

Commercial Litigation and International Arbitration Client Service Group

From Bryan Cave, Paris

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New French Arbitration Law - (*Décret n° 2011-48 du 13 janvier 2011 portant réforme de l'arbitrage*)

The French Government published a long-awaited Decree on Friday, January 14, 2011, updating the French arbitration law for the first time since 1981. The Decree modifies the Articles 1442 *et seq.* of the French Code of Civil Procedure (“CCP”). It will enter into force on May 1, 2011.

Why is the Government revising the French arbitration law?

The main objective of the Decree is to reinforce the attractiveness of arbitration in France for both internal and international parties by strengthening and clarifying the rules relating to arbitration. Existing case law has been codified and certain innovative rules inspired by foreign law have been introduced.

New rules for domestic arbitration

Concerning internal arbitration, the distinction that previously existed between the “*clause compromissoire*” (arbitration clause), which is incorporated in an agreement prior to any dispute, and the “*compromis d'arbitrage*” (agreement to arbitrate), which is agreed upon after a dispute has arisen, has been abandoned. Both are now treated together under the same term: “*convention d'arbitrage*” (arbitration agreement). Under the previous regime, they were subject to different rules regarding their validity.

Other new rules reduce the means the parties have to avoid or challenge arbitration. For instance, new Article 1452 of the CCP introduces default rules for appointment of the arbitrators which will apply when the arbitration agreement remains silent on this point. This is an important change since under prior law an arbitration agreement that did not specify how to appoint arbitrators was void. Similarly, according to new Article 1473 of the CCP, if any unexpected event prevents an arbitrator from participating in the arbitration, the process will simply be suspended until a replacement arbitrator is named.

The possibilities to challenge an arbitral award have also been restricted. For instance, whereas under the previous regime, a domestic arbitral award was appealable unless otherwise provided by the parties, new article 1489 of the CCP now excludes lodging an appeal against the award, unless

otherwise agreed by the parties. In addition, the procedural time limits applying to other challenges to an award have been shortened. For example, claims regarding the interpretation of the award or the correction of possible clerical errors and omissions must now be presented to the arbitral tribunal within three months from the notification of the award (Article 1486 of the CCP).

Greater reforms for international arbitration

The reforms are even greater in the realm of international arbitration, defined as an arbitration where “*interests of the international trade are involved*” (Article 1504 of the CCP), in order to promote France as a leading center for international arbitration. For instance, Article 1522 of the CCP now authorizes the parties, at any time, to formally waive their right to bring a “*recours en annulation*” (action for annulment) against an international arbitral award issued in France. Moreover, according to new Article 1526 of the CPC, legal action taken against the award will not suspend its enforceability. In addition, new Article 1513 of the CPC introduces the possibility for the president of the arbitral tribunal to settle the dispute alone if the arbitrators cannot reach agreement, unless the parties have excluded this possibility in their arbitration agreement.

Supporting judge

Finally, the authority and the independence of the arbitral process from State courts is clearly reasserted, both in internal and international arbitration. New Article 1448 of the CPC reaffirms that State courts must decline their jurisdiction when confronted with an arbitration agreement. At the same time, the role of the “supporting judge” (*juge d’appui*), a State judge whose role is to facilitate the arbitration process, is reaffirmed and widened. In particular, problems related to the appointment of the arbitrators may now be resolved by this “supporting judge” (Articles 1452 to 1458 and 1506 of the CCP).

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