ. Trends and pending issues in recent French case law

1. Liberal acceptance of arbitration as an independent system

Generally speaking, French judges have been promoting the effectiveness of the arbitral process, both with regard to the arbitration agreement (e.g. principle of competence-competence, autonomy of the arbitration agreement, interpretation *in favorem* of pathological clauses, clause by reference, broad application to non-signatories, etc) and to the enforcement or annulment of arbitral awards (e.g. diminution of the control of state's judge).

(1) The so called "arbitral legal system"

Arbitration is now perceived and built, especially in France, as an autonomous and structured means of resolving disputes. Rather remarkably, French courts have used the term "*arbitral legal system*",[81] which seems to exist alongside with the term "*judicial legal order*". The idea beneath this expression is that arbitration *constitutes* – or should constitute – an international justice *per se.*[82]

This view was already prevailing, at least implicitly, under the old statute (the decrees of 1980 and 1981) and was restated again in the new Arbitration Act of 2011. Indeed, already under the old regime, the arbitrator was entitled to apply any "*legal rule*", even non-national.[83] By the same token, the recognition and enforcement of an award was already possible in France even if the foreign judge had set it aside in the jurisdiction of the seat of arbitration.[84]

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81) E. Gaillard, "L'ordre juridique arbitral: réalité, utilité et spécificité", *The Mcgill Law Journal* 2005, Vol. 55, Issue 4, p. 891-907.

82) Thomas Clay, "Le nouveau droit français de l'arbitrage", Lextenso Editions, 2011.

83) Article 1511 CCP.

84) Cass. civ. 1ère, 23 March 1994, *Hilmarton, Bull Civ.* I, No. 104 ; CA Paris, 29 September 2005, *Betchel, Rev arb.* 2006, Issue 3, pp. 695-700; Cass. civ. 1ère, 29 June 2007, *Putrabali, Rev arb.* 2007, Issue 3, pp. 507-515.

Since 2007, French courts continue to reaffirm the autonomy of the international arbitral legal system: French judges cannot interfere in arbitral proceedings as an international arbitral tribunal is an autonomous jurisdiction.[85] Also, in case there is a risk of denial of justice, the French judge may ascertain his/her jurisdiction as a "*juge d'appui*", even if the seat of arbitration is not in France.[86]

By contrast, if a foreign court sets an award aside, the Korean court may refuse its enforcement under Article V.1 (e) of the New York Convention. However and to the best of our knowledge, there has been, so far, no case in Korea where Korean courts have enforced an award that has been set aside by a foreign court. [87]

(2) The French judge: a vital support to arbitration[88]

1) A very liberal case law on the validity and enforcement of arbitration agreements

Since the 1990s, the efficiency of arbitration has always been the prevailing guideline when ruling over the validity of the arbitration agreement and the enforcement of arbitral awards.[89]

For instance, French courts have a liberal interpretation of pathological clauses. As mentioned below, judges have long been validating "white clauses", i.e. the clauses that fail to clearly set out the name of the arbitrator or the means by which the arbitrator is to be nominated.

Korean courts generally respect the parties' intent to settle disputes through arbitration and tend to recognize more readily the validity of an arbitration agreement, even when it is not worded in a clear and specific manner. Indeed,

85) Cass. civ. 1ère, 12 October 2011, No. 11-11058, *Recueil Dalloz* 2011, No. 25, comm. by X. Delpech.

86) Cass. civ. 1ère, 1 February 2005, *Nioc, Bull. civ.* I, n° 53.

87) See e.g. Seung Wha Chang, Article V of the New York Convention and Korea, Journal of International Arbitration, (Kluwer Law International 2008, Volume 25 Issue 6) p. 868.

88) Thomas Clay ≪ Le nouveau droit français de l'arbitrage ≫, *Lextenso Editions*, 2011.

89) E. Gaillard, "La jurisprudence de la Cour de cassation en matière d'arbitrage international", *Rev. arb.* 2007, n°4, p.684.

in a domestic arbitration case, the Korean Supreme Court stated that "*to the extent that there is an express intent to resolve potential dispute through arbitration, the requirements for a valid arbitration agreement are met, despite the lack of specification of the institution, the governing law, or the seat of arbitration*".[90]

French Courts have recognised arbitration clauses incorporated by reference and this principle is now stated in article 1443 CCP, concerning both domestic and international arbitration.

The same solution applies in Korea.[91]

French courts are known to have extended the scope *ratione materiae* and *ratione personae* of arbitration agreements.[92] The intervention of the "*juge d'appui*" plays here a key role, especially when it must assess whether the arbitration clause is "*manifestly void or inexistent*" when it involves non-signatories parties. There are numerous cases where French courts have decided to extend the scope *ratione personae* of a clause to the latter or to admit the quasi-automatic assignment of such a clause.

Regarding the issue of group of companies or group of contracts, the Paris Court of Appeal has extended the scope *ratione personae* of the arbitration clause to non-signatory companies belonging to the same group, provided that they were aware of the existence of the clause and that they were involved in the negotiation and the performance stages.[93] This solution has been constantly confirmed by the French courts and is applicable to both domestic and international arbitration.[94]

Very few courts have refused to extend the scope of the arbitration agreement. Nonetheless, a case, recently held, confirmed the setting aside of an award on the basis that one of the respondent companies was not a signatory

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90) Korean Supreme Court, Decision 2001Da20134, 11 April 2003.

91) Korean Supreme Court, Decision 89DaKa20252, 10 April 1990.

92) E. Gaillard, "La jurisprudence de la Cour de cassation en matière d'arbitrage international", *Rev. Arb.* 2007, n°4, p.698, spec. pp.704-705.

93) CA Paris, 21 October 1983, *JurisNet*, 2014, p. 75.

94) Cass. civ. 1ère, 27 March 2007, *Rev. arb.*, 2007, Issue 4, pp. 785-787, comm. by J. El-Ahdab.

party of the arbitration agreement. [95] In this case, the French court refused to extend the scope of the arbitration clause even though the condemnations were indivisible and the company in question admitted to be linked by the arbitration agreement. Hence, the indivisibility *per se* between the contracts is not sufficient.

On the contrary, the group of companies' doctrine is not applied in Korea, but other methods of piercing the corporate veil are recognized under very strict circumstances.

