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New French Arbitration Law Clarifies Role of National Courts and Reinforces Recognition and Enforcement of Arbitration Awards

Christophe von Krause (White & Case LLP) · Friday, February 25th, 2011 · White & Case

The new French arbitration law, published on 14 January 2011, further reinforces Paris' position as a leading arbitration centre. The new law, which comes thirty years after the previous 1980 law regarding domestic arbitration and the 1981 law dealing with international arbitration, maintains the distinction between domestic and international arbitration. It clarifies and enhances an already arbitration-friendly law by codifying case-law and including innovative provisions in the Code of Civil Procedure (Articles 1442 to 1527). This is apparent, in particular, in the new provisions governing the role of French courts in supporting arbitration and those regarding the recognition and enforcement of arbitration awards.

The new law clarifies the role of French courts. The President of the Paris Court of First Instance (*Tribunal de grande instance de Paris*) has been attributed the official title of "support judge" ("*juge d'appui*"), a term first introduced in scholarly works and used in case law, and now has sole jurisdiction to "support" international arbitration proceedings in case of related procedural disputes (Article 1459). This centralisation of power with the Paris Court is designed to ensure consistency in decisions.

Consistent with the previous law, this "support judge" has jurisdiction when the place of arbitration is France, or the parties have chosen to apply French procedural law. In addition, the "support judge" now also has jurisdiction if the parties have expressly agreed to refer their procedural disputes to French Courts or where one of the parties is exposed to a risk of denial of justice (Article 1505), which is a noteworthy innovation. French case law had previously upheld the jurisdiction of the President of the Paris Court of First Instance as "support judge" of an international arbitration between two foreign parties, in order to avoid denial of justice (*NIOC* case, dated 1 February 2005). In this case, the French Supreme Court noted, as one of the grounds for its decision, that there was a link, even if remote, with France. The new law goes further still. The "support judge" has jurisdiction in case of a risk of denial of justice, without there needing to be a link with France, thus granting universal jurisdiction to the "support judge".

The new law also clarifies the respective powers of national courts and arbitral tribunals to take conservatory or provisional measures. Before appointment of the arbitral tribunal, national courts have sole jurisdiction to order such measures. Once constituted, arbitral tribunals have jurisdiction to take conservatory or provisional measures during arbitration proceedings, with the exception of conservatory seizures or judicial securities which are within the exclusive jurisdiction of national

courts (Article 1468).

Further, the law introduces new rules governing the production of evidence. Arbitral tribunals are entitled to order parties to produce evidence subject to penalties should they fail to do so (Article 1467). Parties to the arbitration may, upon leave of the arbitral tribunal, request the "support judge" to order a third party to produce documents relevant to the case (Article 1469).

Another aim of the new law is to reinforce recognition and enforcement of arbitration awards and, therefore, provide more certainty to the parties relying on arbitration to settle their disputes.

Thus, according to the new law, "by way of a specific agreement the parties may, at any time, expressly waive their right to bring an action to set aside" the arbitration award (Article 1522). The parties' waiver under this provision (which applies only to arbitration agreements entered into after 1 May 2011) does not affect their right to appeal a court decision to enforce the award in France (*exequatur*).

To accelerate enforcement of awards, the new law provides that any claim to set aside an award must be filed within one month of notification of the award (Article 1519) (three months for a foreign party), instead of one month (or three months) of service of the judgment enforcing the award (*jugement d'exequatur*) under the previous law.

The new law also facilitates proceedings for court enforcement (*exequatur*) of the award. It no longer requires a certified translation of the award or the presentation of the original copy of the award (Article 1515).

Finally, and importantly, to minimise unnecessary delays, the existence of court proceedings to set aside an arbitration award no longer stay the enforcement of the award, unlike under the previous law. Instead, the arbitral award is provisionally enforceable, unless the party against which the award is sought to be enforced applies for a stay of the award with the Court of Appeal. However, this party would have to demonstrate that enforcement of the award would be highly detrimental to its rights (Article 1526). The purpose of this provision – which will apply to awards rendered after 1 May 2011 – is to discourage parties from initiating frivolous annulment proceedings to delay the enforcement of awards.

These new provisions are by no means an exhaustive description of the new arbitration law. They are though illustrative of how the new law confirms France's desire to remain a pro-arbitration jurisdiction.

Christophe von Krause and Paul Giraud

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