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Rules of Evidence (Civil Proceedings): Overview (France)

by Franck Poindessault and Milan Sikyurek, Watson Farley & Williams

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A Practice Note providing an overview of the rules governing disclosure and the admissibility of evidence in civil proceedings. It looks at the rules on the disclosure obligations of the parties, admissibility of evidence, witness evidence, the burden and standard of proof, as well as issues that arise in gathering cross-border evidence.

Evidence is fundamental to the outcome of any civil litigation case. Usually, the facts in issue in a case must be proved by evidence, and the court will decide the case on the evidence adduced by the parties.

One of the most challenging aspects for any cross-border practitioner is to adapt to the differences in the rules of evidence taking in various jurisdictions. These differences are evident in the manner in which evidence is produced, the issues surrounding relevance and admissibility, the probative value attached by the courts to the various types of evidence, and the principles of burden and standard of proof across jurisdictions. Further, these disputes often give rise to situations where one of the parties to the litigation must produce evidence located in a jurisdiction foreign to the forum of proceedings. These are important legal issues that a practitioner should be aware of since they largely determine the way litigation is conducted in all the major civil law and common law systems around the world and ultimately influence its result.

This Note provides an overview of the rules of disclosure and evidence in civil proceedings in France. In looks at:

- The rules regarding the disclosure obligations of the parties.
- Admissibility of evidence.
- Witness evidence.
- Expert evidence and the role of experts (court hired independent experts and party hired experts) in civil proceedings.
- The rules regarding the burden of proof and standard of proof in civil proceedings.
- The rules regarding cross-examination.
- Issues that arise in gathering cross-border evidence, including:
  - the applicable international treaties, agreements, and regulations governing cross-border evidence;
  - how to obtain foreign evidence for use in French civil proceedings; and
  - how to obtain evidence located in France for use in foreign civil proceedings.

Rules of Evidence and Evidence in Domestic Proceedings

The main source of the rules of evidence in civil proceedings is the Civil Procedure Code (*Code de procédure civile*). In addition, there are specific rules regarding evidence of civil obligations in the Civil Code (*Code civil*). The Commercial Code (*Code de commerce*) contains the rules of evidence for litigation arising in a business context.

Obtaining Evidence

Disclosure or Discovery Obligations

There are no disclosure obligations comparable to those in common law jurisdictions. However, under the adversarial principle, each party must inform all the other parties to the litigation of every document

presented to the court. Every party must be provided with copies of these documents. (Article 15, Civil Procedure Code.) If the parties are assisted by counsel, communication of the documents is made through an online platform accessible only by lawyers called *Réseau Privé Virtuel des Avocats*.

Role of the Courts in the Evidence-Taking Process

The French courts usually have a less important role in the evidence-taking process than they do in common law jurisdictions. There is a specific judge, different from the judges who will hear the case, in charge of the evidence-gathering process (including admissibility issues) (*juge de la mise en état*).

The court hearing the case only rules on evidence issues in rare cases.

The basic principle in French civil and commercial proceedings is that a party asking the court to enforce a right must prove it (Article 9, Civil Procedure Code).

Other Mechanisms to Obtain Disclosure from an Adverse Party and Third Parties

Other than a simple request by letter to the party from whom discovery is sought, there is no mechanism (aside from a judge's order) to compel a reluctant party to disclose information.

A party can request the judge to order another party or a third party to disclose documents that are in their custody. This disclosure mechanism is governed by Articles 132 to 142 of the Civil Procedure Code. The party applying for an order must show that the document is necessary for the case and is in the other party's custody. A request is not subject to any specific formalities (Article 139, Civil Procedure Code). On request, the judge can withdraw or modify their order if there are difficulties or the party from whom disclosure is sought invokes a legitimate impediment. A third party can appeal against this new decision within 15 days of the date of issue (Article 141, Civil Procedure Code).

Standard of Proof and Burden of Proof in Civil Proceedings

There is no actual standard of proof in French law. The judge, according to the evidence presented, decides which party must prevail. The nearest concept would be the "preponderance of evidence" standard.

