



THE NEW FRENCH RULES on INTERNATIONAL ARBITRATION

French decree no. 2011-48 of 13 January 2011

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The French decree of 13 January 2011



- Supersedes the decrees of 14 May 1980 and 12 May 1981 on domestic and international arbitration
 - ⇒ which inspired new arbitration laws in the Netherlands, Switzerland, and England, and for UNCITRAL.
- The French arbitration rules needed modernizing due to:
 - the tremendous development, professionalization, and processualization of arbitration litigation, and
 - the increased competition between the various European international arbitration forums, in particular London and Geneva.
- Aim of the 2011 reform:
 - to clarify the rules for foreign practitioners
 - to increase the efficacy of both proceedings and award

=> to boost traders' confidence in French international arbitration law

The French decree of 13 January 2011



- Divided - as usual - in two parts on domestic and international arbitration respectively, which make up Book IV of the French Code of Civil Procedure.
- The decree's provisions will for the most part come into force on 1 May 2011.
- The new French international arbitration regulatory framework now boasts 24 articles, including article 1506 that specifically and clearly refers to 31 provisions pertaining to domestic arbitration.
- Traditional definition of international arbitration .

The French decree of 13 January 2011



- The international arbitration agreement
- The relationship between the arbitration tribunal and the judicial courts
- The arbitration proceedings
- Enforcement and remedies

The international arbitration agreement



- **Form requirements:** softer than ever!
 - No specific form required.
 - Reference to another document or even to a group of contracts suffices.
- **Substantial requirements:** "arbitration friendly"!
 - So-called "white" arbitration agreements are valid.
 - Remains valid if the contract is void or invalid (*inefficacité*).

The relationship between the arbitration tribunal and the judicial courts: 1/6 Principle



- **Arbitration agreements have two jurisdictional effects:**
 - The deciding power is transferred to the arbitrators who become exclusively empowered to that effect.
 - The judicial courts are denied competence.
- **Jurisdictional courts can have exceptional jurisdiction,** depending on the stage of the arbitration proceedings:
 - Before the proceedings commence: the judicial courts can have jurisdiction on the merits or to order provisional measures.
 - While the proceedings are underway: the judicial courts can have a supporting role.
 - After the award has been rendered: the judicial courts have jurisdiction to control and enforce the award.

The relationship between the arbitration tribunal and the judicial courts: 2/6 Before the arbitration proceedings commence



- **Exceptional cases:** Article 1448 provides that as long as a case has not yet been referred to an arbitration tribunal, the judicial courts may declare themselves to have jurisdiction on the merits if:
 - the arbitration agreement is obviously null and void or
 - the arbitration agreement is obviously inapplicable.

=> This provision is however not mandatory in international arbitration matters.

The relationship between the arbitration tribunal the and judicial courts

3/6 Before the arbitration proceedings commence



- **Exceptional cases:** Article 1449 provides that the judicial courts may be petitioned for investigation / temporary / seizure measures:
 - Fact-finding measures (article 145 of the French Code of Civil Procedure) or provisional or protective measures:
 - Which court: the President of the civil division of the high court.
 - Which procedure: *ex parte* or *inter partes*.
 - What special requirement: urgent matter.
 - Provisional seizures and judicial securities:
 - Which court: the judge in charge of the execution of decisions ("juge de l'exécution" or "JEX")

The relationship between the arbitration tribunal and the judicial courts

4/6 Once the arbitration tribunal is formed



- The arbitral tribunal has **broad powers**:
 - It can order a party to produce documents subject to periodic penalty payments.
 - It can order any protective or provisional measures.
- **Two limits** to the powers of the arbitral tribunal:
 - It may not order provisional seizures and judicial securities (*JEX*).
 - It may not secure evidence held by third parties (President of the civil division of the high court).

The relationship between the arbitration tribunal and the judicial courts

5/6 The supporting judge (*juge d'appui*)



- One of the decree's major novelties: The supporting judge may help the arbitration proceedings, not monitor them.
- (Broad) **International jurisdiction** where:
 - the arbitration proceedings take place in France or
 - the parties have chosen to submit the arbitration proceedings to French procedural law or
 - the parties have expressly chosen to refer disputes relating to the arbitration proceedings to the French judicial courts or
 - one of the parties risks being the victim of a miscarriage of justice.
- The President of the Paris High Court unless the parties decide to refer their case to another French judge. Not mandatory (except in case of miscarriage of justice)

The relationship between the arbitration tribunal and the judicial courts

6/6 The supporting judge (*juge d'appui*)



- **The supporting judge's powers** are broad but specifically limited to problems with respect to:
 - forming the arbitral tribunal,
 - maintaining or removing arbitrators,
 - controlling the arbitrators' independence,
 - extending the deadline for the arbitration proceedings.
- **The procedure** is *inter partes* and cases are referred to the judge “as in urgent matters”.
- **No remedies** available unless the judge refuses to appoint the arbitral tribunal.

