European Company Law

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Book Review

Bob Wessels
Arbitration and Company Law in France

With more than 3.1 million companies registered in France,¹ corporate law is a very dynamic field of French law. All the more so as French corporate law is very much intertwined with strong connections with other fields such as commercial and civil law. For instance, it is Article 1832 of the French Civil Code (FCC) which defines corporations, i.e., as a creation of ‘two or several persons who agree by a contract to appropriate property or their industry for a common venture with a view to sharing the benefit or profiting from the saving which may result therefrom (…)’.² In accordance with this definition, corporations can thus either be civil or commercial in nature.

As one might expect, the dynamism of this field generates a significant number of disputes colloquially referred to as corporate disputes. Legal authors have defined such disputes as being divided into two categories of claims, i.e., contractual and institutional.

This classification stems from the dual nature of legal corporations, which are, on the one hand, ‘contractual’ (e.g., based on the shareholders’ agreement to set up the company) and, on the other hand, ‘institutional’ (because legal entities are governed by statutory rules which are also in the interest of third parties).³ For example, contracts concluded between shareholders (such as shareholder, share transfer and joint-venture agreements) are obviously contractual in nature, whereas corporate resolutions (e.g., the exercise of shareholder rights by majority including abuses by majority and minority factions, appointments of directors or provisional administrators, regulated agreements (‘conventions réglementées’)) generally fall within the institutional category.

Specific considerations will attach to corporate disputes arising out of institutional claims involving public policy issues because they have ricochet effects on third parties (e.g., the creditors of a corporation the dissolution of which has been ordered pursuant to a claim brought by a shareholder as it will have a significant and obvious impact on all third parties dealing with this corporation as it ceased to exist). Consequently, the use of arbitration as a means for dispute resolution is not always an available option for litigants.

We will therefore identify the main criteria which define the types of disputes that may be submitted to arbitration under French law (1). As applied to corporate disputes, this criteria will provide a scope of arbitrability of corporate disputes under French law (2).

1. ARBITRABILITY IN FRANCE

The arbitrability of a dispute lies in whether a dispute may be validly submitted to arbitration, instead of to the jurisdiction of a State court.⁴ The classic approach is thus to consider arbitrability as an ‘exception to the jurisdiction of the State’.⁵

But arbitrability is not a static principle; it evolves notably through the evolution of case law. Thus, what previously could not be submitted to arbitration may become arbitrable and vice versa. It also has a definite nationalistic character: what may not be arbitrated in one State may be arbitrated in another.

In the absence of a conflict of laws, arbitrability as it is understood under French law will apply to a dispute seated in France. But in cases where foreign laws also apply to the dispute, the French concept of arbitrability will remain relevant in at least three situations:

First, the issue of arbitrability might come up at the outset of the litigation, when a party, despite an arbitration clause, refers its dispute to a French court. In such a situation, according to the competence-competence principle, the judge would normally decline jurisdiction. However, pursuant to Article 1448 of the French Code of Civil Procedure (FCCP), French courts retain jurisdiction if the arbitration agreement is manifestly void or not

⁵ Patrice Level, ‘L’arbitrabilité’, Rev. arb., 1992, p. 213. (Free translation from French.)
applicable. For instance, an arbitration agreement is manifestly void if the matter of the dispute can obviously not be submitted to arbitration. In performing this review of the arbitration agreement, the judge will apply the lex fori, i.e., French law.6

Second, the French judge may apply the French concept of arbitrability when faced with an action to set aside an award. Indeed, pursuant to Articles 1492 1°, 1492 5°, 1520 1°, and 1520 5° of the FCCP, the judge may set aside an award if (s)he finds that, inter alia: (i) the arbitral tribunal wrongly upheld or declined jurisdiction, or that (ii) the challenged award contradicts the French conception of international public policy. In this respect, the determination of these findings sometimes revolves around the issue of arbitrability. For instance, if an arbitral tribunal seated in Paris held that it has jurisdiction over a divorce dispute pursuant to a foreign law, the award would very likely be set aside on the basis that the arbitral tribunal lacked jurisdiction because such disputes are not arbitrable under French law.7