The parties bear the burden of proof to establish the facts that support their case (Article 1353, Civil Code). Therefore, a party who invokes something that did not occur must provide proof of this, but this can be a matter of showing that it is reasonable to assume it did not occur. The same standard of proof may also apply when invoking things that did occur, if the nature of the facts in question means that it is not reasonable or possible to provide certain proof.

Failure to Give Evidence at Trial: Consequences

The judge can draw any conclusion from abstention or refusal to collaborate with a court's request (Article 11, Civil Procedure Code).

Admissibility of Evidence

One of the main principles of French civil proceedings is fairness. Evidence must be obtained in a fair way. This means that evidence obtained in breach of individual fundamental rights is not admissible. For example, in the past, the Court of Cassation has deemed inadmissible a tape recorded without the knowledge of one of the two participants (for example, see Cassation Court (Cour de cassation), Plenary Assembly (Assemblée plénière), 7 January 2011, 09-14.316, 09-14.667). However, on 22 December 2023, the Court of Cassation reversed its case law on the admissibility of evidence obtained unfairly and admitted transcripts of illegal recordings of interviews (Cassation Court, 22 December 2023, 20-20.648).

While evidence obtained illegally or unfairly is in principle inadmissible, French judges must assess whether the evidence undermines the fairness of the proceedings, weighing the right to evidence against the conflicting rights at stake. As an example, the Cassation Court has accepted the admissibility of unfair evidence that was necessary for a party to exercise their right (Cassation Court, 2nd Civil Chamber, 6 June 2024, 22-11.736).

There is no requirement that evidence be relevant to be admissible in France. Technically, irrelevant evidence can be admitted.

The assessment of the relevance of evidence is made at the discretion of the judge, as shown in

recent case law (Cassation Court, Social Chamber, 5 February 2025, 23-15.776).

However, the principle of fairness may limit the admissibility of irrelevant evidence. Evidence filed only to smear a party could be considered unfair.

In addition, the duty to communicate evidence to every party to the proceedings renders inadmissible any evidence that is not communicated to all parties or is communicated without giving all other parties sufficient time to challenge it.

Finally, evidence in a foreign language that is not translated is generally deemed inadmissible (see Cassation Court, Commercial Chamber, 27 November 2012, 11-17.185).

When to Apply

Usually, the judge preparing the hearing sets a timetable for the gathering of evidence and exchange of pleadings. During this time, parties must submit evidence and challenge its admissibility before this judge. However, a party can challenge evidence during the main hearing.

Exclusionary Rules of Evidence

Communications between a lawyer and their client are confidential as they are covered by attorney-client privilege. Therefore, the judge cannot compel the production of such communications either by the lawyer or their client. The client holds the privilege and can disclose information without any prior approval of the lawyer. (see Article 66-5, Law no 71-1130 of 31 December 1971; Article 160, Decree no 91-1197 of 27 November 1991; Article 4, Decree no 2023-552 of 30 June 2023.)

In a preliminary ruling on a question of constitutionality, the Constitutional Court held that anything that falls within the scope of the attorney's advisory activity and is not directly related to legal proceedings and the exercise of the rights of the defence is not covered by attorney-client privilege (Constitutional Council (Conseil constitutionnel), 19 January 2023, 2022-1030). The Criminal Chamber of the Court of Cassation adopted the same view by ruling that documents and correspondence exchanged between the client and their lawyer can be seized if they do not relate to the exercise of the rights of defense (Cassation Court, Criminal Chamber, 24 September 2024, 23-84.244).

However, in a ruling dated 26 September 2024, the Court of Justice of the European Union (CJEU) took the opposite position, reaffirmed the confidentiality of all communications between a lawyer and their client, whether for advice or defense, and ruled that any national regulation to the contrary violates European law (*F SCS v Administration des contributions directes (C-432/23) EU:C:2024:791 (26 September 2024)*). This ruling seems to have been adopted by the Commercial Chamber of the Court of Cassation in a recent decision (Cassation Court, Commercial Chamber, 8 October 2025, 24-16.995). Therefore, in view of this divergence between the Court of Cassation's Chambers' decisions, clarification by a ruling of principle from the high court seems necessary according to legal doctrine.

