

## PROCEDURE

- **An objection to the international jurisdiction of the French courts is a procedural plea**

In international disputes, litigants often challenge the jurisdiction of French courts. Their objective is to have the case referred to another court abroad, thus giving them more time and, eventually, to obtain a procedural advantage (defendants often prefer to be tried by the court of their domicile or place of establishment) or a substantial advantage (should the law applicable to this action before a foreign court be different).

The characterisation of this plea as a procedural plea has given rise to numerous questions in the past. Indeed, litigants have attempted to avoid the strict rules governing procedural pleas, which must in particular be raised before addressing the merits of the case. The French Supreme Court had already dismissed these attempts by stating that, even in a European context, the rules governing pleas of lack of international jurisdiction depended on the law of the forum and that pleas raised late were inadmissible by relying on the provisions applicable to procedural pleas (French Supreme Court, 1<sup>st</sup> Civil Chamber, 9 July 1991, Bull. Civ. I, no. 231).

Nevertheless, the French Supreme Court also held that the plea of lack of international jurisdiction is not identical to a plea of lack of territorial jurisdiction (between French domestic courts). It is true that such a challenge "*does not aim at sharing jurisdiction between the national courts but aims at depriving [the French courts] of the power to settle the dispute to the benefit of the court of a foreign State*" (French Supreme Court, 1<sup>st</sup> Civil Chamber, 7 May 2010, Bull. Civ. I, no. 106). This is the reason why it is possible to lodge a so-called immediate appeal before the French Supreme Court (*pourvoi immédiat*) against the appellate decision having ruled on a plea of lack of international jurisdiction without waiting for a decision on the merits. The Supreme Court thus applied to such pleas rules that differ, in this respect, from the rules concerning the pleas of lack of territorial jurisdiction (to the benefit of a court located elsewhere in France).

A Swiss company has recently attempted to take advantage of the reasoning of the French Supreme Court in this decision. It is only before the Court of Appeal that this company had, unsuccessfully, challenged the jurisdiction of the French courts. To attempt to render such a challenge admissible, it then argued, in the scope of its appeal before the French Supreme Court, that the objection to the international jurisdiction of the French courts could not be considered to be a procedural plea as it aims at challenging the French courts' power to rule on the claim, which would relate, according to the Swiss company, to the very right of the French courts to rule and not to their jurisdiction. The French Supreme Court dismissed this reasoning and recalled that any objection to

the international jurisdiction of the French courts is a procedural plea (French Supreme Court, 1<sup>st</sup> Civil Chamber, 23 May 2012, Bulletin to be published, *Pourvoi* no. 10-26.188).

With this decision, handed down by the plenary bench of the First Civil Chamber, the French Supreme Court is thus attempting to remove all ambiguities concerning the rules governing pleas of lack of international jurisdiction. It is *in limine litis*, before any other ground, that litigants will be allowed to raise an objection to the jurisdiction of French courts.

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