Third, pursuant to Articles 1499 and 1525 of the FCCP, the aforementioned Articles also apply to challenges of the French exequatur of an award. Thus, when the issue of arbitrability is raised before French courts at the stage of enforcement proceedings, French law will also be applied determining whether the award has violated any rule on inarbitrability.8

Hence, the drafting and indeed the entering into an arbitration agreement requires a minimum if not an important degree of anticipation of the types of potential disputes that may ensue between the parties, if one is to ensure the effectiveness of the arbitration agreement under French law.

1.1. Conceptual Scope of Arbitrability in France

France is home to a very liberal conception of arbitrability. Under French law, three main elements determine whether a dispute is arbitrable or not.

The identity of the litigants. For example, a dispute will generally not be arbitrable if the French State is a party. This is referred to as subjective arbitrability (ratione personae).9

The subject-matter of the dispute, i.e., those particular sectors which are, by their very nature, not arbitrable. These are mainly related to the State’s regal prerogatives, such as matters regarding civil status or arising under criminal litigation.10 This is referred to as objective arbitrability (ratione materiae).

The domestic or the international nature of the dispute. Indeed: the fact that a particular matter is nonarbitrable in a domestic [context] does not necessarily mean that it will be nonarbitrable in an international setting . . . [i]n international cases, national conceptions of public policy and mandatory law should be moderated, in light of the existence of competing public policies of other states and the shared international policy of encouraging the resolution of international commercial disputes through arbitration.11

In this latter respect, Article 1504 of the FCCP12 refers to an economic criterion to define whether an arbitration is international: ‘An international arbitration is the one that concerns interests of international trade.’13

1.2. Overview of Relevant Statutory Provisions and Case Law on the Matter of Arbitrability in France

With regard to domestic arbitration, both case law and a number of statutory provisions help define what may be arbitrated and what may not (1). In the field of international arbitration, however, only case law provides relevant guidance in the absence of relevant statutory provisions (2).

1.2.1. With Respect to Domestic Arbitration

The section of the FCC entitled ‘Arbitration agreement’ provides guidance on the question of the arbitrability of disputes, and sets the criteria for both subjective and objective arbitrability. Other statutory provisions and case law also have an influence on the arbitrability of domestic disputes.

Pursuant to Article 2059 of the FCC, “all persons may enter into a compromise agreement on rights of which they have the free disposal.”14 This provision suggests that all natural persons and legal entities may enter into arbitration agreements to settle a vast array of disputes.

The apparent wide scope of said Article 2059 is, however, curtailed by the following Article 2060 which adds that:

One cannot enter into a compromise agreement about matters of status and capacity of the persons, matters relating to divorce and judicial separation or matters of disputes involving public bodies and institutions and more generally in all matters concerning public order.

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10 Ibid.
12 In the FCC part devoted to ‘Arbitration’, a first section running from Arts 1442–1503 relates to domestic arbitration while a second running from Arts 1504–1527 relates to international arbitration.
13 Translation from Legifrance. This economic criteria has been interpreted by the jurisprudence as corresponding to transfers of goods, services or currency across the border. See for instance Cass. Civ. 1, 26 Jan. 2013, n. 09-10.198, INSEEM v. Foundation Letten F. Sangidal.
14 Translation from Legifrance, (available at http://legifrance.gouv.fr/els/evaluations/en-English/Legifrance-translations). This Article also relates to objective arbitrability (cf. infra).
However, some categories of public institutions of an industrial or commercial character may be authorized by decree to enter into compromise agreements.\footnote{Ibid.}

In the domestic arena, Article 2060 therefore defines limits to the arbitrability of disputes both on 
ratione materiae and 
ratione personae bases.