In other hypothesis, such as cases where there is a third party beneficiary, in the context of a maritime transport contract or where state entities and governments can be bound together, French courts will broadly extend the arbitration clause. For example, in a famous case brought before the Paris Court of Appeal, the arbitration clause has been extended to the State of Pakistan as the State behaved like the true contractor.[96]

As to Korea, it is a well-established principle that a third party cannot be bound by an arbitration clause. However, third parties or non-signatory parties may be bound by an arbitration agreement in cases of succession and assignment of a contractual relationship in which there is an arbitration clause. Although the KAA does not provide for joinder of parties in the arbitration process, a third party may participate in practice in an arbitration proceeding with the consent of all parties concerned and the tribunal. [97]

In France, in cases of assignment of contracts or substitution of parties, the arbitration agreement is automatically assigned and binding on the assignees. It has been ruled that the arbitration agreement follows through the substitution mechanism.[98] In a case dealing with subrogated insurers, the French court decided that the latter could not raise the inapplicability of the arbitration agreement on the basis that they had not expressly agreed to it. It considered that in a maritime contract, the extension of the arbitration agreement was usual.[99]

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95) Cass. civ. 1ère, 30 October 2006, *Rev. arb.*, 2008, Issue 2, p. 307, comm. by D. Cohen.

96) CA Paris, 17 February 2011, *Dallah, Cah. arb.* 2011, No. 2, p. 433, comm. by G. Cuniberti.

97) K. Kim, South Korea, *Arbitration Guide IBA Arbitration Committee*, September 2012, spec. p. 6.

98) Cass. civ. 1ère, 8 February 2000, No. 95-14.330, *Bull. civ.* I, 2000, No. 36, p. 23.

In a case of chain of successive contracts with a transfer of ownership, it was ruled that, as the arbitration clause was accessory to the right of action, the final owner became bound with the initial seller.[100] In a more recent decision in which a distribution contract containing an arbitration clause was transferred, the Paris Court of Appeal held that, even though the assignor company was not party to the dispute, the arbitral tribunal did not err in deciding the assigning contract (and thus of the arbitration agreement) was binding on the assignee, despite the absence of any authorization as to the underlying lease transaction.[101]

2) The supporting judge or "*juge d'appui*"

The supporting judge intervenes like a "*juge des référés*". However, contrary to such an emergency judge, his decisions are not temporary and can only be challenged if they are not in favor of arbitration.

With respect to the taking of evidence, it is noteworthy that parties may, after being authorized by the arbitral tribunal, request the supporting judge to order the production of a document.[102]

In Korea, the arbitral tribunal or a party with the approval of the arbitral tribunal may request to the competent court assistance in taking evidence.[103] The court from which the arbitral tribunal requests the assistance shall, after taking the requested evidence, send the court records, such as a copy of the report on a witness examination or the transcript of a site inspection.

In France, like in many other jurisdictions, both arbitral tribunals and state judges have jurisdiction to adopt interim measures. Before any request is made to either, parties should consider which authority is their best option, the most efficient and whether there is an emergency. They will have to bear in mind that, in case they bring their request to the arbitrator, the latter can be limited by the terms of his mission, cannot order any conservatory measures, and has

99) Cass. civ. 1ère, 22 November 2005, No. 03-13621, *Bull civ.* I, 2005, No. 440 p. 368.
100) Cass. civ. 1ère, 27 March 2007, *Rev. arb.* 2007, Issue 4, pp. 785 – 787.
101) CA Paris, 27 November 2012, *Rev. arb.* 2012, Issue 4, p. 885.
102) Article 1469 CCP.
103) Article 28-1 KAA.

no power with regard to third parties.

In Korea, both courts and arbitral tribunals may order provisional measures. An interim measure adopted by the arbitral tribunal is not enforceable *per se*, but the relevant party usually complies with the interim measure as non-compliance with it might have a negative impact on the arbitration proceeding.

Under article 18 of the KAA, as long as the interim measure relates to the subject matter of the dispute, the arbitral tribunal is entitled to adopt any interim measure and to determine the level of security to be provided. Interim measures must be issued in the form of an order and not as an award.[104)]

Moving back to France, the supporting judge has no power to administer or interfere within the arbitral proceedings. His intervention is limited in case of difficulties regarding the constitution of the arbitral tribunal, (such as difficulty when appointing an arbitrator or existence of a pathological clause), in case of a challenge or resignation of an arbitrator, or to extend the time-limit of the arbitration in *ad hoc* proceedings.

The supporting judge has no power to monitor the arbitral proceedings. The French judge can only ensure, but after the award is rendered, that the arbitration complies with principles of due process and equality between the parties.[105)] In the course of the arbitration, the arbitral tribunal's decisions constitute procedural orders or rulings that cannot be challenged.[106)]

Arbitrators also have the superseding power to manage the arbitral proceedings by deciding on procedural issues pertaining language, hearings or the arbitration's calendar. These decisions cannot be the subject of any action in the course of the arbitration. The rationale is that, otherwise, unsatisfied parties would systemically challenge those decisions, even when they are ancillary, and could end up paralyzing every step of the process. This would clearly be against

104) K. Kim, South Korea, *Arbitration Guide IBA Arbitration Committee*, September 2012, spec. p. 9.

105) Cass. civ. 1ère, 7 January 1992, *Dutco*, *Rev. arb.* 1992, Issue 3, p. 470.

106) CA Paris, 24 February 2013, RG n°12/13819, *Cah. arb.* 2012, No.1, p. 479-490.

the idea of efficiency in arbitration.

In Korea, the Korean judiciary authority also supports arbitration. For instance, Korean courts do not allow injunctions aimed to interfere with arbitration proceedings when the arbitration agreement is clearly valid and binding.[107]

It is also worth pointing out that French courts have the notable tendency to sanction abusive recourses by imposing the payment of significant court fees to the challenging party.[108]

3) Diminution of the state judge's control and powers

The meaning of an arbitration agreement "*obviously void or inapplicable*" – an exceptional hypothesis giving back jurisdiction to state courts over arbitral tribunals – remains quite restrictive, even when the matter involves a non-signatory party.

