

France - Code of Civil Procedure - Book IV - Arbitration In force 14 May 1981

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Title I - The Arbitration Agreement 2

Chapter I. - The Arbitration Clause 3

Article 1442 4

An arbitration clause is an agreement by which parties to a contract undertake to submit to arbitration any disputes that may arise in relation thereto. 5

Article 1443 6

To be valid, an arbitration clause shall be in writing and included in the contract or in a document to which it refers. 7

To be valid, an arbitration clause shall furthermore appoint the arbitrator or arbitrators, or provide for the method of their appointment. 8

Article 1444 9

If a dispute has arisen and problems occur with regard to the constitution of the arbitral tribunal due to the behavior of a party or to the implementation of the appointment method, the arbitrator or arbitrators shall be appointed by the President of the Tribunal de Grande Instance . 10

The appointment shall be made by the President of the Tribunal de Commerce if the parties expressly so agree. 11

If the arbitration clause is manifestly null and void or insufficient to constitute an arbitral tribunal, the President shall so determine and declare that there is no basis for appointment. 12

Article 1445 13

The dispute shall be submitted to the arbitral tribunal either jointly by the parties or by the interested party. 14

Article 1446 15

If an arbitration clause is null and void it shall be considered not to have been written. 16

Chapter II. - The Submission Agreement 17

Article 1447 18

By a submission agreement the parties submit an existing dispute to the arbitration of one or more persons. 19

Article 1448 20

To be valid, a submission agreement shall mention the subject matter of the dispute. 21

To be valid, a submission agreement shall furthermore appoint the arbitrator or arbitrators or provide for the method of their appointment. 22

A submission agreement is null and void if an arbitrator appointed therein fails to accept his mission. 23

Article 1449 24

A submission agreement shall be in writing. It may be contained in the minutes of a meeting of the arbitrators and the parties, signed by them. 25

Article 1450 26

The parties may conclude a submission agreement even when they have already submitted their dispute to another jurisdiction. 27

Chapter III. - Generally Applicable Rules 28

Article 1451 29

Only physical persons in the full enjoyment of their civil rights may act as arbitrators. 30

If the arbitration agreement appoints a legal person as arbitrator, its powers are limited to organizing the arbitration. 31

Article 1452 32

An arbitral tribunal is not constituted until the arbitrator or arbitrators accept their mission. 33

If an arbitrator supposes that a ground for his challenge may exist he shall so inform the parties and may accept his mission only with their consent. 34

Article 1453

35

An arbitral tribunal shall consist of one or an uneven number of arbitrators.

36

Article 1454

37

If the parties provided for an even number of arbitrators, an additional arbitrator shall be chosen either in accordance with the agreement of the parties or, in the absence thereof, by the appointed arbitrators or, if they fail to agree, by the President of the Tribunal de Grande Instance .

38

Article 1455

39

If a physical or legal person is charged with the organization of the arbitration, the mission of arbitrator shall be conferred upon one or more arbitrators accepted by all the parties.

40

Failing such acceptance, the person charged with the organization of the arbitration shall invite each party to appoint an arbitrator and if necessary proceed to the appointment of an additional arbitrator to complete the arbitral tribunal. If the parties fail to appoint an arbitrator, the person charged with the organization of the arbitration shall make the appointment.

41

The arbitral tribunal may also be constituted directly in accordance with the method set forth in the preceding paragraph.

42

The person charged with the organization of the arbitration may provide that the arbitral tribunal shall only render a draft award and that the dispute shall be submitted to a second arbitral tribunal if one of the parties objects to this draft. In such case the person charged with the organisation of the arbitration shall appoint the members of the second arbitral tribunal; each party may request the replacement of one of the arbitrators so appointed.

43

Article 1456

44

If no time limit is fixed in the arbitration agreement for the arbitrators' mission it shall be six months from the day on which the last arbitrator accepts his mission.

45

The statutory or contractual time limit for the arbitrators' mission may be extended at the request of a party or of the arbitral tribunal by the President of the Tribunal de Grande Instance , or, in the case envisaged by Art. 1444.2, of the Tribunal de Commerce .