1.2.1.1. Subjective Arbitrability (Ratione Personae)
Subjective arbitrability is of particular relevance with respect to State and public entities, consumers, and in the field of employment.

With regard to State and public entities, the general rule is that the latter are prohibited from entering into arbitration agreements in order to preserve the jurisdiction of, and hence the supervision by, administrative courts over entities held or controlled by the State.

This general rule has, however, been the subject of a certain degree of erosion.

For example, Article L311-6 of the French Code of Administrative Justice provides that disputes which involve public entities may be submitted to arbitration if the Law so provides. The French Code of Administrative Justice has thus carved out various exceptions such as for public entities dedicated to scientific and technological research,\footnote{Decree n. 2002-56 of 8 Jan. 2002.} the postal office,\footnote{Article L211–14, Code des transports.} or the French national railway company,\footnote{Translation from Legifrance, supra.} which are permitted to use arbitration as a means of dispute resolution.

With regard to consumers, Article 2061 of the FCC provides that '[e]xcept when there are particular legislative provisions, a compromissory clause is valid in contracts entered into on account of a professional activity,'\footnote{This Article was amended in 2001. The former version of Art. 2061 of the FCC provided that '[t]he arbitration clause is null and void unless the law provides otherwise.'} This Article considerably enlarged the number of subjectively arbitrable disputes.\footnote{Article R132-2, 10, Code de la Consommation; see also Cass. Civ. 1, 23 Feb. 2010, n. 09-12.126, note Maximin de Fontmichel, Petitier Affiches, n. 202, 11 Oct. 2010.} As such, an arbitration agreement entered into in the course of the litigants’ professional activities will most often be subjectively arbitrable.

Conversely, simple consumers cannot be bound by such clauses.

But Article 2061 does not prohibit consumers from validly entering into arbitration agreements after the dispute has arisen.

This is because French law distinguishes between arbitration agreements entered into before and after the inception of the dispute. In other words, either the parties are bound by a clause contained in the underlying agreement (‘clône compromissoire’), or an arbitration agreement entered into after the emergence of the dispute (‘comprims d’arbitrage’). The prohibition set by Article 2061 only applies to a pre-existing arbitration agreement, the so-called compromissory clause.\footnote{See Cass. Soc., 30 Nov. 2011, n. 11-12.905 and 11-12.906, Deloitte.}

With regard to employment law, Article L1411-4 of the French Labour Code is an exception to Article 2061 of the FCC pursuant to which arbitration agreements set out in employment agreements not binding on employees.\footnote{Public policy is undefined in that Article, except for the three categories expressly excluded from arbitration. See Jean-Louis Deloche, et al., Part II – Chapter 4: Institution or Arbitral Proceedings, in French Arbitration: Law and Practice: A Dynamic Civil Law Approach to International Arbitration 36–39 (2d ed., Kluwer L. Intl. 2009).}

1.2.1.2. Objective Arbitrability (Ratione Materiae)
Pursuant to Article 2059 of the FCC, ‘all persons may enter into a compromise agreement on rights of which they have the free disposal.

This implies that if the subject-matter of the dispute concerns rights which private persons do not have the freedom to dispose of (such as their civil status), the dispute will not be arbitrable. The classic example is that of a divorce which cannot be submitted to arbitration.

Article 2060 further limits the scope of objective arbitrability as it states that matters of public policy are also excluded from the purview of arbitration.\footnote{CA Paris, 22 Mar 1980 and Cass. Com., 21 Oct. 1982, p. 264, note J.-B. Blaise, JC Deuxas.} In other words, the parties cannot resort to arbitration to enforce a contract which violates public policy.

