

10 things you should know about the new French Arbitration law

Here is what you need to know about the New French Arbitration law which came into force in May 2011

- 1. It is in force:** the new articles 1442-1527 of the French code of civil procedure reforming French arbitration law came into force on 1 May 2011 (although note that certain articles apply only if the arbitration agreement was concluded, the arbitral tribunal constituted, or the award made, after 1 May 2011).
- 2. Its aim:** to make Paris "the" most popular venue for international arbitration, appealing even to parties that have no connection with France. The new law largely codifies existing case law with a view to making French arbitration law more visible and appealing to foreign users.
- 3. "Oui" to oral arbitration agreements:** international arbitration agreements do not have to meet any particular form requirements (article 1507).
- 4. Increased support role of French Courts:** a specific "support judge" (*juge d'appui* – the President of the Paris First Instance Tribunal) will resolve any procedural dispute relating to the arbitration proceedings seated in France, or to proceedings in respect of which the parties have chosen French procedural law. Its role will be particularly relevant in ad-hoc arbitrations (where no institutions are involved). For example, the "support judge" will assist with the appointment of the Tribunal and decide any challenges to arbitrators.
- 5. No "French connection" necessary:** assistance from the "support judge" will also be available to foreign parties to an arbitration taking place outside France: (i) in order to avoid a denial of justice or (ii) when the parties have chosen to give jurisdiction to the French courts to resolve their arbitration-related disputes (article 1505). There is no need to prove any connection with France. The support judge is effectively being granted universal jurisdiction in case no other state court is ready and able to assist the arbitration proceedings.

Key Issues

International Commercial Arbitration

2011 French arbitration law

Enforcing awards in France

Role of French Courts

International Commercial Arbitration

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6. **Enforcing Awards in France:** The procedure for enforcement of the award (exequatur) is simplified. A certified translation of the award or the original copy of the award is no longer needed (article 1515). To discourage frivolous applications for annulment of awards, the new law provides that a challenge to an award does not lead to its automatic suspension. The award may be enforced, save if the party challenging the award demonstrates that its rights would be severely prejudiced as a result of the provisional enforcement (article 1526).
7. **Setting aside Awards in France:** The five grounds provided for setting aside an award or refusing recognition and enforcement in France remain unchanged: (i) the tribunal wrongly upheld or declined jurisdiction; (ii) the tribunal was not properly constituted; (iii) the tribunal did not rule within the scope of its remit; (iv) due process was violated; and (v) recognition or enforcement of the award would contravene international public policy (article 1520).
8. **French revolution?** One of the most controversial provisions is that permitting the parties to waive in advance the right to challenge the award by way of annulment (article 1522). Waiver of annulment is aimed at facilitating enforcement of awards in countries which recognise annulment at the seat of the arbitration as a ground for refusing enforcement. In practice, we do not anticipate that this provision will be taken up too often. In any event, it is still possible to resist enforcement of the award even if the right to challenge the award has been validly waived.
9. **No automatic obligation of confidentiality for international arbitrations:** parties may want to provide expressly for such confidentiality in their arbitration agreement.
10. **It is available here** <http://www.parisarbitration.com/documentation.php#basic-legal-texts> (in French and English).

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