NEW CODE OF CIVIL PROCEDURE (FRANCE)¹

BOOK FOUR ARBITRATION

TITLE I ARBITRATION AGREEMENTS

CHAPTER I ARBITRATION CLAUSE

Article 1442


An arbitration clause shall be the agreement whereby the parties to a contract commit themselves to refer to arbitration the disputes that that contract may give rise to.

Article 1443


An arbitration clause shall have, under penalty of it otherwise being null, to be stipulated in writing in the principal agreement or in a document to which the latter shall incorporate.

Under the same sanction, the arbitration clause shall have to, either appoint the arbitrator or arbitrators, or provide for the means of their appointment.

Article 1444


Where, once a dispute has arisen, the constitution of the arbitration tribunal is impeded by reason of the act of one of the parties or in relation to the manner of its

¹ Source: www.legifrance.gouv.fr
appointment, the president of the *tribunal de grande instance* shall appoint the arbitrator or arbitrators.

Notwithstanding the above, this appointment shall be effected by the president of the commercial Court where the agreement has explicitly made provision for it in this manner.

Where the arbitration clause is, either on the face of it, null, or insufficient to allow for the constitution of an arbitration tribunal, the president shall record the same and declare that there is no need to so appoint a tribunal.

*Article 1445*


Disputes shall be referred to an arbitration tribunal either jointly by the parties or by the first mover.

*Article 1446*


Where it is null, the arbitration clause shall be deemed unwritten.

**CHAPTER II CONSENT TO A REFERENCE**

*Article 1447*


A consent to a reference shall be the agreement whereby the parties to a dispute which has arisen shall refer it to arbitration before one or more persons.

*Article 1448*
The consent to a reference shall have to, under penalty of it otherwise being null, determine the subject-matter of the dispute.

Under the same sanction, it shall have to appoint the arbitrator or arbitrators, or provide for the manner of their appointment.

The consent to a reference shall lapse where an arbitrator who is appointed declines the assignment entrusted upon him.

Article 1449

The consent to a reference shall be recorded in writing. It may be incorporated in a procès-verbal signed by the arbitrator or the parties.

Article 1450

The parties shall have at their disposal the right to consent to a reference even where they are in the course of proceedings instituted before another court.

CHAPTER III COMMON RULES

Article 1451
The assignment of the arbitrator may only be entrusted upon a natural person; the latter must enjoy the full exercise of his civil rights.

Where the arbitration agreement shall appoint a corporate entity, the latter may only exercise the powers of organizing the arbitration.

Article 1452


The constitution of the arbitration tribunal shall be completed only where the arbitrator or arbitrators shall accept the assignment entrusted upon them.

The arbitrator who shall consider himself open to being recused shall inform the parties. In that case, he may only agree to his assignment under the approval of the parties.

Article 1453


The arbitration tribunal shall consist of one or more arbitrators in odd numbers.

Article 1454


Where the parties have appointed arbitrators in even numbers, the arbitration tribunal shall be completed by an additional arbitrator chosen, either in accordance with the expectations of the parties, or in the absence of such expectations, by the appointed arbitrators, or in default of an agreement between the latter, by the president of the tribunal de grande instance.

Article 1455
Where a natural person or corporate entity is entrusted to organise the arbitration, the task of arbitration shall be entrusted to one or more arbitrators under the approval of all the parties.

In default of agreement, the person or entity entrusted to organise the arbitration shall invite each party to appoint an arbitrator and shall proceed, should the occasion arise, to the appointment of that arbitrator that has become necessary in view of completing the arbitration tribunal. Where the parties fail to appoint an arbitrator, the latter shall be appointed by the person or entity entrusted to organise the arbitration.

The arbitration tribunal may also be directly constituted in accordance with the manner provided for under the foregoing sub-article.

The person or entity entrusted to organise the arbitration may make provision for the fact that the arbitration tribunal shall render a draft award and that where this draft shall be contested by one of the parties, the matter shall be submitted to a second arbitration tribunal. In the latter event, the members of the second tribunal shall be appointed by the person or entity entrusted to organise the arbitration, each party having at his disposal the right to cause the substitution of one of the arbitrators thus appointed.

Article 1456

Where the arbitration agreement does not specify the time-limit, the assignment of the arbitrators shall be within a period of six months to be reckoned from the date on which the last of them accepted the said assignment.

The legal or contractual time-limit may be extended either by virtue of the agreement of the parties, or, at the suit of one of them or of the arbitration tribunal, by the president of the tribunal de grande instance, or in the case referred to under Article 1444, sub-article 2, by the president of the Commercial Court.

Article 1457
In the case referred to under Articles 1444, 1454, 1456 and 1463, the president of the court, seised as in a matter of summary interlocutory procedure on behalf of one of the parties or by the arbitration tribunal, shall rule upon by way of an order not open to review.