Consider an arbitration agreement the scope of which included disputes arising out of the performance of a cartel agreement, but not arising out of issues related to its validity. In this case, there had indeed been a breach of the cartel agreement and claimant obtained an award in its favour. But had this case been litigated before a State court, the cartel agreement would have been annulled on grounds of unlawful cause. In a subsequent challenge against the award, the award was thus set aside by the Court of Appeals on the basis that the arbitration agreement violated Article 2060.\footnote{This Article was amended in 2001. The former version of Art. 2061 of the FCC provided that '[t]he arbitration clause is null and void unless the law provides otherwise.'}

However, French courts have gradually limited the broad prohibition set by Article 2060. As a result, save for subject-matters which are still considered inarbitrable per se (e.g., civil status, divorce . . .), tribunals in domestic arbitration today have jurisdiction over matters which involve mandatory public order provisions provided the tribunal correctly applies such provisions (i.e., the arbitrability of the issues ruled upon by the arbitral
tribunal will be upheld in a subsequent challenge to set aside the award if said tribunal has made a correct application of the concerned public order provisions). French courts have thus liberalized (so to speak) the regime of objective arbitrability under domestic arbitration akin to what exists under international arbitration (cf. infra). 25

Although not expressly mentioned by Article 2060, matters such as criminal law or tax law are other examples of fields which remain outside the purview of arbitration. The important consequences such matters may have on society as a whole, or the imperium of the State, are sufficient justification to exclude such matters from the jurisdiction of private judges. But overall, the number of inarbitrable matters has decreased over time. As one author put it, notwithstanding ‘potentially expansive (and archaic) non arbitrability provisions of the Civil Code, and almost equally expansive historic judicial interpretations of those provisions, French courts have progressively narrowed the scope of non arbitrable matters.’ 26

Moreover, the French Commercial Code also expressly narrows the scope of non arbitrable matters. For example, its Article L721-37 confirms the objective arbitrability of commercial disputes: 28

The Commercial Courts hear:

1. Disputes relating to commitments between traders, credit institutions or between the foregoing;
2. Those relating to commercial companies;
3. Those relating to commercial acts between all persons.

However, parties are free to agree, at the time of contracting, to submit the above-mentioned disputes to arbitration. 29

In the end, ‘the objective of arbitrability, which is “an interest in protecting the public order”, loses strength little by little, while the scope of arbitrability grows.’ 30

The arbitrability of domestic commercial disputes under French law has thus become the principle rather than the exception.

1.2.2. With Respect to International Arbitration

The foregoing criteria do not readily apply to the determination of what may and may not be arbitrated in international arbitration. 31 In fact, French law is silent on the issue as applied to international arbitration.

French courts have therefore developed their own set of rules to assist in the determination of the appropriate criteria for arbitrability in this area. 32 The relevant jurisprudence thus consists of a ‘progressive elaboration of a specific liberal regime of international arbitration, as opposed to domestic arbitration.’ 33

With regard to objective arbitrability, the applicable jurisprudence has evolved through a number of decisions ranging from the denial of the arbitrability of disputes only involving public policy questions in 1954, 34 to a general acceptance of the arbitrators’ empowerment to rule upon the validity of contracts which are contrary to international public policy, 35 subject to a review of their award by ‘the annulment judge.’ 36

For example, the Court of Appeals of Paris has held that notwithstanding the fact that arbitrators are prohibited from issuing injunctions or fines in matters which concern economic policy of the European Union regarding competition law rules, an arbitral tribunal ‘can still rule on the civil consequences of a behavior deemed illegal under rules of public order that can be directly applied to the relations of the parties.’ 37

However, some matters such as criminal law and tax law remain outside the purview of international arbitration. As in domestic arbitration, these two fields are at the core of the principle of inarbitrability.

As for subjective arbitrability, it is of little significance in international arbitration. Indeed, the traditional prohibitions under Articles 2060 38 and 2061 of the FCC 39 have both been held to be inapplicable to international arbitration by the French Cour de Cassation.