French law prohibits a registered lawyer from working in-house for a corporation (Article 7, Law no 71-1130 of 31 December 1971). (A registered lawyer is a lawyer admitted to practise law in France and listed on a specific registry. A lawyer who wants to work in-house for a corporation must cease or suspend their activity). This rule stems from the principle of lawyers' independence. Therefore, members of the legal department of a corporation are not considered registered lawyers, and there is no attorney-client privilege between an in-house lawyer and their employer. Technically, every communication between an executive and their legal department is admissible unless it includes information provided by the corporation's lawyer, which is covered by confidentiality.

A parliamentary report submitted to the French Government in June 2019 (*Rapport Gauvain*) supports the creation of a new professional status for in-house lawyers. The report recommends that the legal opinions and work of "in-house lawyers" should be protected by a form of attorney-client privilege enforceable against third parties as well as judicial and administrative authorities. This report has not yet been implemented into law, and the in-house lawyer professional status does not currently exist. The issue advocated by the former Minister of Justice, Eric Dupond-Moretti, is currently under discussion.

On 8 June 2023, the French Senators adopted, with a favourable opinion from the Law Commission and the government, an amendment to the Ministry of Justice's Orientation and Programming Bill for 2023-2027. The amendment provides that

confidentiality would apply to legal advice provided by in-house lawyers if both:

- They hold a master's degree in law or an equivalent French or foreign diploma.
- They have completed training courses in ethics. The amendment provides that these training courses will need to comply with standards defined by joint order of the Minister of Justice and the Minister for the Economy, on the recommendation of a commission whose composition and operating procedures would be set by decree.

Confidentiality would only apply to legal advice on compliance matters, with an express exclusion of criminal and tax issues.

In July 2023, the French National Assembly adopted the amendment but has not yet passed the related Bill. If adopted, the Law will add a new Article 58-1 to Law no 71-1130 of 31 December 1971. However, on 16 November 2023, the amendment was deemed by the Constitutional Council not to conform to the Constitution because it was adopted by means of a procedure contrary to it (Decision no 2023-855 of 16 November 2023).

The text was resubmitted by the French Deputy Jean Terlier, which was subsequently adopted by the National Assembly on 2 May 2024. Concurrently, another text which also aims to add a new Article 58-1 to Law no 71-1130 of 31 December 1971 was submitted by the French senator Louis Vogel, also in the form of a draft law. The text was adopted by the Senate on 14 February 2024. Both bills are quite similar, with the main difference being that Louis Vogel's draft law provides a definition of legal advice (*consultation juridique*) and the scope of the confidentiality provided by the law.

In January 2026, the Senate adopted Terlier's bill concerning the confidentiality of in-house lawyers' consultations. This provision defines which documents are protected by confidentiality, and it determines that confidentiality applies to civil, commercial, and administrative proceedings or disputes. However, this confidentiality does not apply to criminal and tax matters (like the 2023 bill). Also, it will not be enforceable against EU authorities in the exercise of their supervisory powers. The bill also provides for criminal penalties in the event of fraudulent designation of a document as a confidential consultation, that is, one year's imprisonment and a maximum fee of EUR15000.

The National Assembly must now examine the text after the Constitutional Council rules upon its constitutionality.

The legislative process is therefore still ongoing for both bills.

Discretion of Court to Exclude Evidence

The courts have no discretion to exclude admissible evidence.

Witness Evidence: Oral and Written

While this is rare, witnesses can be heard by the judge preparing the case or by the court, either at their own or the parties' request. In practice, most witness evidence is submitted to the court through the French equivalent of an affidavit (*attestation de témoin*).