46

Article 1457

47

In the cases envisaged by Arts. 1444, 1454, 1456 and 1463 the President of the Tribunal shall at the request of a party or of the arbitral tribunal decide in summary proceedings (*référé*), by court order against which no recourse is available. 48

Appeal is nevertheless open against this order if the President refuses to make the appointment for one of the reasons set forth in Art. 1444.3. The institution, conduct and decision of this appeal procedure shall be the same as for disputes regarding competence. 49

The President of the Tribunal designated in the arbitration agreement shall be competent, or, in the absence of such designation, the President of the Tribunal of the place where the arbitration agreement has situated the arbitration. In the silence of the arbitration agreement, the President of the Tribunal of the place where the defendant to the incident, or one of them, resides shall be competent or, if no defendant resides in France, the President of the Tribunal of the claimant's place of residence. 50

Article 1458

51

If a dispute pending before an arbitral tribunal on the basis of an arbitration agreement is brought before a State court, it shall declare itself incompetent. 52

If the dispute is not yet before an arbitral tribunal, the State court shall also declare itself incompetent, unless the arbitration agreement is manifestly null and void. 53

In neither case may the State court declare itself incompetent at its own motion. 54

Article 1459

55

Any stipulation or agreement contrary to the provisions of the present chapter shall be deemed not to have been written. 56

Title II - The Arbitral Procedure

57

Article 1460

58

The arbitrators shall determine the arbitration procedure; they shall not be bound by any rules applicable in court proceedings unless the parties have provided otherwise in the arbitration agreement. 59

The guiding principles of procedure set forth in Arts. 4 to 10, 11.1 and 13 to 21 shall at all times apply to the arbitration procedure. 1 60

If a party is in the possession of an element of proof, the arbitrator may order him to produce it. 61

Article 1461 62

Procedural orders and records of proceedings shall be made by all the arbitrators jointly unless the parties agree that such tasks may be delegated to one arbitrator. 63

Third parties shall be heard without taking oath. 64

Article 1462 65

The arbitrators shall proceed with their mission until it is completed. 66

An arbitrator shall only be removed with the parties' unanimous consent. 67

Article 1463 68

An arbitrator shall not withdraw or be challenged except on a ground revealed or arising after his appointment. 69

Any difficulties in the application of the present Article shall be brought before the President of the competent Tribunal . 70

Article 1464 71

Unless the parties have specifically agreed otherwise the arbitral procedure shall end: 72

upon an arbitrator's removal, death, incapacity or loss of civil rights; 73

upon the withdrawal or challenge of an arbitrator; 74

upon expiration of the time limit for the arbitral procedure. 75

Article 1465 76

Arts. 369 to 376 apply to interruptions in the arbitral procedure. 2 77

Article 1466 78

If a party challenges in the arbitration the existence or scope of the arbitrator's jurisdiction, the arbitrator shall decide on the issue. 79

Article 1467 80

Unless the parties agree otherwise, the arbitrator shall have the power to decide on incidents regarding the verification of handwriting or the forgery of documents, in accordance with Arts. 287 to 294 and Art. 299. 3 81

Art. 313 shall apply to an incident regarding the forgery of documents in an arbitral procedure. 4 The arbitral procedure shall be suspended until the decision in the incident is taken. 82

Article 1468 83

The arbitrator shall fix the date on which the deliberations begin. 84

After that date no more claims or arguments shall be introduced. No party shall produce further comments or documents unless at the request of the arbitrator. 85

Title III - The Arbitral Award 86

Article 1469 87

The arbitrators' deliberations are secret. 88

Article 1470 89

The arbitral award is rendered by majority. 90

Article 1471 91

The arbitral award shall summarize the parties' respective claims and the arguments on which they are based. 92

The decision of the arbitrators shall give the reasons for which it is given. 93

Article 1472 94

The arbitral award shall contain: 95

the names of the arbitrators; 96

the date on which it was rendered; 97

the place where it was rendered; 98

the family name and given names or corporate denomination of the parties, as well 99

as their domicile or social seat;

the name of the parties' lawyers or of any person who represented or assisted them. 100

Article 1473 101

The award shall be signed by all the arbitrators. 102

If a minority refuses to sign, the other arbitrators shall mention this in the award, which shall then have the same effect as if it had been signed by all arbitrators. 103

Article 1474 104

The arbitrator shall decide the dispute according to the rules of the law unless the parties had authorized him in the arbitration agreement to decide as amiable compositeur . 105

Article 1475 106

When the award is rendered, the jurisdiction of the arbitrator ceases to exist with regard to the dispute it decides. 107

However, the arbitrator has the power to interpret the award, to correct any error and material omission affecting it and to supplement it in case he has omitted to decide on an element of the claim. The Arts. 461 to 463 shall apply. 5 If it is impossible to reconvene the arbitral tribunal this power shall lie with the court or tribunal that would have been competent in the absence of the arbitration agreement. 108

Article 1476 109

The arbitral award has force of res judicata with regard to the dispute it decides at the moment it is rendered. 110

Article 1477 111

An arbitral award can only be enforced if exequatur is granted by the Tribunal de Grande Instance in whose territory it was rendered. 112