Hence, public entities and even consumers may validly provide for arbitration agreements in international trade agreements. 40

26 Gary Born, supra, p. 964.
29 Free translation from French.
30 Laurence Ravillon, supra, p. 39 (Free translation from French).
31 This is essentially true regarding Arts 2060 and 2061 of the FCC. However, with regard to Art. 2059 of the FCC, as Christophe Seraglini and Jérôme Orsoni, in Droit de l’Arbitrage Interc et International, 2014, Lexisnexis, p. 548, s. 644 explain, ‘the French jurisprudence seems, in fact, to overlook the criteria of the free disposal of rights in international arbitration [. . . ,] preferring a more global approach on arbitrability’ (Free translation from French).
35 The scope of which is much narrower than that of domestic public policy.
38 Cass. Civ. 1, 2 May 1966, Galabdi, Bull. n. 236.
notable exception applies to employees who are parties to an arbitration agreement inserted in an international employment agreement as they may, regardless, escape an obligation to arbitrate if they so desire.41

Restrictions on matters that can be arbitrated in international arbitration are therefore far fewer than in the field of domestic arbitration.

2. ARBITRABILITY OF CORPORATE DISPUTES

The liberal trend under French law regarding the types of matters that can be submitted to arbitration is particularly true in corporate disputes (regardless of their contractual or institutional nature).42

The devil, however, is in the detail as there are several exceptions which, in some cases, create real questions as to whether a dispute arising under matter corporate in nature can be submitted to arbitration.

2.1. Subjective Arbitrability of Corporate Disputes in France

As between business persons, there should normally be little debate as to whether their disputes can be submitted to arbitration. Indeed, the subjective arbitrability of the dispute is of little relevance.

But if one considers a shareholder dispute where one of the shareholders is underage, and if the related contract was entered into by that underage shareholder without the authorization of his legal guardian, the obligation to submit any disputes to arbitration will not be binding on that underage shareholder.43

Moreover, in the case of a domestic dispute (i.e., not international), the agreement to arbitrate will only be binding on a natural person to the extent it was entered into in the context of that person’s professional activity. For example, corporate disputes involving civil companies, such as law firms or medical practices, may be submitted to arbitration.44

A counter-example, however, would be that of the so-called civil real-estate company (‘société civile immobilière’ or ‘SCI’). This type of corporation is often used by private individuals to organize and administer their real-estate assets, particularly in situations where assets have been inherited. Any ‘corporate’ dispute relating to such an entity would not be arbitrable because the relationship between the shareholders is not born out of their professional activities.

A more straightforward situation is with regard to corporations which are governed by the French Commercial Code. In accordance with the latter’s Article 721-3, 2°, disputes relating to commercial companies, i.e., regarding their by-laws, shareholder and management issues, and the dissolution and liquidation of such entities can be submitted to arbitration. This also extends to the State45 acting as the shareholder of such a corporation regardless of the domestic or international nature of the dispute.46

However, notwithstanding the objective arbitrability of such disputes involving corporations, the subjective inarbitrability may affect the ability of the State, acting as a shareholder, to submit a domestic dispute to arbitration. Indeed, French courts have construed Article 2060 of the FCC as a prohibition of the State from entering into arbitration agreements.47 Thus, a domestic dispute involving the State acting as a shareholder cannot be submitted to arbitration unless a specific decree or law has authorized it to enter into arbitration agreements.

2.2. Objective Arbitrability of Corporate Disputes in France

Objective arbitrability is more straightforward although, here again, there are some notable exceptions to be mindful of.

2.2.1. Examples of Objectively Arbitrable Matters

2.2.1.1. Shareholders’ Agreements

French courts have consistently held that disputes arising out of shareholders’ agreements may be settled before an arbitral tribunal.48

2.2.1.2. Sale of Shares

In international arbitration, the sale of shares should always be deemed arbitrable. As for domestic arbitration, provided the dispute concerns a sale of shares of a commercial corporation, it will also be objectively arbitrable pursuant to Article L721-3 of the French Commercial Code.49 This is true even if the sale is not undertaken in connection with a professional activity. For instance, if a retired individual sells his/her shares in a commercial corporation, said sale is not related to a professional activity and, therefore, the dispute arising out of such sale should be deemed arbitrable.41

As of today, the State is a shareholder in seventy-four companies. See Annual Report of the French Agency of the State’s Participations, (available at http://www.economie.gouv. fr/files/files/directions_services/agency-participations-etat/ANG-Panorama.pdf).