Notwithstanding the above, this order may be appealable where the president declares against the appointment of arbitrators in view of the grounds referred to under Article 1444 (sub-article 3). The appeal shall be brought, managed and determined as in an appellate plea against jurisdiction.

The competent president shall be the one of the court which has been specified in the arbitration agreement or, in default thereof, the one in whose province the agreement made provisions for the arbitration proceedings. Where the agreement is silent upon the same, the competent president shall be the one for the court of situs where one or more respondents to the interlocutory matter have established their dwelling, or where the respondent has not established any dwelling in France, the court of situs where the applicant dwells.

Article 1458


Where in a dispute regarding which the arbitration tribunal is seised by virtue of an arbitration agreement is brought before a court of law of the State, the latter shall have to decline jurisdiction.

Where the arbitration tribunal is not yet seised, the court shall equally have to decline jurisdiction save where the arbitration agreement is manifestly null.

In both cases, the court may not raise ex proprio motu its lack of jurisdiction.

Article 1459


Any provision or agreement contrary to the rules herein laid down shall be deemed unwritten.
TITLE II ARBITRATION PROCEEDINGS

Article 1460


The arbitrators shall lay down the rules for the arbitration proceedings without being bound by the rules governing the courts of law, save where the parties have decided otherwise as stipulated in the arbitration agreement.

Notwithstanding the above, the governing principles of proceedings as enacted under Articles 4 to 10, 11 (sub-article 1) and 13 to 21 shall always be applicable to arbitration proceedings.

Where a party has in his possession an item of evidence, the arbitrator may enjoin him to produce the same.

Article 1461


Process with regard to the management and procès-verbaux are executed by the arbitrators where the consent to a reference does not give them powers to commission one of them.

Third parties shall be heard without an oath being administered.

Article 1462


An arbitrator must undertake his assignment until its completion.
An arbitrator cannot be revoked save on a unanimous consent from the parties.

Article 1463
An arbitrator may not withdraw himself nor be recused save for a ground of recusal that would have become apparent or which had supervened subsequent to his appointment.

Difficulties arising in relation to the application of the present Article shall be brought before the president of the competent court.

Article 1464

Arbitration proceedings shall terminate, save where there are specific agreement between the parties:

1° by the revocation, death or impediment of an arbitrator as well as his lost of the full exercise of his civil rights;
2° by the withdrawal or recusal of an arbitrator;
3° by the lapsing of the time-limit for arbitration.

Article 1465

Abatement of an arbitration proceedings shall be governed by the provisions of Articles 369 to 376.

Article 1466
Where, before an arbitrator, one of the parties has challenged as by way of principles, or with reference to its compass, the vires of the arbitrator, it shall belong to the latter to rule upon the validity and limits of his nomination.

Article 1467


Save where there is a contrary agreement to the same, an arbitrator shall entertain vires to determine the subsidiary interlocutory issues in relation to the verification of writing or of forgery in accordance with the provisions of Articles 287 to 294 and of Article 299.

Where there shall be a plea of forgery, Article 313 shall be applicable before the arbitrator. The time-limit for arbitration shall run from the day on which the subsidiary interlocutory issue has been determined.

Article 1468


The arbitrator shall fix the date on which the matter shall be deliberated.

After that date, no claim may be brought or new issue raised. No observation may be submitted nor any document be produced, save where it shall be at the request of the arbitrator.

TITLE III ARBITRAL AWARD

Article 1469


The deliberation of arbitrators shall be in camera.
Article 1470


The arbitral award shall be given by way of majority votes.

Article 1471


The arbitral award shall have to recite summarily the respective claims of the parties and grounds relied upon.

The ruling shall have to be reasoned.

Article 1472


The arbitral award shall contain the following particulars:
- the name of arbitrators who gave it;
- the date;
- the venue where it was given;
- the surname, first names and denomination of parties, as well as their domicile or registered address;
- should the occasion arise, the name of avocats or any person who represented or assisted the parties.

Article 1473

The arbitral award shall be signed by all the arbitrators.

Notwithstanding the above, where a minority among them have refused to sign it, the others shall recite the same and the award shall bear the same significance as where it has been signed by all the arbitrators.

Article 1474


An arbitrator shall determine a dispute in accordance with the rules of law, save where, in the arbitration agreement, the parties assigned him as an amicable compounder.

Article 1475


An award shall have the effect of bringing the contention which he has determined out of the cognisance of the arbitrator.

The arbitrator nevertheless shall entertain vires to interpret the award, to correct clerical errors and omissions that shall impair it and to complete it where he has omitted a ruling on an issue raised. Articles 461 to 463 shall be applicable. Where an arbitration tribunal cannot be convened de novo, such vires shall appertain to the court which would have otherwise been competent in default of arbitration.

