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New French Arbitration Law

France has adopted a new statute on arbitration, Decree No. 2011-48 dated January 13, 2011 (the “Decree”). Thirty years ago, in 1980 and 1981, France was one of the first countries to adopt a modern statute that created a separate, specific legal regime for international arbitration. This regime incorporated a number of principles that have since become widely accepted, such as *compétence-compétence* and the limitation of the grounds of recourse against international arbitral awards and of judicial interference in the arbitral proceedings. Over the years, the French courts have also developed an extensive set of precedents favoring the effectiveness of arbitration, such as a broad principle of autonomy of the arbitration agreement (*i.e.*, the arbitration agreement is unaffected by the fate of the underlying contract).

The Decree preserves the separate regimes for domestic and international arbitrations established thirty years ago and aims at strengthening the position of France as a leading, arbitration-friendly venue for international disputes. Codified in Articles 1442 to 1527 of the Code of Civil Procedure, the Decree encompasses and clarifies the provisions of the previous statutes, confirms and codifies the existing *corpus* of case law and practice and incorporates a few innovations.

The Decree will enter into force on May 1, 2011, except for specific provisions that apply only to arbitration agreements entered into, arbitral tribunals constituted, or awards rendered after that date. The major innovations of the new statute are set out below.

- The new statute lessens the formalism surrounding arbitration agreements concluded after May 1, 2011. One of the striking features of the new statute is that international arbitration clauses no longer need to be in writing (even if concluded prior to the date of entry into force of the Decree).
- French law previously did not include a provision on the confidentiality of arbitration and therefore this principle remained undefined and ambiguous. The Decree includes an unusual provision providing expressly for the confidentiality of domestic arbitrations (unless the parties otherwise agree), but that does not apply to international cases (unless the parties otherwise agree).

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- A party to an arbitration can have recourse to a supervisory judge (“juge d’appui”). Under the previous statute, the role and authority of the supervisory judge was limited, mainly to assist in the constitution of the arbitral tribunal, but the supervisory judge had no express power to assisting with other matters, for instance, the production of evidence. Under the new statute, the supervisory judge has more extensive powers to take measures in aid of arbitration, such as assisting with interim measures and evidentiary collection.
- Contrary to the previous law, the new statute provides expressly, in the case of an international arbitration, for the parties’ possible waiver of their right to seek the setting aside or annulment of the arbitral award by a French court, irrespective of the nationality or domicile of the parties. This provision only applies to arbitrations in which the arbitral tribunal has been constituted after May 1, 2011. However, as under the previous statute, the parties cannot waive their right to challenge or resist the enforcement of an award in France.
- The new statute also modifies the previous rule concerning the suspension of the enforceability of international awards that are the subject of setting aside proceedings in France. Under the new statute, international arbitral awards will be capable of enforcement in France without having to await the outcome of such a proceeding, unless otherwise ordered by a court. This new provision is intended to prevent the parties from delaying the enforcement of legitimate awards by initiating setting aside proceedings for dilatory purposes.

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