43 In conformity with Art. 2059 of the FCC with regard to domestic arbitration.
46 As to today, the State is a shareholder in seventy-four companies. See Annual Report of the French Agency of the State’s Participations, (available at http://www.economie.gouv. fr/files/files/directions_services/agency-participations-etat/ANG-Panorama.pdf).
inarbitrable pursuant to Article 2061 of the FCC. But because the sale is, in fact, commercial in nature, it is arbitrable pursuant to Article L721-3 of the French Commercial Code as said Article L721-3, 3° will prevail over the prohibition of Article 2061 of the FCC.  

Therefore, a key parameter to determine if a corporate dispute is arbitrable in domestic arbitration is whether it is commercial in nature. In other words, objective arbitrability prevails over the limits of subjective arbitrability set by Article 2061 of the FCC. In this regard, French case law has adopted a very liberal stance, holding that disputes even remotely related to the sale of shares of a commercial corporation should be commercial in nature and therefore arbitrable.

For example, a dispute arose from a non-compete clause inserted in a share purchase agreement of a commercial company. The buyers had filed a claim against the former executives of the company subject of the sale before a commercial court. The executives challenged the jurisdiction of the commercial court as they were not parties to the share purchase agreement nor were they merchants. The French Cour de Cassation nonetheless confirmed the jurisdiction of the commercial court on the basis that the dispute was commercial in nature as it was related to a non-compete clause inserted in a share of sales of a commercial company.

In another case, a shareholder, contemplating the sale of his/her shares in a corporation, retained a financial advisor to find a buyer. Even though the contract with the financial advisor had not been entered into for professional reasons, this contract was nevertheless held to be commercial in nature because it had been entered into in view of a potential sale of shares in a commercial corporation.

Shares disposals are thus a typical area where the French liberal trend is in favour of a very broad principle of arbitrability. The only exception is in domestic arbitration where the disposal of shares of civil corporations, sold for non-professional objectives, remains outside the purview of arbitration.

2.2.2. Matters Less Evidently Characterized as Arbitrable

Other issues, because they are more deeply imbricated with the corporation’s ‘social life’ or because they relate to the commercial public order, are more difficult to identify as being arbitrable.

2.2.2.1. Decisions Taken by the Shareholders’ Meeting (‘Assemblée Générale’)

Decisions taken by the shareholders’ meeting can be annulled. For example, in the event of an abuse of majority, domestic courts routinely annul the resolutions of shareholders’ meetings. If the corporation’s by-laws contain an arbitration clause, the minority dissenting shareholder may challenge the concerned resolution of the shareholders’ meeting before an arbitral tribunal.

Such a solution has been confirmed by the Court of Appeals of Paris which upheld the lack of jurisdiction of State courts to rule over such challenges in the presence of an arbitration clause contained in the articles of association.

2.2.2.2. The Liability of Company Representatives

As Professor Daniel Cohen remarked in an article published in 2003, the liability of a corporation’s legal representative is becoming an important topic in international private law, especially given the globalization of business. Should the behaviour of the legal representative give rise to a dispute with the company or its shareholders, there is a potential of conflicts between competing jurisdictions. Arbitration might therefore be the proper forum to avoid such conflicts.

Under French law, such disputes are arbitrable. For instance, the actus singuli action where a shareholder may initiate, in the name of the company, proceedings against the latter’s legal representative is a relevant example. In a recent case, the shareholder of a French corporation initiated an actus singuli action before an arbitral tribunal against its legal representative. Faced with an award which ordered the legal representative to pay damages to the company, the representative sought the annulment of the award before the Court of Appeals of Paris on the ground that the actus singuli action could not be submitted to arbitration. The Court of Appeals rejected the petition for annulment of the award, holding that such a dispute was arbitrable on the basis of both Article L721-3 of the French Commercial Code and the arbitration clause contained in the company’s by-laws.