There are no different requirements for non-trial submissions, such as for applications or motions.

Requirements for the Content of Written Evidence (Witness Statement or Affidavit)

The main substantive requirement is the witness's personal knowledge of the facts described in the statement (Article 199, Code of Civil Procedure).

From a formal point of view, the document must:

- Include the following information regarding the witness:
  - name;
  - nationality;
  - date and place of birth;
  - address;
  - employment; and
  - details of any shared family relations or interest with any of the parties.
- Mention that false testimony is a criminal offence.
- Include the part of the statement describing the fact witnessed in the witness's own handwriting.

(Article 202, Civil Procedure Code.)

There are no different requirements for non-trial submissions, such as for applications or motions.

Oral Evidence in Support of Written Evidence

It is not usually necessary to corroborate a written document with an oral statement.

Timing for Filing Written Witness Evidence

The judge sets a timetable for the submission of evidence (see *Exclusionary Rules of Evidence*). A party can only file evidence at trial in very specific cases. For example, the judge can request to hear a witness who submitted written witness evidence (Article 203, Civil Procedure Code). However, a judge cannot force a person to testify if they either:

- Have a legitimate reason to not testify (for example, a person subject to a duty of professional confidentiality).
- Are subject to legal incapacity.

(Articles 205 and 206, Civil Procedure Code.)

In practice, parties try to submit evidence as early as they can in the proceedings.

Evidentiary Value of Witness Evidence

In civil proceedings, a judge usually gives greater value to written documents, especially when issued by the party against whom enforcement is sought (Cassation Court, 1st Civil Chamber, 23 June 1998, 96-11.486). This follows from the general principles of French law that no one can create a title to themselves (Article 1363, Civil Code). However, this principle is not applicable when the party tries to demonstrate a legal fact such as delivery (Cassation Court, Commercial Chamber, 26 June 2024, 22-24.487).

Documents signed before a notary public or any public official have greater probative value than private documents signed by the parties only (Articles 1369 and 1371, Civil Code).

The court has a wide discretion in assessing the probative value of any filed evidence.

Cross-Examination and Re-Examination

There is no express right to cross-examine a witness. However, if a witness appears before the judge, both parties can be present and make observations.

Any party can make written observations on any witness statement filed with the court.

Judges are allowed to ask questions of a witness.

Witness Unwilling or Unable to Provide Evidence or Attend Court

A party can ask the judge to hear a witness. If the judge grants the request and the witness refuses to testify, the unwilling witness can be fined up to EUR10,000 (Article 207, Civil Procedure Code).

Whether these measures of compulsion apply to witnesses in foreign legal proceedings will depend on the type of treaty between France and the foreign jurisdiction in question, but usually a treaty would require a French judge to compel the testimony: if this is the case, the same measures of compulsion will apply.

Witness Immunity

French law does not guarantee witness immunity in civil proceedings, and any statement, oral or written, can be used in prosecution to prove any charges (including false testimony before a court).

It does not make a difference whether the witness is a witness of fact or an expert witness.

Expenses

Witness expenses can only be paid with the court's approval (Article 221, Civil Procedure Code). Witness expenses are generally paid by the party that submitted the testimony.

Expert Witnesses

Court-Appointed Experts

The judge can appoint an expert to clarify facts whenever the judge deems it appropriate (Article 232, Civil Procedure Code). Every region has a list of

accredited experts from which the judge must choose. In practice, if the judge does not choose an accredited expert, they must justify this decision.

In most cases, the judge appoints an expert witness on a party's request.

The opportunity to resort to an instruction measure, such as the appointment of an expert, is at the discretion of the judge (Cassation Court, 2nd Civil Chamber, 14 April 2022, 20-22.578).

Party-Hired Experts

A party can hire an expert without involving the court. In this case, the rules of civil procedure on court-appointed experts do not apply. Courts will assess the probative value of the expert opinion.