In a recent case dated 27 April 2004, one of the very rare cases applying this exception, it has been considered that the arbitration agreement was only included in the general terms and conditions, concluded after the main contract which by contract contained a contradictory jurisdictional clause. Therefore, the arbitration agreement was obviously inapplicable.[109] It takes thus a lot for a state court to reach the conclusion that an arbitral tribunal has no jurisdiction over a matter.

By contrast and in line with its liberal and classical case law, in the presence of an arbitration agreement that is not obviously void or inapplicable, the state judge can only declare himself incompetent.[110]

For instance, French courts ruled in decision dated 16 October 2001 that the fact that two disputes arising from different contracts cannot be divided does not necessarily mean that the arbitration clause concluded only in one contract was obviously inapplicable to the second one.[111]

By the same token, French courts have also considered that the very broad

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107) K. Kim, S. H. Lim, J. Morrison "From backstage into the spotlight: the rise of international arbitration in Korea", IBA Arbitraion Newsletter, vol.15, No. 1, spec. p. 4.

108) In the *Dallah* case 100.000 euros were granted by the Court.

109) Cass. civ. 1ère, 27 April 2004, N° 01-13.831, *Bull. Civ.* I, 2004, No. 117, p. 96.

110) Cass. civ. 1ère, 12 February 2014, No. 10-17.076, *Rev. Procédures*, April 2014, p. 22.

111) Cass. civ. 1ère, 16 October 2001, *Rev. arb.* 2002, Issue 4, p. 919, comm. by D. Cohen.

scope of an arbitration agreement did not make it obviously or *per se* inapplicable[112] or that the inapplicability of a clause could not be deduced simply from the impossibility of a party to face the costs of arbitration.[113]

In the same vein, the principle of competence-competence is a rule giving priority to the arbitrator to rule on its own jurisdiction, including on matters involving the applicability of an arbitration agreement. However, a state judge has the power to review the award, including on its jurisdictional grounds, once the arbitration proceeding has ended.

At last, another example of the legal hurdles preventing a court from interfering with an arbitral tribunal's competence is the principle according to which French judges cannot intrude in arbitral proceedings because an international arbitral tribunal is an autonomous jurisdiction. Hence, it was held that a French court must deny a request made by one of the parties that would prevent an arbitral tribunal from pursuing its mission.[114]

(3) Public policy in France

French judges rarely admit violation of public policy. Only a few decisions have recognised a violation of public policy regarding the merits of the dispute. It is also worth mentioning here that the French understanding of what is "international public policy" is even narrower and even more scarcely applied than the concept of domestic public policy", often pertaining to technical rules dealing with bankruptcy law.

The violation of public policy can be recognised on the ground of a fraud orchestrated by the parties. For example, in a case in which the object of the contract was not licit and the arbitrators had been abused on the reality of the exchanges between the parties, French courts held that these facts constituted a fraud and thus a violation of international public policy.[115]

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112) Cass. civ. 1ère, 8 July 2010, *Rev. arb.* 2010, Issue 3, p. 513.

113) CA Paris, 26 February 2013, No. 12/12953, *Rev. arb.* 2013, Issue 3, pp.749-760.

114) Cass. civ. 1ère, 12 October 2011, No. 11-11058, available at http://www.juricaf.org/arret/ FRANCE-COURDECASSATION -20111012-1111058.

115) CA Paris, 1 July 2010, *Rev. arb.* 2010, Issue 3, p. 679.

The violation of public policy may also include a clear contrariety of decisions. For instance, when two arbitral awards have created incompatible legal consequences, one admitting compensation and the other one refusing it, the recognition of the second award would violate public policy.[116)]

Some decisions have been rendered on "procedural public policy" grounds but not necessarily involving arbitration law *per se*. All, however, raise questions of "international public policy" and do have some relevance when approaching the frontiers of that concept.

A few cases have involved anti-suit injunctions and raised, as for arbitration, arguments of fraud.[117)] It was held that an anti-suit injunction does not violate international public policy if its object is only to sanction the violation of a jurisdictional clause.[118)] In this particular case, an American company and its French counterpart had concluded an exclusive distribution agreement with a clause giving jurisdiction to Georgian courts (USA). The American company terminated the contract, which triggered an action brought by the French company before a French court. In parallel, the American company brought an action in the United States. In its decision, the American judge pronounced an anti-suit injunction prohibiting the French judge to continue the proceedings and recognizing the debt of the French company towards the American one. This US decision obtained an exequatur order in France. The Court of cassation ultimately confirmed this exequatur order, holding that no fraud was committed, both parties having agreed upon the jurisdiction clause, which the American company rightly attempted to implement. Moreover, it considered that there was a denial of justice. Finally, the Court considered that the anti-suit injunction did not violate public policy as its object was only to sanction the violation of a jurisdictional clause, applying the principle according to which contracts have a binding force and should be enforced accordingly.

In a case regarding the issue of advance of costs, an arbitral tribunal applied

116) CA Paris, 26 mars 2013, *Rev. arb.* 2013, issue, p. 532.

117) E. Cornut "*L'anti suit injunction* n'est pas contraire à l'ordre public international", *JCP éd. G*, 9 November 2009, No. 46, p. 416.

118) Cass. civ. 1ère, 14 October 2009, No. 08-16-369.

the ICC rules, which provide that, if a respondent does not pay its advance on costs in relation to its counterclaims, the arbitral tribunal should not rule on them. The Paris Court of Appeal ruled that the arbitral tribunal should not have applied the ICC rules as, given the circumstances of the case, this provision was unconscionable. Indeed, for the Court, the subsequent refusal to rule on the counterclaims constituted a denial of justice and a violation of equality between the parties, which was against the international procedural public policy. The Court of cassation overruled the judgment by examining whether the counterclaims were severable from the main claims. If the counterclaims were independent of the principal claims, the dismissal of respondent's counterclaim would not be against public policy. In this case, the French Court of Cassation considered that the ICC rule was not *per se* excessive and that the parties agreed to it, such that the arbitral tribunal had to apply in any event the ICC rules and the parties must comply with the latter.[119)]

2. Specific but Constant Trends

There are different reasons why France is considered as a very arbitration-friendly jurisdiction. They all correspond to quite liberal trends followed by French courts and legislators as to the way arbitration agreements are construed and enforced, to very strict requirements imposed upon arbitrators and to the desire to secure efficiency not ony in the arbitration process itself but also when it comes to annulment and enforcement proceedings.