For this purpose one of the arbitrators or the interested party shall deposit the award, together with a copy of the arbitration agreement, at the registry of the competent court. 113

Article 1478 114

The exequatur is recorded on the arbitral award. 115

The court order refusing exequatur shall contain reasons. 116

Article 1479 117

The rules for the provisional enforcement of court judgments shall apply to arbitral awards. 118

In case of appeal or an action for setting aside the First President or the magistrate in charge of the case may grant exequatur of an arbitral award that has been declared provisionally enforceable. He may also declare an arbitral award provisionally enforceable, subject to the conditions of the Arts. 525 and 526, and his decision shall have the force of exequatur. 6 119

Article 1480 120

An arbitral award is not valid unless it complies with the requirements of Arts. 1471.2, 1472 inasmuch as the names of the arbitrators and the date of the award are concerned, and 1473. 121

Title IV - Means of Recourse 122

Article 1481 123

Opposition and pourvoi 7 en cassation 8 are not available against arbitral awards. 124

Tierce opposition may be instituted against the arbitral award before the court or tribunal that would have had jurisdiction in the absence of an arbitration agreement, subject to Art. 588.1. 9 125

Article 1482 126

Appeal is available against an arbitral award unless the parties have waived this possibility in the arbitration agreement. No appeal is available if the arbitrator is authorized to decide as amiable compositeur , unless the parties reserve the possibility of appeal expressly in the arbitration agreement. 127

Article 1483 128

If the parties have not waived the possibility of appeal as provided in Art. 1482 or 129

if they have reserved it expressly in the arbitration agreement, only appeal shall be possible, be it for revision or for annulment of the award. The court shall decide as amiable compositeur if the arbitrator was so authorized.

Article 1484

130

If the parties have waived the possibility of appeal as provided in Art. 1482 or if they have not reserved it expressly in the arbitration agreement, the action for setting aside is possible, despite any stipulation to the contrary.

131

The action for setting aside may be based only on the following grounds:

132

1. if the arbitrator has rendered his decision in the absence of an arbitration agreement or on the basis of an arbitration agreement that is invalid or that has expired;

133

2. if the arbitral tribunal was irregularly constituted or the sole arbitrator irregularly appointed;

134

3. if the arbitrator has not rendered his decision in accordance with the mission conferred upon him;

135

4. if due process 10 has not been respected;

136

5. in all cases of nullity provided in Art. 1480;

137

6. if the arbitrator has violated a public policy rule.

138

Article 1485

139

If the court in an action for setting aside sets the award aside, it shall decide the substance of the dispute in accordance with the mission of the arbitrator, unless the parties agree otherwise.

140

Article 1486

141

Appeal and setting aside procedures shall be brought before the court of appeal of the place where the arbitral award was rendered.

142

These procedures may be instituted from the moment the arbitral award is rendered; they shall no longer be admissible if they have not been instituted within one month from the date the exequatur of the award is notified.

143

The time limit for these procedures suspends the execution of the arbitral award. Institution of one of these procedures within the time limit also has a suspensive effect.

144

Article 1487 145

The appeal and setting aside procedures shall be instituted, conducted and decided according to the rules for court of appeal procedures. 146

The characterization of the procedure by the parties at the moment it is instituted may be modified or specified until the court of appeal is seized of the matter. 147

Article 1488 148

No recourse is available against an order granting exequatur. 149

However, an appeal or setting aside procedure, within the limits of the case before the court, entails ipso jure recourse against the order of the enforcement court or termination of the action before it. 150

Article 1489 151

Appeal is possible against an order refusing exequatur within one month from its notification. The court of appeal shall, at the request of the parties, consider such grounds as they could have invoked in an appeal or setting aside procedure against the arbitral award. 152

Article 1490 153

Upon rejection of the appeal or the action for setting aside, the arbitral award or the parts thereof not affected by the decision of the court obtain exequatur. 154

Article 1491 155

Recours en révision is available against arbitral awards in the same cases and under the same circumstances as against court decisions. 156

The action is brought before the court of appeal competent for the other means of recourse against arbitral awards. 157

Title V - International Arbitration 158

Article 1492 159

An arbitration is international if it implicates international commercial interests. 160

Article 1493

161

An arbitration agreement may, directly or by reference to arbitration rules, appoint the arbitrator or arbitrators or provide for the method of their appointment.

162

If in an arbitration taking place in France or subjected by the parties to French procedural law difficulties arise in the constitution of the arbitral tribunal, the interested party may bring the matter before the President of the Tribunal de Grande Instance of Paris as provided in Art. 1457, unless the parties agree otherwise.

163

Article 1494

164

An arbitration agreement may, directly or by reference to arbitration rules, determine the arbitral procedure or subject to any procedural law.