The Cassation Court has held that a judge cannot exclusively rely on evidence included in the report of a party-hired expert and must ensure that the report is corroborated by other evidence (see, for example, Cassation Court, 2nd Civil Chamber, 9 February 2023, 21-15.784 and Cassation Court, 2nd Civil Chamber, 17 November 2022, 21-15.708).

While the law does not provide that the evidence given by a court-appointed expert should be given greater weight by the court than that of a party-appointed expert, in practice judges are likely to follow the court-appointed expert's report, and it is usually hard (but not impossible) to convince them to do otherwise.

Fees of Expert Witnesses

The judge determines the court-appointed expert's fees. Usually, the claimant advances payment of the court-appointed expert's fees. The judge ultimately decides which party or parties must bear theses costs (generally the losing party or parties).

Parties must pay for their own experts' fees but are entitled to claim reimbursement of these fees as defence costs under Article 700 of the Civil Procedure Code. In practice, judges order the reimbursement of defence costs that it would be "unfair" for the winning party to bear.

Role of Party-Appointed and Court-Appointed Experts

The Civil Procedure Code only defines the role of court-appointed experts, as follows:

- They must personally carry out the task entrusted to them (Article 233, Civil Procedure Code)
- They must execute objectively and in an impartial manner the task for which they were appointed (Article 237, Civil Procedure Code).
- They can request information from any person, including parties (Articles 242 and 243, Civil Procedure Code).
- They can ask the judge to issue a court order if this is necessary to aid their investigations (Article 243, Civil Procedure Code).
- At the end of their task, they must answer the question that was presented to them by the judge, giving an opinion on the facts but not on the law (Article 238, Civil Procedure Code).

Decree No. 2025-660 of 18 July 2025 sets aside Article 240 of the Code of Civil Procedure to lift the traditional prohibition on experts acting as conciliators. Technical experts can now attempt to reconcile the parties in addition to their expertise duties. The parties may resort to conventional mediation by appointing the expert as a mediator, or the expert may be appointed as mediator by the judge.

Presentation of Expert Evidence

In practice, expert evidence is presented in writing. The expert will only be heard in court in very specific cases at the court's discretion. For example, this may be the case when the matter is very technically complex and the judge would like to have the expert present in person.

In some cases, the judge can hear the expert privately (*in camera*) with all parties present, to gain information on how the mission is progressing or for the expert to explain their report orally.

Under the adversarial principle, expert opinions must be sent to the parties.

Documentary Evidence: Certification of Documents

There are no specific steps to certify documents before they can be admitted as evidence in court. However, the parties can petition the court to assess the authenticity of documents. Several procedures may be followed depending on the type of document. For a document certified by a notary public, a court's clerk, or a bailiff, there is a

presumption of authenticity, and the procedure to challenge the authenticity of such a document is lengthy (and can expose the party to a civil fine if the challenge is vexatious).

In addition, lawyers have a duty of candour to the court (Articles 1.3 and 1.4, National Internal Regulations of the Legal Profession; Article 3, Decree no 2023-552 of 30 June 2023). Lawyers who submit documents that they know are false face criminal charges and disciplinary proceedings initiated by the Bar Association, with penalties ranging from a warning to disbarment.

Legal Framework Governing Cross-Border Evidence

The Taking of Evidence Regulation

As France is a member of the EU, the *Taking of Evidence Regulation (1206/2001)* applies.

On 25 November 2020, the EU adopted two new regulations in the field of judicial co-operation in civil matters:

- The Recast Taking of Evidence Regulation ((EU) 2020/1783).
- The Recast Service Regulation ((EU) 2020/1784).

Both regulations were published in the *Official Journal of the European Union* on 2 December 2020 and are applicable as of 1 July 2022.

The Hague Evidence Convention

The HCCH Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970 (Hague Evidence Convention) applies in cases where EU regulations do not apply, that is, mainly in relation to non-EU countries or when the scope of the Convention is broader than that of EU regulations.