2.2.2.3. The Appointment of an Ad hoc Administrator

Cases of minority abuses, i.e., where a company’s corporate affairs are blocked by a dissenting minority shareholder, are replete. In such cases, the other shareholders may seek the appointment of an
‘ad hoc administrator’. Said administrator may be sought to convene a shareholders’ meeting or to vote in the stead of the dissenting minority shareholder.  

In such cases, if an arbitration clause is contained within the by-laws or the shareholders’ agreement, the dispute will be validly submitted to arbitration. Arbitrators will have the same powers as do State court jurisdictions to solve the issue in the corporation’s interest, among which the power to appoint an ad hoc administrator. To our knowledge, a French court has never held that such appointments fall outside the powers of arbitral tribunals.  

In this regard, it must be borne in mind that the arbitrator, as the judge, has no power to decide in place of the governing bodies of the company. As one author underlined, ‘an arbitrator cannot intervene in matters related to the production of decisions that are the exclusive competence of corporate bodies.’ Such appointments therefore do not entail an instruction as to how the ad hoc administrator should vote.

2.2.2.4. The Nullity of the Corporation  
Issues regarding the mere constitution of a company are another example of the liberal stance of French law regarding arbitrability. A typical case is where a party seeks the annulment of the corporation on the ground that its shareholders failed to make their capital contributions.

For a long time, French jurisprudence systematically refused to allow such cases to be submitted to arbitration, notwithstanding pervasive criticism by authors of legal doctrine. It was not until 2002 that the French Cour de cassation finally admitted the arbitrability of such disputes.  

2.2.2.5. The Dissolution of the Corporation and Its Aftermath  
Notwithstanding the fact that Article 1871 of the FCC states that the right to seek the corporation’s dissolution is a matter of public policy, both French courts and the doctrine agree that the dissolution of a corporation may be submitted to arbitrators.  

A recent decision by the Court of Appeals of Paris has held that the arbitrability of such a dispute is subject to the right of every party to be heard; in other words, an arbitral tribunal may only validly order the dissolution of a corporation if the latter is a party to the dispute.  

The consequences of a dissolution may, however, be submitted to arbitration. A recent decision rendered by the Court of Appeals of Aix-en-Provence held that all disputes related to the dissolution of the corporation were governed by the arbitration clause contained in the by-laws.

2.2.3. Residual Limits to Objective Arbitrability  
Despite the wide acceptance of the principle of arbitrability of corporate disputes, arbitration is not possible regarding matters which are subject to the exclusive jurisdiction of the national courts. This is the case, for example, of insolvency proceedings.

Under French law, only State courts have the authority to inter alia commence, administer and wind-up bankruptcy proceedings, operate it under some form of receivership or administration, or rule on the liability of a legal representative for the debts of the company.  

Another area of inarbitrability concerns disputes that are subject to the jurisdiction of the administrative authority which oversees the operation of financial markets (in France, the Autorité des Marchés Financiers or ‘AMF’), such as disputes arising out of public tenders or securities trading.

2.3. Conclusion  
In the end, the distinction between institutional and contractual claims does not have a fundamental bearing on the scope of the arbitrability of corporate disputes.

If the arbitrability of contractual claims is to be expected, French courts have widened the goal posts to empower arbitral tribunals with jurisdiction over disputes which may involve matters of public policy in order to sanction conduct which violates principles of public policy.

As such, given the gradual disappearance of restrictions regarding the arbitrability of corporate disputes, particular attention must be given to the remaining exceptions.

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Johann Wolfgang Goethe-University, Frankfurt, Germany
E-mail: fleischer@mpipriv.de

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