165

If the arbitration agreement is silent the arbitrator shall determine the procedure inasmuch as necessary, either directly or by reference to a law or to arbitration rules.

166

Article 1495

167

If an international arbitration is subject to French law, the provisions of Titles I, II and III of this Book apply only if the parties have not made any specific agreement, and subject to Arts. 1493 and 1494.

168

Article 1496

169

The arbitrator shall decide the dispute in accordance with the rules of the law chosen by the parties or, in the absence of such choice, in accordance with the rules of the law he considers appropriate.

170

In all cases he shall take the usages of the trade into consideration.

171

Article 1497

172

The arbitrator shall decide as amiable compositeur if he is so authorized in the arbitration agreement.

173

**Title VI - Recognition, Enforcement and Means of Recourse with
Regard to Arbitral Awards Rendered Abroad or in International
Arbitration** 174

**Chapter I. - The Recognition and Enforcement of Arbitral Awards
Rendered Abroad or in International Arbitration** 175

Article 1498 176

Arbitral awards shall be recognized in France if the party relying on them establishes their existence and if this is not manifestly contrary to international public policy. 177

Under the same conditions arbitral awards shall be declared enforceable in France. 178

Article 1499 179

The existence of an arbitral award shall be established by producing the original thereof together with the arbitration agreement, or authentic copies of these documents. 180

If these documents are not in French, the party concerned shall provide a certified translation by a court-registered translator. 181

Article 1500 182

Arts. 1476 to 1479 shall apply. 183

**Chapter II. - Means of Recourse Against Arbitral Awards Rendered
Abroad or in International Arbitration** 184

Article 1501 185

The court decision refusing recognition or enforcement is subject to appeal. 186

Article 1502 187

Appeal of a court decision granting recognition or enforcement is only available on the following grounds: 188

1. if the arbitrator has rendered his decision in the absence of an arbitration agreement or on the basis of an arbitration agreement that is invalid or that has expired; 189

2. if the arbitral tribunal was irregularly constituted or the sole arbitrator irregularly appointed; 190
3. if the arbitrator has not rendered his decision in accordance with the mission conferred upon him; 191
4. if due process 11 has not been respected; 192
5. if recognition or enforcement is contrary to international public policy. 193

Article 1503 194

The appeal of Arts. 1501 and 1502 is brought before the court of appeal in the resort of which the enforcement court is located, within one month from the notification of its decision. 195

Article 1504 196

The action for setting aside is available against arbitral awards rendered in France in international arbitration, on the grounds of Art. 1502. 197

No recourse is available against court orders granting exequatur of such awards. 198

However, the setting aside procedure, within the limits of the case before the court, entails ipso jure recourse against the order of the enforcement court or termination of the action before it. 199

Article 1505 200

The setting aside procedure of Art. 1504 is brought before the court of appeal of the place where the arbitral award is rendered. It may be instituted from the moment the arbitral award is rendered; it shall no longer be admissible if it has not been instituted within one month from the date the exequatur of the award is notified. 201

Article 1506 202

The time limit for the procedures of Arts. 1501, 1502 and 1504 suspends the execution of the arbitral award. Institution of one of these procedures within the time limit has the same suspensive effect. 203

Article 1507 204

The provisions of Title IV of this Book shall not apply to recourse proceedings, with the exception of Arts. 1487.1 and 1490. 205

Metadata

SiSU Metadata, document information

Document Manifest @:

`<http://www.jus.uio.no/lm/france.arbitration.code.of.civil.procedure.1981/sisu_manifest.html>`

Title: France - Code of Civil Procedure - Book IV - Arbitration In force 14 May 1981

Creator: France

Rights: Copyright (C) 1981 France

Publisher: SiSU `<http://www.jus.uio.no/sisu>` (this copy)

Date: 1981-05-14

Topics Registered: statute:France;arbitration:statute:France

Version Information

Sourcefile: france.arbitration.code.of.civil.procedure.1981.sst

Filetype: SiSU text 2.0

Source Digest: SHA256(france.arbitration.code.of.civil.procedure.1981.sst)=ffac4160c61e4c8b45e66c20-edd61852f7871775673be311762e345e19910fa7

Skin Digest: SHA256(skin_lm.rb)=5acda64a9532f9ef6b71693da2b471d4efac2f23a8499e68de066eec8ea9b8e9-

Generated

Document (dal) last generated: Tue Sep 21 16:56:53 -0400 2010

Generated by: SiSU 2.6.3 of 2010w30/3 (2010-07-28)

Ruby version: ruby 1.8.7 (2010-08-16 patchlevel 302) [i486-linux]