(1) The principle of validity of the arbitration agreements

1) Reform of the provision of the Civil Code governing the arbitration clause

Article 2061 of the Civil Code used to pose the principle of nullity of arbitration clauses in civil matters. Due to critics, the rule was amended and reversed in 2001, such that the nullity remained but was phrased in a way to rather constitute the exception to the rule of validity, applying only to domestic

119) Cass. civ. 1ère, 28 March 2013, n°11-27.770, *JCP éd. G*, 20 May 2013, n° 21, p. 983.

disputes between professionals and consumers.

Articles 2059 and 2060 of the French Civil Code also prohibit arbitration in certain fields, such as capacity, divorce, and other related family law issues, which are typical matters excluded from arbitration in most jurisdictions. Nonetheless, on these aspects too, French case law adopts another solution and accepts the use of arbitration even for disputes involving public policy issues.

In international arbitration, the principle of validity of the arbitration agreement has been widely affirmed and for a long time.[120] This principle is based upon, among other things, the intent of the parties and their obligation of good faith.[121]

By the same token, Korean courts generally hold that arbitration clauses that designate an international arbitration institution for dispute resolution are valid and shall be enforced.[122]

2) New reform in 1975

In the early and mid 1980s, a new subparagraph was added to article 2060 of the Civil Code to broaden the scope of validity of arbitration clauses involving a state entity. The new provision now states that a public entity engaged in commercial activity (called in French an "*EPIC*") may conclude an arbitration agreement if it has been pre-authorized by decree. Implementing this new rule, an Act n° 86-972 dated 19 August 1986 was passed to allow the French State, some regional authorities and other State-owned entities to use arbitration when concluding contracts with foreign companies: this specific law was enacted to allow the Euro-DisneyLand project to go through as the US investor required the inclusion of an arbitration agreement to conclude the overall contract. Other examples followed. By Decree No. 2008-879 of 1 September, 2008, France concluded an arbitration agreement with the United Arab Emirates concerning the construction of a Museum in Abu Dhabi. By Order No 2010-1307 dated 28 October 2010, the French national railway company ("*SNCF*") may now conclude

120) Cass. civ. 1ère, 5 January 1999, *Rev. arb.* 2007, Issue 4, p. 701.
121) Cass. civ. 1ère, 8 July 2009, *Rev. arb.*, 2009, Issue 3, p. 529.
122) G. L. Kim "The development of Arbitration Law and practice in the Republic of Korea", International *Arbitration Law Review*, Vol 6, Issue 4, August 2003, p. 141.

any arbitration agreement. More recently, on 13 July 2004, the Decree No 2004-703 provided that higher education institutions may conclude arbitration agreements with foreign organisms.[123)]

(2) Arbitrators: more demanding duties of transparency and independence.

1) Obligation of disclosure

The obligation to disclose any relevant circumstances likely to affect the arbitrator's independence and/or impartiality[124)] in the parties' eyes has become a legal criterion largely implemented and monitored by French courts.[125)] However, there is still a debate on what and how much information arbitrators should disclose. Today, the burden seems to fall more on the arbitrator. There have been quite a few successful challenges on this ground over the past decade. The violation of this obligation of disclosure can lead to the annulment of the award, although this is no longer automatic.

For example, in a recent case, it was held that the arbitrator appointed by the respondent had violated this obligation as he had not disclosed that he worked during more than ten years in the firm where the respondent's counsel was an associate and that he was consulted several times by this firm after that period.[126)] Similarly, an arbitrator was held to have violated this obligation of disclosure as he did not reveal all elements concerning his relationship with the party that had appointed him.[127)]

As for the French CCP, the KAA sets out the obligation of disclosure for arbitrators[128)] in very broad and general terms. It could thus be suggested, given the less demanding threshold imposed by Korean courts on this aspect, that the new version of the KAA would provide further details on the exact disclosure

123) Article 123-6 of the French Education Code.
124) Article 1456 CCP.
125) This obligation is foreseen in Art. 6 ICSID Rules, in Art. 11 UNCITRAL Rules and Art. 11 ICC Rules.
126) CA Paris, 10 March 2011, *Rev. arb.* 2011, Issue 2, p. 569.
127) Cass. civ. 1ère, 20 March 2013, No. 12-18238.
128) Article 13(1) KAA.

requirements for arbitrators willing to accept a mission.

2) Independence and impartiality of arbitrators

The independence and impartiality of arbitrators, completely intertwined with the previous topic, have become increasing concerns for arbitrators as they have remain powerful grounds for challenging arbitral awards by those whose independence and impartiality have been questioned.[129]

The independence of the arbitrator concerns the absence of professional or personal relationships between him/her and any other person involved in the arbitral proceedings (party, counsel, co-arbitrator, etc).

The impartiality of the arbitrator relates to the equal treatment of the parties and the absence of prejudice – or preconceived idea – concerning the subject or parties in the dispute, the legal points at stake, etc. Impartiality is more difficult to verify as it is much more subjective than the question of independence.

After a set of decisions setting aside international awards on this ground,[130] the French Court of cassation has recently relaxed its requirements on this issue. In order to allow the Court of cassation to perform its control, an Appeal Court has to give the grounds for which it decided that the relationship between an arbitrator and the law firm of a party, for example, created a reasonable doubt on the independence and impartiality of that arbitrator.[131] As a result, the absence of disclosure is no longer an automatic event triggering the annulment of the award.

The KAA sets out two grounds on which an arbitrator can be challenged: the arbitrator does not possess the qualifications on which the parties agreed or there are some circumstances giving rise to justifiable doubt regarding the impartiality and/or independence of the arbitrator.[132]

3) Liability: new fronts and frontiers.

Arbitrators are only liable for acts or omissions falling within the exercise of

129) Article 1456 CCP.
130) Cass., civ 1ère, 10 October 2012, *Rev. arb.* 2013, Issue 1, p.129.
131) Cass., civ 1ère, 10 October 2012, *op. cit.*
132) Article 13(2) KAA.

their mission. No liability exists on the basis of the content of the award, such as an error of judgment, or a factual or legal error, unless these errors are attributable to fraud or distortion of fact and/or evidence from an arbitrator.