The arbitration proceedings



– Traditional solutions:

- Kompetenz-Kompetenz principle.
- Substantial law: chosen by the parties or applicable law determined by the arbitrators (+ international customs).
- Procedural law: chosen by the parties or applicable law determined by the arbitrators.

– New rules:

- Estoppel.
- Arbitrators must act swiftly and fairly and reveal any circumstance affecting their independence and impartiality.
- Failing a majority in the tribunal, the chairman may rule alone.

Recognition and enforcement of arbitral awards



– Form requirements:

- The original copy (or a copy) of the award must be presented along with the original copy (or a copy) of the arbitration agreement.
- It is now possible to provide a free (as opposed to a sworn) translation.

– Substantial requirements:

- Enforcement can only be denied if the award is “*obviously contrary to international public policy*”.

– *Ex parte* exequatur proceedings :

- Before the President of the civil division of the High Court in Paris for awards rendered abroad.
- Before the President of the High Court within whose jurisdiction the international arbitration award was rendered (in France).

Remedies

1/3 Common rules



– **Aim:** To make the award more effective and find a balance between the various interests at stake:

- Neither the claim to set aside an international arbitration award rendered in France, nor the appeal of the order granting the enforcement of such an award or an award rendered abroad,
=> shall suspend the enforcement of the award.
- The first President of the Court of Appeal ruling in urgent matters may stay or simply adjust the enforcement of the award “*if such enforcement is liable to encroach deeply upon the rights of one of the parties*”.

Remedies

2/3 International arbitration awards rendered in France



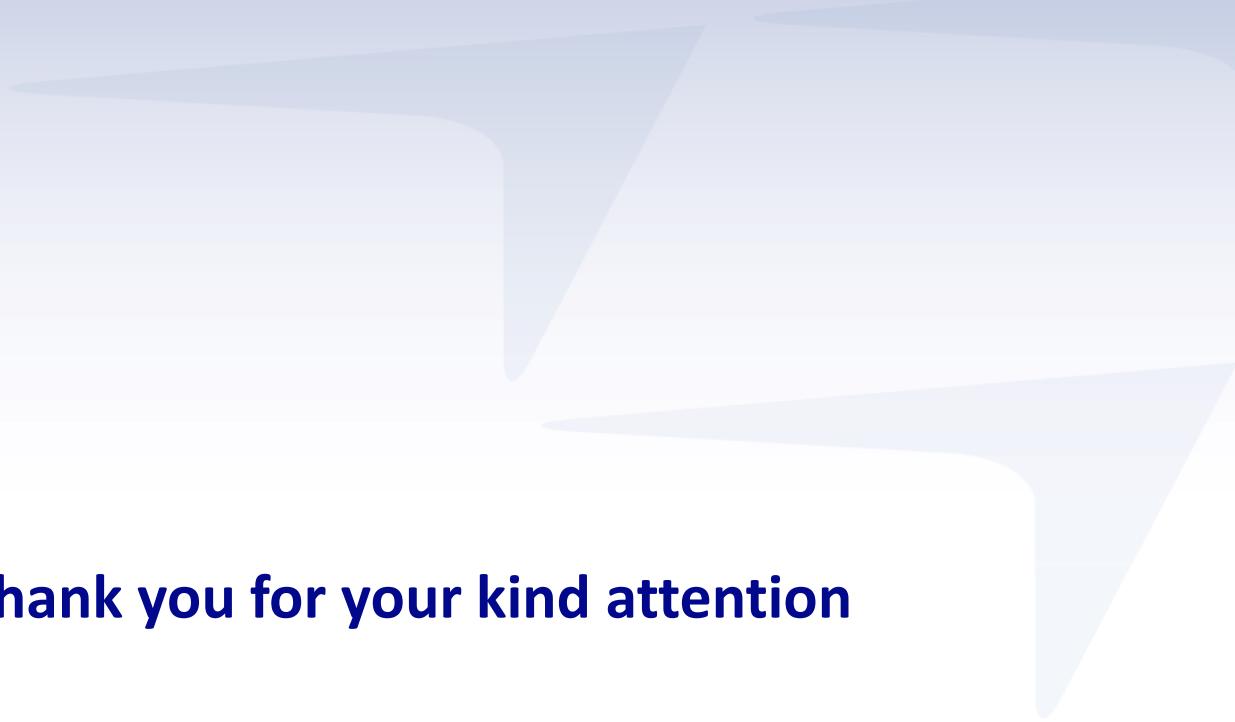
- **Traditional solutions:** Limited grounds to challenge the award:
 - No appeal
 - Five classic cases for setting aside an award
- **New solutions:** “Arbitration friendly” encore
 - The parties may expressly waive the right to set aside the award.
 - The deadline for bringing a claim to have the award set aside is of one month as of notification of the award (instead of one month as of *service* of the enforcement order).
 - The award may be notified by service, but the parties may decide otherwise.

Remedies

3/3 Arbitration awards rendered abroad



- No significant changes to available remedies.
- Orders in answer to petitions for the enforcement in France of such awards may be challenged before the Court of Appeal.
- The courts may only deny recognition or enforcement in the 5 classic and limited cases.



Thank you for your kind attention

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