Chapter I of the Hague Evidence Convention provides for the possibility for the foreign judge to issue a Letter of Request (*Commission Rogatoire*) directly to the French Ministry of Justice. The Hague Evidence Convention also provides, in Chapter II, a second option for the taking of evidence through a diplomatic officer, consular agent, or commissioner.

Any Other International Instruments

For jurisdictions that have not ratified the Hague Evidence Convention but are signatories to the Hague Civil Procedure Convention 1954, the latter will apply. This is the case for some states such as Japan and Belgium.

Additionally, France is a party to several bilateral conventions that provide a framework for international co-operation (for example, the France-Egypt Treaty of March 1982 and the France-Senegal Treaty of November 1974).

The Hague Evidence Convention

Central Authority

In France, the designated Central Authority is the French Ministry of Justice:

Ministère de la Justice
Direction des Affaires Civiles et du Sceau
Département de l'entraide, du droit international privé et européen (DEDIPE)
13 Place Vendôme, 75042 Paris Cedex 01

For more details of the designated Central Authority and additional authorities, see Authorities, Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.

Reservations, Declarations, and Notifications

See Status table, Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, for a complete list of reservations, declarations, and notifications made by France in relation to:

- Language of letter of request (Article 4). The French government has made a reservation specifying that it will execute only those Letters of Request that are either written in French or accompanied by a French translation.
- Execution of letter of request in the presence of judicial personnel (Article 8).
- Evidence by diplomatic officers, consular agents, and commissioners (Articles 15 to 17).
- Pre-trial discovery (Article 23). Under Article 23 of the convention, Contracting Parties may, by way of declaration, choose not to execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents. The French government has made this reservation, stating that Letters of Request issued for the purpose of obtaining pre-

trial discovery of documents will not be executed in France. However, this reservation does not extend to requests for oral testimony and has been further qualified: the French government allows the execution of Letters of Request for the purpose of pre-trial discovery when the requested documents are specifically and narrowly identified in the request and have a direct and precise connection to the subject matter of the proceedings.

Request from Foreign Litigants

In terms of timing, Article 9 of the Hague Evidence Convention specifies that: "A Letter of Request shall be executed expeditiously." According to the website of the Hague Conference on Private International Law, the time for execution in France is between about two and six months.

Judicial personnel can be present at the execution of requests without any specific authorisation (Article 741, Civil Procedure Code).

There are no key procedures other than the one described in *Procedure to Enforce Request for Witness Evidence*.

The French Justice Administration (specifically, the *Département de l'entraide, du droit international privé et européen* (DEDIPE), which is part of the *Direction des Affaires Civiles et du Sceau*) is the competent authority for the purpose of evidence being taken by diplomatic or consular agent in accordance with Chapter II of the convention.

Authorisations are granted on a case-by-case basis.

The DEDIPE imposes certain conditions to:

- Protect the rights of persons heard by diplomatic or consular agents in their embassy or consulate (for example, persons must be reminded of their right to be represented).
- Guarantee that the DEDIPE can attend the meeting if needed (notification of attendance must be delivered with sufficient time to allow the competent authority to be represented).

In addition, the DEDIPE can impose additional and specific conditions on a case-by-case basis.

France does not authorise diplomatic officers, consular agents, or commissioners to apply for appropriate assistance to obtain evidence by compulsion (that is, Article 18 of the Hague Evidence Convention does not apply in France).

Under Chapter I of the convention, the competent authority sends the request to the competent French court for enforcement of the requested measure. The French court can accept that the foreign requesting court be present during enforcement of the measure, including by videoconference. In this case, the two courts will discuss the practical and technical conditions of the measure.

Additionally, if the subject matter of the letter of request is limited to the organisation of a videoconference lead by the foreign court, the competent authority may authorize the direct execution of a Letter of Request by the foreign court (Article 747-1, Civil Procedure Code). If the case is referred at the request of the foreign court, the Ministry of Justice will specify the conditions under which the investigative measure is to be carried out and, where appropriate, designate the competent court responsible for assisting the foreign court in its execution (Article 747-2, Civil Procedure Code). The remote hearing may be conducted on the premises of a French court, although this is not mandatory.