The liability of an arbitrator may be different regarding which obligation has been violated (e.g. violation of the obligation of diligence, violation of the obligation of disclosure, etc).

The liability, on disciplinary grounds, may be applied by the arbitral institutions which can exercise a legal action or request the refund of the fees. As in many other fields, another type of practical sanction results from the institutions' or practitioners' unwillingness to appoint the candidate in further matters.

The civil liability of the arbitrator may be engaged since there is an implicit contract concluded between the arbitrator and the parties. But that would require some evident negligence on the part of the arbitrator. For example, after an arbitral tribunal had rendered the award beyond the arbitration time-limit, the French Court of cassation held that the arbitrators were responsible for violating the requirement to render an award within the time set, which constitutes a clear and straight forward duty falling on the arbitrators' shoulders.[133] In an extreme case, the arbitrator had not revealed that he had worked as a counsel for the respondent. Beyond the challenge and validity of the very award he had rendered, he was also considered civilly liable and was forced to refund the arbitration fees he had earned out of the arbitration. [134]

Also, the criminal responsibility of the arbitrator may be invoked. To the best of our knowledge, there is no decision rendered so far[135] on this topic but for instance, in domestic arbitration, arbitrators may expose themselves to criminal law consequences,[136] if they violate the secrecy of the deliberations.[137]

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133) Cass. civ. 1ère, 6 December 2005, No. 03-16.572. (unpublished).

134) *CA* Paris, 9 April 1992, *L'Oreal, Rev. arb.* 1996, Issue 3, p. 483; CA Paris, 30 June 1995, *Rev. arb.* 1996, Issue 3 p. 475-483.

135) See however the now famous "Tapie" saga, a domestic arbitration case, involving French politics and which led to a still pending criminal prosecution against at least one arbitrator.

136) Article 378 of the French Criminal Code.

137) Article 1479 CCP.

(3) The Insulation of Arbitral Proceedings From Internal and Outside Attacks.

1) Increase of autonomy and powers of arbitrators

French judges cannot interfere in arbitral proceedings as an international arbitral tribunal is an autonomous jurisdiction.[138] French courts have thus refused to rule on the request made by one of the parties with the aim of preventing an arbitral tribunal from pursuing its mission.[139]

The arbitrators have broad powers to administer arbitral proceedings, including according to efficiency parameters, as long as the rights of the defence and the principle of due process are not violated.[140]

2) Importance and weight of due process

The arbitrators have the obligation to guarantee due process (including equality) in the course of the arbitral proceedings.[141] For instance, arbitrators cannot communicate *ex parte*, i.e. with only one party, without informing or copying the other(s).

Compared to public policy challenges, which often go to the merits of the case, these procedural aspects tend to become more effective grounds for successfully challenging an award.

3) New procedural principles: loyalty and efficiency

This is a new procedural principle provided for in the statute, and for which practitioners still have little distance: parties, including their counsels and arbitrators shall all be loyal towards each other.[142] It is often deemed that the principle of *estoppel* is part of the loyalty principle.[143]

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138) Cass. civ. 1ère, 12 October 2011, No.11-11058. Available at http://www.juricaf.org/ arret/FRANCE-COURDECASSATION-20111012-1111058.

139) Cass. civ. 1ère, 12 October 2011, No.11-11058, *Bull. civ. I*, 2011, No. 163.

140) CA Paris, 24 February 2013, *Rev. arb.* 2014, Issue 1, p.83, comm. by P. Duprey, C. Fouchard.

141) Article 1464 CCP.

142) Article 1464 CCP

143) Paris, 12 September 2002, *Rev. arb.* 2003, Issue 2, p. 173 comm. by M-E. Boursier; Cass.,

As seen in various parts of this presentation, efficiency is one of the major objectives the new French Arbitration Act has attempted to achieve. But this aim was not only implicitly contemplated in some provisions (for example on the very limited formal requirements applied to an arbitration agreement): an explicit provision[144] has now been included in the law to impose such an obligation between the parties, including the counsels, and the arbitrators. It covers all stages of the arbitration, including one that can substantially delay the entire proceeding: the document-production phase.

There is yet no case law on these new principles.

(4) Setting aside and recognition

1) Concerning recognition and enforcement

Every year, there are very few decisions (as an average out of more than hundreds of cases) that set aside awards or refuse their recognition. Most of them involve domestic disputes.

For example, the French court ordered the partial annulment of the arbitral award on the ground of the violation of public policy principles due to the extinction of improper debts in collective insolvency proceedings.[145] In another case, the Paris Court of Appeal decided on the annulment of the arbitral award as the arbitral tribunal was not properly constituted. A Court of Appeal had annulled the order of the President of the Commercial Court which appointed one of the arbitrators.[146] The Court of Appeal of Paris also set aside the award on the ground of the absence of arbitration agreement as the submission agreement did not specify the object of the dispute and there was no agreement between the parties before the beginning of the proceedings.[147]

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civ. 1ère, 6 July 2005, *Rev. arb.*, 2005, Issue 4, p. 993, comm. by Ph. Pinsolle.

144) Article 1464 CCP.

145) CA Paris, 11 February 2010, *Rev. arb.* 2010, Issue 2, p. 380.

146) CA Paris, 18 March 2010, *Rev. arb*, 2010, Issue 2, p. 388.

147) CA Paris, 23 March 2010, *Rev. arb*, 2010, Issue 2, p. 389.

2) Violation by the arbitrators of international public policy less subject to scrutiny

The control performed by the French judges regarding the violation of international public policy by the arbitrators remains narrow.[148] French courts will only assess whether to admit or refuse the incorporation of an award into the French legal order, on the basis of a manifest violation of a foundational principle of French law – a very high threshold – and will thus not review the merits of the case. [149]

3) Restrictive powers of annulment and recognition judges

In presence of an unenforceable (inapplicability of the arbitration agreement to employees), but valid arbitration clause, the court of appeal that has set aside the award cannot rule on the merits.[150] The court that heard the annulment case, being deprived from any power, should send the parties to seize the judge which has jurisdiction to settle again the case, without having to indicate which judge.[151]

Like in France, Korea belongs to those rare Asian pro-arbitration jurisdictions and its courts very rarely set aside awards rendered in Korea. For example, in a very recent case, the Seoul High Court overturned a ruling of the Seoul District Court that declined to enforce an award in favor of a UK-based company against a South Korean broadcaster, on the basis that the award rendered was not concrete enough to be enforced.[152] The Korean High Court declared that an award can only be set aside or refused enforcement under the grounds set out in article 36(2) KAA, and that the difficulties to enforce in practice the award should not come into account. In another case, the defendant attempted to resist enforcement in Korea alleging a fraudulent conduct on the part of the plaintiff.