Article 1476


The arbitral award, from the moment that it has been given, shall carry the authority of res judicata in relation to the dispute which it has determined.

Article 1477
The arbitral award may not be subjected to compulsory enforcement save by virtue of an enforceable judgment of exequatur to enforce the arbitral award from the tribunal de grande instance in whose province the award was given.

To this end, the minutes of the award subjoined with a copy of the arbitration agreement shall be lodged by one of the arbitrators or by the first mover to the clerk's office of the court.

Article 1478

The enforceable judgment of exequatur shall be appended on the minutes of the arbitral award.

The judgment disallowing the enforceable judgment of exequatur must be reasoned.

Article 1479

Rules governing interim enforcement of judgment shall be applicable to arbitral awards.

In cases of appeal or review to vacate, the first president or the judge having the management of the matter ever since that he has been seised, may grant the enforceable judgment of exequatur to the arbitral award supported with a certificate of interim enforcement. He may also order the interim enforcement in the manner prescribed under Articles 525 and 526; his decision shall amount to an enforceable judgment of exequatur.
Article 1480


The provisions of Articles 1471 (sub-article 2), 1472 in relation to the names of arbitrators and the date of the award, and 1473 are laid down under penalty of the matter being otherwise null.

TITLE IV MEANS OF REVIEW

Article 1481


The arbitral award shall not be open to application to set aside nor to a petition in cassation.

It may be amenable to third party application to set aside before the court which would otherwise have been competent in default of arbitration, subject to the provisions of Article 588 (sub-article 1).

Article 1482


The arbitral award shall be appealable save where the parties have renounced to an appeal in the arbitration agreement. However, it is not open to appeal where the arbitrator has been appointed as an amicable compounder, save where the parties have expressly provided for this right in the arbitration agreement.

Article 1483
Where, following the distinction drawn under Article 1482, the parties did not renounced to the possibility of appeal, or where they have expressly provided for this right in the arbitration agreement, an appeal only shall lie, whether it shall be in view of reversing the arbitral award or in view of its vacation. The appeal judge shall determine the matter as an amicable compounder where the arbitrator was so appointed.

Article 1484

Where, following the distinctions drawn under Article 1482, the parties have renounced to a right of appeal, or where they have not expressly provided for this right in the arbitration agreement, a review to vacate an instrument termed arbitral award may nevertheless be brought albeit contrary stipulations to the same.

The same shall lie in the following cases:

1° where the arbitrator has ruled upon the matter without an arbitration agreement or where this agreement is null or has lapsed;
2° where the arbitration tribunal has been unlawfully constituted or a sole arbitrator unlawfully appointed;
3° where the arbitrator has ruled upon the matter contrary to the assignment given to him;
4° where the adversarial principle has not been respected;
5° in cases of nullity as referred to under Article 1480;
6° where the arbitrator has acted in contravention of a rule of public interest.

Article 1485

Where a court seised of a review to vacate, has vacated an arbitral award, it shall rule upon the merits within the vires of the assignment of the arbitrator, save where a contrary intention is exhibited from all the parties concerned.
Article 1486


The appeal and the review to vacate shall be brought before the court of appeal in whose province the arbitral award was given.

These reviews shall be admissible ever since the award has been given; they shall cease to be so where they have not been brought within the month of the signification of the award endorsed with the enforceable judgment of exequatur.

The time-limit to bring these reviews shall operate a stay of execution in relation to the arbitral award. The review brought within the time-limit shall equally operate a stay of execution.

Article 1487


The appeal and the review to vacate shall be brought, managed and determined in accordance with the rules governing the procedure in contentious matters before the court of appeal.

The legal definition given by the parties to the means of review at the time where the declaration is made may be amended or particularized until the cognisance of the court of appeal.

Article 1488


The judgment granting an enforcement by exequatur shall not be open to any review.

Notwithstanding the above, an appeal or review to vacate of an award shall signify as of right, within the vires of the cognisance of the appellate forum, a review against the judgment of the judge allowing an execution by exequatur or shall have the effect of taking the matter out of the latter’s cognisance.
Article 1489


The judgment disallowing enforcement by exequatur shall be amenable to appeal until the lapsing of a time-limit of a month to be reckoned from its signification. In the latter event, the court of appeal shall take cognisance of the grounds that they would have otherwise raised against the arbitral award, by way of appeal or review to vacate as the case may be.

Article 1490


The dismissing of the appeal or the review to vacate shall confer upon the arbitral award the entitlement to enforcement by exequatur or upon such disposition which shall not be the subject of the condemnation of the court.