France considers that the competent authority cannot bring any technical support or video connection in relation to Chapter II of the convention, but that commissioners, diplomatic, or consular agents must deal themselves with the corresponding measures.

Domestic Requests

See *Obtaining Evidence from Another Jurisdiction*.

The Taking of Evidence Regulation

Competent Body, Courts, and Authority

For a complete list of Central body, requested courts, and competent authority under the Taking of Evidence Regulation, see France.

Request from Foreign Litigants

There is no available information on the time frame for the execution of requests.

Parties and their representatives can be present during the taking of evidence if the judge deems it necessary.

France publicly declared that judicial personnel can be present during the taking of evidence in the national territory.

Direct taking of evidence is possible in France.

France does not impose different conditions than those specified in the Taking of Evidence Regulation. Therefore, the competent authority can reject a request if it decides that the action is outside the scope of the Regulation, that the request is incomplete (according to Article 4), or that the action contravenes fundamental principles of French law.

There is no express provision on which party is responsible for the fees and costs for experts, interpreters, and the use of special procedure and communications technology. In practice, the costs are paid by the party requesting the measure.

Under Article L. 111-12-1 of the Code of Judicial Organisation (*Code de l'organisation judiciaire*) (introduced by Law no 2021-1729 of 22 December 2021 for confidence in the judicial institution), the President of the tribunal can authorise any party, expert, or witness to depose by video on request of that party, expert, or witness.

The following rules apply to depositions by video:

- Depositions by videos can be authorised when they are compatible with the nature of the debates and comply with the adversarial principle.
- Depositions by video must be organised in a manner enabling the tribunal to ensure the quality of the transmission, the confidentiality of exchanges, and the dignity and serenity of the debates (there is a presumption that these conditions are met when the deposition is made from the offices of a law firm).
- A decision to grant or to deny a request is a "judicial administrative measure" (that is, a party is not entitled to challenge the decision before the court of appeal).

(Article R. 111-7-1, Code of Judicial Organisation.)

Domestic Requests

See *Obtaining Evidence from Another Jurisdiction*.

Obtaining Evidence from Another Jurisdiction

General Requirements

On petition by a party or on its own initiative, the court can issue an international request to obtain evidence. No specific requirements are specified in the law, but the judge will only initiate this measure if a party can prove a specific need to obtain evidence abroad.

Form or Application Along with the Documents

The procedure to obtain evidence abroad can only be conducted through the French court. Therefore, the request is a regular motion made to the judge. The request must:

- Be sufficiently precise in its description of the evidence required.
- Describe the parties from whom the evidence is sought.
- Indicate the location of the evidence.

(Article 3, Hague Evidence Convention.)

Notice Requirements

There are no specific notice requirements. The other party will have the opportunity to challenge the evidence in accordance with the adversarial principle.

Grounds

The Civil Procedure Code does not list any grounds for making a request. The judge has full discretion when granting or denying the motion. Parties must prove what they allege, and the judge cannot mitigate any lack of proof (see *Obtaining Evidence*). The grant of an international request requires the applicant to show a specific need and specific circumstances.

Costs and Expenses

There is no explicit legal provision on costs and expenses. The judge will determine which party bears the costs (usually the petitioner).

Application and Procedure Irrespective of the Applicable International Instruments

The procedure set out above only applies if France is not a party to an international convention on the taking of evidence with the relevant country. Otherwise, the relevant international convention applies.

However, this procedure was based on, and adopted after signing, the Hague Evidence Convention, and the process is similar.

Admissibility of Overseas Evidence

The French court can consider inadmissible any evidence obtained in breach of the procedural rule of the jurisdiction where it was obtained (see Cassation Court, 1st Civil Chamber, 22 February 1978, 77-10.109; *Paris Court of Appeal, 24 January 2020, 17-12.908*). In some cases, the French court can require that the taking of evidence be performed in a certain way, and the foreign court has the discretion whether to comply.