148) E. Gaillard, "La jurisprudence de la Cour de cassation en matière d'arbitrage international", *Rev. arb.* 2007, Issue 4, p.714.
149) Cass. civ. 1ère, 12 February 2014, n° 10-17076, *Bull. Civ.* No. 2.
150) Cass. civ. 1ère, 6 March 2013, No 12-15.375, *Bull civ*, No. 31.
151) Cass. civ. 1ère, 6 March 2013, No 12-15.375, *Bull civ*, No. 31.
152) Seoul High Court, 17 January 2014, cited in Douglas Thomson, "Seoul court recognizes award that can't be executed", *GAR*, 23 January 2014.

The Court rejected his arguments, considering that enforcement could only be refused in case of objective and compelling evidence of fraudulent conduct, which was not proved.[153)]

Nonetheless, a few cases have still refused to enforce arbitral awards. For example, the Seoul High Court refused to enforce an ICC arbitral award against a South Korean state-owned entity on the ground that no arbitration agreement existed between the parties.[154)]

The New York Convention, ratified by Korea in 1973, and the Civil Procedure Code are the only tools a party can rely upon to seek recognition and enforcement of a foreign arbitral award in Korea. It usually takes between eight months and one year to obtain a first decision. However, it is possible to be granted a provisional decision, which is subject to appeal.[155)] Also, after the recognition or the enforcement of an award, no action for annulment is admissible.

The frame of this article provides a good occasion to compare the French and Korean provisions pertaining to the legal grounds to set aside an international award in those two countries.

153) Korean Supreme Court Decision n° 2006Da20290, rendered on 28 May 2009.

154) Seoul High Court, 16 August 2013, cited in Douglas Thomson, "Seoul court rejects Lone Star enforcement", *Global Arbitraion Review*, 6 September 2013.

155) Y. S. Lee, ≪Korean Arbitration and ROC arbitration awards≫, *Yulchon*, p. 5.

<Table 1>

In FRANCE: Based on article 1520 CCP, an international award made in France may only be challenged on the following five limitative grounds (article 1520 is substantially identical to prior article 1502):	In KOREA: The KAA provides that the court may set aside an arbitral award when any of the following grounds are present (KAA art 36(2)):
Where the arbitral tribunal wrongly upheld or declined jurisdiction;	The arbitration agreement is not valid due to a limited party's capacity; the arbitration agreement is not valid for a reason other than the limited capacity of a party under the law to which the parties have agreed to subject it (or, failing any indication thereof, under the law of Korea);
Where due process was violated;	The party, who make the application, was unable to present its case in the arbitral proceedings;
Where the arbitral tribunal ruled without complying with the mandate conferred to it;	The arbitral award contains decisions on matters beyond the scope of the arbitration agreement or the claims in the arbitral proceedings;
Where the arbitral tribunal was not properly constituted;	The composition of the arbitral tribunal or the arbitral proceedings were not in accordance with the provisions of the laws of Korea (or the agreement of the parties, where the parties reached an agreement on matters concerning the provisions of the law).
X	The dispute is cannot be settled by arbitration under the laws of the Republic of Korea.
Where recognition or enforcement of the award is contrary to international public policy.	The award rendered is contrary to public policy.

3. New and Pending Issues

(1) Towards more transparency

Arbitration is often perceived as a secretive justice, a way to avoid a public trial. Even if these arguments are often heard or can have some merits, they should be nuanced. Indeed, the first two motivations to go to arbitration are the involvement of the parties in all steps of the proceedings and the possibility for parties from different countries to have a neutral judge. Confidentiality is thus not a primary parameter when opting for arbitration, though there can be very legitimate reasons to keep a dispute away from the public domain, including but not limited to trade secrecy.

At the same time, transparency seems to correspond to an increasing demand or aspirations amongst economic actors nowadays,[156] especially when a State is involved in a dispute. For that reason, the principle of confidentiality, as a matter of compromise, was provided for in the 2011 French Arbitration Act, but only for domestic arbitration matters.[157]

The KAA does not have any express provision prohibiting the disclosure of information related to arbitral proceedings. As a consequence, arbitrations governed by the KAA are not presumed to be confidential.[158] However, the KAA does not exclude confidentiality agreements, and they are enforceable under Korean law. Accordingly, parties may ensure that their dispute and the related arbitration proceeding will be kept confidential by stating so in the arbitration agreement or stipulating it in a separate agreement providing for confidentiality.

156) F. Pertier "Paris renforce son droit de l'arbitrage", *La Tribune*, 22 February 2011, p. 27.
157) Article 1464 CCP.
158) B. Hughes, S. Lee, "Towards a uniform approach to confidentiality in arbitration: a role for the new IBA Rules", *IBA Arbitration Newsletter*, April 2012, p. 43.

(2) Arbitrability: subjective versus objective

1) Subjective arbitrability

It is noteworthy that public entities often use arbitration for their international transactions and that their co-parties tend to require such an ADR before concluding any contract with such State counterparts.

In France, when and if the dispute is domestic, public entities cannot go to arbitration.[159] Conversely, in international arbitration, these entities can enter into arbitration under certain conditions.[160] There is a recent tendency by French courts to be more restrictive regarding arbitration when the matter involves a State or a public entity. For instance, regarding the immunity of execution, a specific and explicit renunciation is required to waive this immunity.[161]

Also, in France, one should bear in mind that there is a fundamental dichotomy of regimes between the commercial and the administrative systems. State entities or the State itself cannot invoke their own national rules to challenge an arbitration agreement they had agreed to.[162] The validity of international awards should be examined regarding the rules applicable in the country where their recognition and enforcement are sought, thus under French law when such recognition or enforcement requests are submitted to a French judge.

