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Iura Novit Curia
In International Arbitration
in Civil Law Jurisdictions



Iura Novit Curia in Civil Law Jurisdictions



Party's Role

Parties and counsels present facts and evidence.



Court's Duty to Know the Law

The court is not limited to legal arguments presented by parties. It must know and research the law also autonomously.

This principle also impacts international arbitration in civil law jurisdictions.

Iura Novit Curia in International Arbitration

Civil Law Jurisdictions

1

Applicability of Iura Novit Curia

The principle 'Iura Novit Curia' (the court knows the law) is also applicable in international arbitration within civil law jurisdictions.

2

Limited Grounds for Setting Aside Awards for Incorrect Legal Assessment

There are very limited possibilities for setting aside an award based on a tribunal's incorrect legal assessment, apart from ultra petita, extra petita, and public policy

3

Serious Pitfall: Forbidden Surprise Decision

Ensuring parties have a fair opportunity to present their case by avoiding unexpected legal arguments.

4

Potential Solution: Warnings by the Tribunal

Tribunals may issue prior warnings before relying on legal points not raised by parties to safeguard the right to be heard.

5

Potential for Perceived Bias

Issuing warnings can create an appearance of bias due to the diverse backgrounds of parties and counsels.

While 'Iura Novit Curia' applies, careful consideration of fairness and the prohibition of surprise are crucial, requiring tribunals to balance their legal knowledge with the parties' right to be heard.

Potential Risks Associated with Iura Novit Curia

1

Setting Aside Action Due to Incorrect Application of Law

The tribunal may misinterpret or incorrectly apply the law, leading to a flawed and challengeable award.

2

Setting Aside Action Due to a Surprise Decision (Lack of Notification)

Parties may not have had the opportunity to address legal points the tribunal decides to apply independently.

3

Challenges Due to Notifications

Inadequate, untimely, or unclear notifications can themselves become grounds for challenging an award.

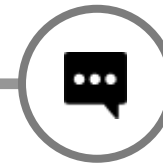
Legal Landscape: Liechtenstein



**Tolerant Approach to
Surprise Decisions in
International Arbitration**



Iura Novit Curia



**High Treshold for
Annulment of Awards**

A surprise decision only leads to annulment of an award if it constitutes a gross violation of due process.

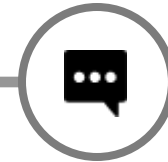
Legal Landscape: Switzerland



Measured Approach to Surprise Decisions



Iura Novit Curia



Foreseeability

Tribunals can apply the law but must avoid surprise decisions, allowing parties to address unforeseeable legal arguments.

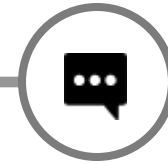
Legal Landscape: France



Strict Approach to Surprise Decisions



Iura Novit Curia



‘Principe du contradictoire’

The adversarial principle requires parties to be informed of legal grounds the court intends to rely upon.

Case Studies: Surprise Decisions



Goitia v. Liedson

**Swiss Federal Supreme Court (4A 400/2008) -
March 4, 2009. Arbitral award set aside by the
court.**



Engel Austria GmbH v. Don Trade

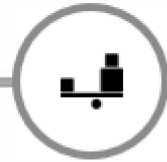
**Paris Court of Appeal (08/13618) - December 3,
2009. ICC arbitral award annulled by the court.**

Takeaways & Practice Considerations: Iura Novit Curia in International Arbitration



Careful Application

Apply 'Iura Novit Curia' judiciously in international arbitration, even within civil law jurisdictions.



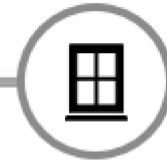
Core Principles

Ensure correct application of law while respecting party autonomy.

Avoid surprise decisions but preserve tribunal impartiality.

Acknowledge different legal cultures at the seat and of counsels

VRG Linhas Aereas S.A. v.
MatlinPatterson Global Opportunities
Partners



Enhancing Transparency

Consider procedural orders or early agreements on applying this principle of 'Iura Novit Curia' to aid transparency and legal certainty.



Closing
Thank you for your attention