Article 1491


A review to reconsider shall be open against the arbitral award in the case and in the conditions provided for in relation to judgments.

It shall be brought before the court of appeal which would have otherwise been competent to have cognisance of the other reviews against the award.

TITLE V INTERNATIONAL ARBITRATION

Article 1492

Where international commercial interests are involved the arbitration shall be an international one.

Article 1493


Directly or by way of reference to a resolution by arbitration, the arbitration agreement may appoint the arbitrator or arbitrators or provide for the manner of their appointment.

Where, for arbitration held in France or for those in relation to which the French procedure has been contemplated, the convening of the arbitration tribunal is facing difficulties, the first mover may, save where there is a contrary clause, seise the president of the tribunal de grande instance of Paris in accordance with the manner laid down under Article 1457.

Article 1494


The arbitration agreement may, directly or by way of reference to a resolution by arbitration, lay down the procedure to apply in the course of the arbitration proceedings; it may equally bring the latter under a law of procedure which shall be specified.

Where the agreement is silent, the arbitrator shall lay down the procedure, to the extent that the same is necessary, either directly, or by way of reference to a law or to a rule of arbitration.

Article 1495

Where an international arbitration shall be amenable to French law, the provisions of titles I, II and III of the present book shall only apply in default of specific agreements and subject to Articles 1493 and 1494.

Article 1496


The arbitrator shall determine the dispute in accordance with the rules of law that the parties have chosen; in default of such a choice, in accordance with those which he shall deem appropriate.

He shall consider in any case the customs in commercial activities.

Article 1497


The arbitrator shall rule upon as an amicable compounder where the agreement between the parties shall appoint him in that manner.

TITLE VI RECOGNITION, COMPELLED ENFORCEMENT AND MEANS OF REVIEW IN RELATION TO ARBITRAL AWARDS GIVEN ABROAD OR IN MATTERS OF INTERNATIONAL ARBITRATION

CHAPTER I RECOGNITION AND COMPELLED ENFORCEMENT IN RELATION TO ARBITRAL AWARDS GIVEN ABROAD OR IN MATTERS OF INTERNATIONAL ARBITRATION

Article 1498


Arbitral awards shall be recognized in France where their existence has been established by the one claiming a right under it and where recognition of the same would not manifestly be contrary to public international order.
Under the same conditions, they shall be rendered enforceable in France by the judge for enforcement.

Article 1499


The existence of a arbitral award shall be established by the production of the original subjoined with the arbitration agreement or copies of the same but shall satisfy the conditions required as to their authenticity.

Where those documents are not drawn up in the French language, a party shall produce a certified translation from a translator registered on the list of experts.

Article 1500


The provisions of Articles 1476 to 1479 shall not be applicable.

CHAPTER II MEANS OF REVIEW IN RELATION TO ARBITRAL AWARDS GIVEN ABROAD OR IN MATTERS OF INTERNATIONAL ARBITRATION

Article 1501


The decision disallowing the recognition or enforcement of an award shall be amenable to appeal.

Article 1502


An appeal against the decision which shall confer recognition or enforcement shall be open only in the following cases:
1° where the arbitrator has ruled upon the matter without an arbitration agreement or where this agreement is null or has lapsed;

2° where the arbitration tribunal has been unlawfully constituted or a sole arbitrator unlawfully appointed;

3° where the arbitrator has ruled upon the matter contrary to the assignment given to him;

4° where the adversarial principle has not been respected;

5° where the recognition or enforcement shall be contrary to public international order.

Article 1503


The appeal referred to under Articles 1501 and 1502 shall be brought before the court of appeal to which the judge who ruled upon the matter is amenable. It may be brought until the expiration of the time-limit of a month to be reckoned from the signification of the decision of the judge.

Article 1504


The arbitral award given in France in matters of international arbitration may be the subject-matter of a review to vacate in the case provided for under Article 1502.

The judgment allowing the enforcement of this award shall not be open to any review. Notwithstanding the above, the review to vacate shall signify as of right, within the vires of the cognisance of the appellate forum, a review against the judgment of the judge allowing execution or shall have the effect of taking the matter out of the latter’s cognisance.

Article 1505


The review to vacate referred to under Article 1504 shall be brought before the court of appeal in whose province the award was given. This review shall be admissible ever since the award has been given; it shall cease to be admissible where this right has not
been exercised within the month of the signification of the award which has been rendered enforceable.

_article 1506_


The time-limit to bring a review as referred to under Articles 1501, 1502 and 1504 shall operate a stay of execution of the arbitral award. The review brought within this time-limit shall equally operate a stay of execution.

_article 1507_


The provisions of Title IV of the present Book, save those of sub-article 1 of Article 1487 and of Article 1490, shall not be applicable to means of review.