Concerning the jurisdiction of the French court regarding international awards involving a French state entity, two recent cases should be recalled here. In the first, it was held that jurisdiction over international awards rendered in France and related to administrative issues should be split between judicial (civil) and administrative courts. From now on, the action for annulment of an award rendered in an international dispute arising from a contract concluded by a public authority falls within the jurisdiction of the administrative courts.[163] In

159) Articles 2059 and 2060 of the Civil Code.
160) Cass. civ. 1ère, 2 May 1966, No.14798, *J.C.P.* II 14798.
161) Cass. civ. 1ère, 28 March 2013, No. 11-13.323 (three decisions), *Rev. arb.* 2013, Issue 4, p. 989.
162) Cass. civ. 1ère, 2 May 1966, *op. cit.*

the second case, the French Council of State (*Conseil d'Etat*) broadened the jurisdiction of the administrative courts by placing the enforcement of the awards rendered abroad under their control. Consequently, arbitral awards related to contracts subject to a mandatory regime of French administrative law fall within the jurisdiction of the administrative courts, whether the seat of arbitration is in France or abroad. However, this solution, which is the subject of much debate today in France, is yet to be clarified and may lead to difficulties in practice. The French lawmaker's intervention would thus be needed to clarify this issue.[164]

2) Objective arbitrability

As already mentioned, article 2060 of the French Civil Code provides that public policy matters cannot be resolved through arbitration. For instance, family or inheritance matters cannot be settled by arbitration.

Under the KAA, arbitrability is restricted to disputes "*under private law*", and disputes that are not between two private parties (e.g., patent claims or antitrust violations) can be settled by arbitration. Indeed, as the criteria are set according to the nature of the dispute (i.e. whether it concerns disputes arising out of private law) and not to the identity of the parties, even a state entity could enter into an arbitration agreement as long as the underlying transaction involves private law. It is understood that disputes relating to criminal, constitutional or administrative law cannot be subject to an arbitration agreement.[165] In addition, disputes related to purely family matters (e.g., validity of a divorce or adoption) cannot be settled by arbitration. However, all these issues may be heard and decided by an arbitral tribunal to the extent that the ultimate relief does not relate to the rights and obligations of third parties, a public or a family relationship.

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163) Tribunal des Conflits, 17 May 2010, *Rev. arb.* 2010, Issue 2, p. 275, comm. by M. Guyomar.

164) Conseil d'Etat, 19 April 2013, *Rev. arb.* 2013, Issue 3, pp. 764-778.

165) K. Kim, South Korea, *Arbitration Guide IBA Arbitration Committee*, September 2012, spec. p. 7.

3) Arbitration in corporate and bankruptcy disputes

Arbitration is largely admitted in corporate dispute, such as when the clause is inserted in articles of association of companies, in shareholders agreements and in documents applicable to internal relationships within groups of companies.[166]

The use of arbitration is largely admitted in this field, even though public policy provisions may be applicable.[167] The arbitral tribunal will then have to respect these provisions.

There are still some doubts concerning arbitrability of the decision of nullity or dissolution of a company because of a split of old decisions in that respect, some ruling in favor of such arbitrability[168] while others had not.[169] Nonetheless, the general trend is very favorable to arbitrability in this field. For example, in a recent case, it has been recognised that when the arbitration clause is inserted in the article of association, the company itself is bound.[170]

Regarding the issue of corporate bankruptcy, the opening of insolvency proceedings against a company can contain the field of arbitrability on the ground of public policy considerations. French Courts consider that they have exclusive jurisdiction over disputes related to insolvency proceedings.[171] However, it has recently been stated that the insolvency of a party does not stand *per se* in the way of arbitral proceedings. In a particular case, in which the company at stake was Spanish, it was reminded that Spanish law did not prohibit arbitration in case of insolvency proceedings.[172]

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166) C. Seraglini et J. Ortscheidt, *Droit de l'arbitrage interne et international*, Montchrétien LGDJ, 2013, p. 161, § 140.

167) CA Paris, 6 January 1984, *Rev. arb.* 1985, p. 279.

168) Cass. com., 17 July 1951 (unpublished).

169) Cass. com., 30 January 1967, *Rev. arb* 1967, p. 92.

170) CA Paris, 24 February 2013, *Rev. arb.* 2014, Issue 1, p.83, comm. by D. Duprey, C. Fouchard.

171) Cass. Com., 8 Juin 1993, *Bull. civ. IV*, No. 233; Cass. com., 14 January 2004, *Bull. civ. IV, n°10*; Cass. com., 2 June 2004 (two decisions), *Bull. civ.* I, No. 110 et 112.

172) Cass. civ. 1ère, 28 March 2013, No.11-27.770, *Pirelli, Rev. arb.* 2013, Issue 3, pp. 746-749.

4) Arbitration in intellectual property disputes[173)]

Since a law dated on 17 May 2011, it is now possible to enter into an arbitration agreement for intellectual property rights.[174)]

Regarding industrial property, there are several obstacles to arbitration concerning parties (employees or public entities), and concerning the subject matter of the dispute (existence of industrial property rights and performance of intellectual property rights). In 2013, the Court of cassation ruled for the first time on the arbitrability of the validity of a patent. The Court stated that disputes involving the validity of a patent as an incidental question are arbitrable, while those addressing the validity of patents as a main claim are not.[175)]

In Korea, to evaluate the arbitrability of intellectual property disputes, it is necessary to examine the specific types of rights and disputes at issue.[176)] A division has to be made between rights that require registration (e.g. patent, trademark, design, trade name rights) and those that do not (e.g. copyright and other creative rights). Rights that do not require registration are generally arbitrable. Concerning registration rights, their infringement is generally considered arbitrable, while issues regarding their validity are still subject of debate. However, it is expected that the scope of the arbitrability regarding disputes relating to intellectual property will be expanded in the future

5) Validity of arbitration agreements related to employment contracts or contracts of consumption

In 2001, the validity of an arbitration agreement concluded in a contract related to the performance of a business/professional activity has been

173) ≪Les obstacles à l'arbitrage en droit de la propriété industrielle au lendemain de la loi du 17 mai 2011≫, Communication Commerce électronique n°2, February 2012, étude 4.

174) Articles L. 521-3-1, L. 331-1, L. 615-17, L. 622-7, L. 623-31, L. 716-3, L. 716-4, L. 722-8, and L. 522-1 of the Code of Intellectual Property, by referral to the dispositions of the Civil Code.