Otherwise, the admissibility of overseas evidence is considered under the same rules as domestic evidence. Overseas evidence must therefore be in French.

Willing Witness (Unable to Travel)

Usually, witnesses are not required to attend trial. Therefore, a willing witness can submit an affidavit of their own to one of the parties or directly to the judge (who will pass it on to any concerned parties).

The requirements are the same as those under domestic law if no international request has been issued. For example, the evidence must be presented in French.

Video-Link, Teleconference, or Depositions

Nothing prohibits parties from submitting evidence by video-link or affidavit. Even a recorded teleconference can be a legitimate means of submitting evidence.

The judge can tape or videotape any action that takes place during the proceedings (Article 174, Civil Procedure Code). Those tapes must be transmitted to every interested party and kept on file by the court.

As witnesses are rarely present at the hearing, a tape recording is the best way to submit the evidence.

On 25 November 2020, the EU adopted two new regulations in the field of judicial co-operation in civil matters (see *The Taking of Evidence Regulation*). The Recast Taking of Evidence Regulation ((EU) 2020/1783) encourages EU member states to use videoconferencing (whenever possible) when evidence needs to be taken from a person who is not located in the territory of the court seized.

The Hague Conference on Private International Law has also published a best practice guidelines handbook for the application of the Hague Evidence Convention, with particular emphasis on the use of videoconferencing.

Obtaining Evidence in Support of Foreign Litigation

National Rules

The Civil Procedure Code regulates international requests from foreign courts to obtain evidence in France. These requests fall within the jurisdiction of a specific tribunal (*Tribunal Judiciaire*) and a specific set of rules applies (*Commission Rogatoire Internationale*). If no international convention applies, diplomatic channels can be used.

Direct Application

There is no national law or procedure allowing a foreign litigant to compel a French witness to testify or to disclose documents.

If a witness located in France is willing to give evidence in support of proceedings taking place abroad, they can voluntarily give evidence without the involvement of the French courts. However, the restrictions imposed by the French "blocking" statute must be considered.

The blocking statute (Law no 68-678 of 26 July 1968 on communication of economic, commercial, industrial, financial, or technical documents and information to foreign corporations or authorities) aims to prevent foreign courts from fishing information from French corporations though discovery requests. Usually, big French corporations use this statute as grounds for not disclosing documents or information detained in France to foreign public bodies (judges and others).

The blocking statute makes it a crime for any person to communicate certain types of information to be used as evidence in legal proceedings outside France other than through the legal procedures established by international treaties. This information includes:

- Economic information.
- Commercial information.
- Industrial information.
- Financial information.
- Technical information.

In practice, although the examples are limited, case law has applied the principles established by the French blocking statute. In a decision dated 20 July 2005, the Paris Commercial Court held that an order issued by a US judge requiring a French financial institution to disclose documents was contrary to French economic and financial public policy, as it conflicted with Article 1-bis of the French Blocking Statute (*Paris Commercial Court, 20 July 2005, 2005-288978*). And, in a significant ruling, the Cassation Court applied the blocking statute, resulting in a fine of EUR10,000 against the French correspondent lawyer of the American lawyer of a party involved in pending proceedings in the US (Cassation Court, Criminal Chamber, 12 December 2007, 07-83.228).

Enacted subject to international treaties and agreements, the French blocking statute cannot be invoked where evidence is sought under the Hague Evidence Convention.

Procedure to Enforce Request for Witness Evidence

The Justice Administration (*Direction des Affaires Civiles et du Sceau*) sends the request to the court with jurisdiction. The president of the competent court appoints a judge to enforce the international request. Enforcement will be effected according to French law unless otherwise requested by the foreign judicial authority (Articles 735 to 739, Civil Procedure Code).

Grounds

Local courts must usually enforce a foreign request unless the judge considers that to do so would exceed their powers or could threaten French sovereignty and security (Article 743, Civil Procedure Code).

Time Frame

The processing of a request for evidence can take up to four months.