

Insight: International Arbitration

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New French Arbitration Law

After nearly a decade of preparation, France published its greatly anticipated new arbitration law on 14 January, the first major reform since the 1980s, thereby enhancing France as one of the most arbitration friendly jurisdictions in the world. In last Friday's *Les Échos* (a French daily financial newspaper), Michel Mercier, the French Minister of Justice, is quoted as saying: *"Paris is the premier place in the world for arbitration and I wish it to remain so: since our law is so well recognized, it is the responsibility of the public authorities to ensure that it continues to thrive."*

The reform concerns both domestic and international arbitration and will be codified in Articles 1442 to 1527 of the French Code of Civil Procedure. The new law will become effective and applicable on 1 May 2011, save in several specific provisions.

The new law is notable in several respects

It enhances the clarity of French arbitration law by codifying existing case law. For instance, Article 1447 reaffirms the principle of severability/separability of the arbitration clause, according to which an arbitration clause is not affected by the avoidance, invalidity or termination of the contract in which it is included. Further, Article 1466 provides that a party, who, without legitimate excuse, fails to raise an irregularity in the arbitral process upon becoming aware of it, is prevented from doing so at the enforcement or annulment stage (estoppel).

The law also reaffirms the independence of the arbitral process from state court influence, and at the same time, recognizes and reinforces the role and powers of state courts (the "supporting judge" or *juge d'appui*) to take measures in aid of arbitration. In this regard, the law further confirms the predominant role of the President of the Paris Tribunal of First Instance (*Tribunal de grande instance*), who has sole jurisdiction in France with respect to international arbitration.



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In addition, the law confirms and reinforces the powers of the arbitral tribunal during the arbitral process. As an example, Article 1467 recognizes the arbitral tribunal's authority to order a party to produce documentary evidence, subject to penalty. Article 1468 also allows the arbitral tribunal to order conservatory or interim measures.

Other innovations concern enforcement or annulment proceedings:

- First, Article 1522 provides that "the parties may, by specific agreement, waive at any time their right to challenge the award [by way of annulment]." The parties' waiver under this provision – which applies only to arbitration agreements entered into after 1 May 2011 – does not, however, affect their right to challenge any decision to enforce the award in France.
- Second, Article 1519 para. 2 provides that annulment proceedings must be initiated within one month after notification of the arbitral award to the relevant party (this delay is three months if that party resides outside France). Previously, annulment proceedings had to be started within one month (or three months) after service of the judgment enforcing the award. The new provision therefore shortens the delay.

- Third, Article 1526 confirms that a challenge of the award itself will not per se stay enforcement of the same. It provides that an arbitral award is provisionally enforceable pending challenge (reversing the previous rule). A party may seek to suspend the enforcement of the award by applying to the "supporting judge," who will grant the request only if enforcement would be highly detrimental to the rights of that party. The purpose of this provision – which will apply to awards rendered after 1 May 2011 – is to discourage parties from commencing annulment proceedings in bad faith to delay the enforcement of fully valid and legitimate awards.

An English translation of the new law is being prepared.