175) Cass. civ. 1ère, 12 June 2013, *Cah. arb.* 2014, Issue 1, pp. 73-82, comm. by I. Léger.

176) Gyooho Lee, Keon-Hyung Ahn & Jacques de Werra, "Euro-Korean perspectives on the Use of Arbitration ADR mechanisms for Solving Intellectual Property Disputes", *LCIA Arbitration International*, Vol. 30, n° 1, 2014, p. 91, spec. pp. 103-106.

recognised.[177] The summa division between professional law and consumption law has been consecrated, superseding thus the civil versus commercial distinction.

What about an arbitration clause in a consumer agreement or in a contract of employment?

Regarding a consumer agreement, the text excludes the possibility of stipulating an arbitration clause in domestic arbitration. Arbitration clauses are besides listed (in a "*grey list*") in the French Code of consumption, in which the professional concluding an arbitration agreement with a layman must prove that the clause is not unconscionable.[178] In international arbitration, according to the *Rado*[179] and *Jaguar*[180] decisions, the arbitration agreement is not obviously void or unenforceable against consumers. The dichotomy of solutions between domestic and international arbitration is thus a fact today, but is not really satisfactory in terms of predictability.

Regarding domestic employment contracts, the arbitration clause stipulated therein would not be void (an employment contract is concluded due to a professional activity) but shall be unenforceable against the employee due to the exclusive jurisdiction attributed to the French Labour Courts.[181] Nonetheless, an agreement to arbitrate concluded after the dispute between the employer and the employee is valid since a decision of 1984. Thus, the jurisdiction is not always exclusive and it is possible to enter into arbitration under some limited circumstances. In international arbitration, some decisions have ruled that such a clause could be enforceable against employees. Once the dispute has arisen, only the employee has a choice and can waive his right to go before a state court.[182]

In Korea, there are currently no special provisions regarding arbitration clause included in consumer or employment contracts, but there seems to be some debates on whether or not it would be necessary.[183]

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177) Article 2061 of the Civil Code.
178) Art R.132-2-10 of the Consumption Code.
179) Cass. civ. 1ère, 30 March 2004, *Rev. arb.* 2005, Issue 2, pp. 115 – 118.
180) Cass. civ. 1ère, 21 May 1997, *Rev. arb.* 1997, Issue 3, p.537.
181) Article L. 511.1 of the Labour Code.
182) Cass. soc., 16 February 1999, *Bull . civ. IV*, No. 78.

6) Arbitration in commercial leases

Regarding commercial leases, many disputes have recently arisen on the lease amount or on the eviction compensation. In these cases, an expert is always needed. This is why many have argued that it might be better to allow the use of arbitration in these circumstances, in order to nominate an expert arbitrator and thus save time and cost.[184]

Arbitration agreements in commercial leases are valid, except if the contract leads to a violation of public policy provisions regarding commercial leases (e.g. revision of the rent or remedies in case of unfair eviction). However, there is an exclusive jurisdiction of the first instance judge in specific matters concerning commercial leases. However, in reality, this is not an exclusive and public policy jurisdiction.

As mentioned above, an arbitration agreement is valid between parties if it has been concluded as a result of their professional occupation,[185] but there are uncertainties regarding the interpretation of this provision.

Before the Act n°2003-699 dated 30 July 2003 on the *quantum* of technological risks, the commercial lease was not the object of any statutory or legislative provisions. Then, with this new act, it has become mandatory to annex the risk situation in certain areas. Apart from that obligation, there is no other specific requirement. However, there is a list of forbidden clauses (such as clauses that prevent the right to renew a lease, clauses that forbid the tenant to give away his lease, etc.).[186]

There are still pending questions regarding the arbitrability of matters concerning the three-yearly review, the fixation of the rent at the market value after the application of the escalator clause, or the renewal of the lease. [187]

183) See "Final Survey for Law Revision Committee KAA amendments", 29 May 2014.
184) N. Rontchevsky, "L'arbitrage dans les baux commerciaux depuis la loi NRE", *Dalloz, AJDI* 2002, p. 270.
185) Article 2061 of the Civil Code.
186) Articles L. 145-15 and L.145-16 of the Commerce Code.
187) J-P Blatter "Liberté contractuelle dans la rédaction des baux commerciaux et modes alternatifs de règlement des conflits", *Dalloz, AJDI*, 2003, p. 921.

7) Arbitration and property right

The objective arbitrability of a dispute is based on the availability of the rights. This distinction is often associated with the dichotomy between patrimonial rights, which are in principle arbitrable, and "extra-patrimonial" rights, which are in principle not arbitrable. Regarding disputes arising over property and real estate rights, the Supreme Court held that such disputes are of a "patrimonial" nature and therefore arbitrable. [188]

Ⅳ. Conclusion

To conclude, one may say that French arbitration law (both its statutes and even more its long-standing case law) has taken a very approach towards arbitration making it completely autonomous from the judiciary. It is probably, with other parameters, one of the major causes explaining why Paris remains one of the leading arbitration venues worldwide. This state of fact stems from very famous, some old, but now well-rooted decisions, all auspicious of a now very liberal statutory regime, modified in 2011 to incorporate this modern case-law. The fact that France is a very pro-arbitration jurisdiction transpires from the way the scope and validity of arbitration agreements are construed and implemented (state courts almost systematically denying jurisdiction in the presence of an arbitration clause, even defective), up to the manner through which arbitral awards are enforced (and rarely set aside), all the way through a judicially protective attitude (by the *juge d'appui* or the French supporting judge and now through a statutory principle of "expediency") of the arbitration proceedings' efficiency.

On all the aspects – contractual, procedural and judicial – the 2011 French reform may provide the Korean legislator with some interesting routes to explore when amending the Koran Arbitration Act. Undeniably, the KAA already offers a modern and liberal regime to practitioners and international companies willing to resort to arbitration for their international and commercial disputes. Yet, some

188) Cass. civ. 1ère, 8 October 2009, *Rev. arb.* 2011, Issue 1, p.126, comm. by L. Perreau-Saussine.

technical improvements may be welcomed and the Korean practitioners' readiness to hear – and perhaps incorporate some of – what is going on in other pro-arbitration jurisdictions is *per se* a sign that the KAA reform will most probably go in the right direction.

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