

Arbitration in France

A review of arbitration background procedures; centers are available for purpose of resolving disputes

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THE ARBITRATION SYSTEM

It was only in 1980-81 that this system was officially included in Articles 1452 to 1507 of the new Rules of Civil Procedure.

For the most part, this text codifies case law. But the part relating to international arbitration, constitutes in addition a complete innovation. It is probably one of the very few legal texts in the world — if not the only one — specifically governing international arbitration.

In domestic matters, there can be no arbitration if the two parties have not already agreed to it. Therefore, an arbitration clause must be included in the contract. However, if it has not been included, and a dispute arises, both parties can, by special agreement ("compromis") agree to submit their dispute to arbitration.

The law requires at least the names of the arbitrators or the manner as to how they must be designated. (Art. 1443)

Where an arbitration clause already exists, no special agreement is necessary when a dispute arises and the arbitration process can begin (Art. 1445).

The special agreement ("compromis") must only define, in writing, the subject of the litigation (Art. 1477).

The appointed arbitrators can be of any nationality, and they must be of uneven numbers (Art. 1453).

The arbitrators' decision is based on national law (i.e. on the domestic law) or on any body of rules chosen by the parties.

They may even, if duly empowered by the parties, settle the case by "friendly agreement," i.e. according to equity (Art. 1474).

The award must be made within six months, or within the time limit agreed upon between the parties — which they are free to extend — or even within the period fixed by the court (Art. 1456).

Majority Decision

The award is made by majority decision (Art. 1470) and the arbitrators must give their reasons for the award. In addition, certain formal requirements must be respected concerning the presentation of the decision. (Art. 1471).

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If an award is not voluntarily executed, the beneficiary of the judgment, may apply to the court for an execution order (Art. 1477). It only has to submit the arbitration agreement and the judgment to the court.

An appeal is possible only in a limited number of cases (Art. 1484).

International arbitration is defined on the basis of its differences from national arbitration. This has been done in an entirely new manner in France, disregarding such criteria as nationality, place of residence or headquarters location. Only an economic factor is taken into account. Art. 1492 stipulates, "Arbitration is international where international trade is involved."

It does not matter, therefore, if the arbitration takes place in France or in another country, between parties of the same nationality or of different nationalities. In order to recognize the international nature of an arbitration, all that is required is that the economic transaction, in connection with the dispute, should involve a movement of goods, funds or services between two different countries.

Rules of procedure are settled directly by the parties, or failing this, by the arbitrator or arbitrators (Art. 1494).

Similarly, the dispute may be settled without resorting to domestic law. The parties' choice may deviate from any system of domestic law, and here again the arbitrators will base their decision on "legal rules" fixed by the parties, or failing this, by the arbitrator or arbitrators (Art. 1497). In all cases, however, the arbitrators must take trade usages into consideration.

To sum up, under the French system, international arbitration is not necessarily dependent on any given national law, which is sometimes constraining and/or inappropriate.

In the same as for domestic awards, a simple order by the court is sufficient for making an international arbitration award — or one made in a foreign country — enforceable. The court has only to verify that the award is not contrary to mandatory rules.

The liberalism of the French system is reflected in the fact that any arbitration award, made in France or abroad, is considered *res judicata* as soon as it has been made.

Conditions for appeal on international awards are practically the same as for domestic arbitration awards.

France is a party to all major international arbitration Conventions, in particular the New York Convention of June 10, 1958, the "European" Geneva Convention of April 21, 1961, the Washington Convention on investments of March 18, 1965, etc. . . .

HOW ARBITRATION IS ORGANIZED IN FRANCE

Although arbitration may be established between dif-

ferent parties, whether through an arbitration clause or a special agreement for arbitration, it is advisable to refer to arbitration associations from which rules, appropriate clauses, and secretarial services can be obtained.

For domestic arbitration cases in general there is the French Arbitration Association (Association Francaise d'Arbitrage) 2, rue de Harlay - 75001 PARIS - France - Tel: 45.63.45.70 to which all matters not belonging to any particular economic speciality can be referred.

- There are also specialized centers, including:
 - The Chambre Arbitrale Maritime de Paris - 73, boulevard Haussmann - 75008 PARIS - France - Tel: 42.65.56.48, for shipbuilding, navigation and sea carriage.
 - The Chambre Arbitrale de Paris, Bourse de Commerce - 75001 PARIS - France - Tel: 42.36.99.65, for disputes resulting from raw material contracts (grain, sugar, alcohol, oil, coffee, cacao).
 - The Centre d'Arbitrage des Travaux Publics, Federation national des travaux publics - 2, rue de Berri - 75008 PARIS - France - Tel: 45.63.11.44, for disputes in connection with private contracts in public works.

Concerning international arbitration, it has not been necessary for France to establish a specialized organiza-

tion since the Arbitration Court of the International Chamber of Commerce (Cour d'Arbitrage de la Chambre de Commerce Internationale - 38, cours Albert ler - 75008 PARIS - France - Tel: 45.62.34.56) has its principal office in this country. It is therefore directly available for the settlement of all international litigations by arbitration.

Finally, and also in relation to these problems, a word should be said about the French arbitration Committee (Comite Francais de l'Arbitrage - 5, rue de Stockholm - 75008 PARIS - France - Tel: 42.93.31.30). This committee is no arbitration center. It is an organization for research and promotion in matters of arbitration. It publishes the "Revue de l'arbitrage" (subscription: Librairies techniques - 27, place Dauphine - 75001 PARIS - France - Tel. 46.33.22.37), which is the leading journal, in French, on the subject of arbitration, and which contains academic articles, judicial decisions by courts of appeal and the supreme court in matters of arbitration, and additional literature. It is a must for all who practice arbitration in France.

Today, France, with its latest arbitration legislation, makes a full range of arbitration centers available for the resolution of disputes which take place on its territory.