# Dispute Resolution Around the World

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# 1. Legal System

France has a civil law legal system. The main sources of French law are the Constitution, treaties and conventions, statutes and European Union law. The Constitution takes precedence over all other statutes. Statutes are enacted by Parliament. The executive has the power to issue regulations for limited purposes.

Judicial decisions are also important because they interpret the aforementioned legal sources. However, court decisions play a comparatively minor role. A vast majority of French law is codified.

# 2. The Courts

## Administrative and Judicial Courts

There are two separate and independent court systems: the administrative courts and the judicial courts. Administrative courts hear cases involving government contracts, torts committed by government departments, certain tax cases and appeals against administrative decisions. There are three levels of administrative court: the administrative tribunal, the administrative court of appeal and the Council of State ("*Conseil d'Etat*") which is the highest jurisdiction. Judicial Courts hear cases which are not administrative. Where it is unclear to which system a case should be allocated, the Conflicts Tribunal, composed of judges of both systems, decides which system will deal with the case.

## First Level of Judicial Courts

At the first instance level, there are two types of judicial courts. First, there are specialized courts which have jurisdiction over specific matters among which the main ones are (i) the commercial courts which deal with disputes between merchants or between a merchant and an individual, and with disputes that relate to a transaction in the ordinary course of business; and (ii) the labour courts which deal with employment disputes. Second, there are the civil courts which have

general jurisdiction and handle any matters that do not fall in the jurisdiction of specialized courts. Civil courts are composed of "*tribunaux de grande instance*", "*tribunaux d 'instance*" and proximity judges ("*juge de proximité*").

The *tribunal de grande instance* is composed of three judges and has jurisdiction over all civil claims in excess of €10,000, except for those that fall within the exclusive jurisdiction of a specialized court. This tribunal is composed of civil and criminal chambers. The *tribunal d 'instance* is composed of a single judge and has jurisdiction over civil actions involving no more than €10,000. The "*juge de proximité*" has jurisdiction over civil claims involving no more than €4,000.

The claimant must determine which court has jurisdiction to hear the case. Generally, claims must be brought in the court where the defendant is located. In the case of a company, this will generally be where its registered office is located.

### Appeal Mechanism and Recourse Before the Supreme Court

In civil litigation, courts of appeal, with panels composed of three magistrates, hear appeals from first instance decisions for which an appeal may be filed. An appeal is in fact a retrial. Hence, courts will hold on the merits of the case.

Decisions from courts of appeal as well as from first instance courts that may not be appealed may be challenged, in specific cases, before the Supreme Court in civil matters. The Supreme Court does not hold on the merits of the case. It limits its analysis to a review of the proper application of the law by the lower court.

## 3. The Legal Profession

In France, lawyers must be independent professionals. An in-house counsel is thus not recognized as a lawyer in France.

Only lawyers may plead before first instance courts (except before courts where lawyers are not mandatory: small claims courts, commercial courts and labour courts). Before the court of appeal, lawyers must go through a specially qualified lawyer known as an *avoué à la cour*. The latter's role is mainly procedural and lawyers may still plead the case themselves without the *avoué's* assistance. However, the role of *avoué* is soon going to disappear and *avoués* will no longer be needed.

Before the Supreme Court and the Council of State, parties may only be represented by a lawyer licensed to practice before these courts, known as *avocats aux conseils*. The proceedings before these courts are mainly written.

A client is entitled to choose and instruct directly an *avoué* or an *avocat aux conseils*, but in most cases they are chosen and instructed by a lawyer on behalf of the client.

## 4. Litigation

### Commencing Proceedings

The procedure in all the civil courts is governed by the Code of Civil Procedure.

An action may be initiated by the submission of a joint application or, more usually, by a writ of summons. The writ of summons generally contains details of the parties, the relevant facts, the legal arguments on which the claimant intends to rely and the relief sought. The writ of summons must be filed with the clerk of the relevant court prior to the first hearing. A writ of summons, even if filed with a court that lacks jurisdiction to hear the dispute will suspend any applicable statute of limitations.

The writ of summons must be served on the defendant who will be given sufficient time to prepare its defense prior to the first hearing (generally, at least fifteen days before the first hearing). A bailiff

serves the writ by personally delivering it to the defendant's domicile or business premises.

## Reply to the Writ of Summons

In certain cases, the representation by a lawyer is mandatory. In such cases, the defendant gives notice of his intention to defend itself by appointing a lawyer within the applicable time period (generally 15 days from service, although in practice, the time limit is rarely met). In other cases, the defendant gives notice of its intention to defend itself by attending the first hearing.

To answer the writ of summons, the defendant may rely on any legal ground, whether jurisdictional (for example lack of jurisdiction, plea of pending litigation elsewhere or lack of connection to France), procedural defects or a defense on the merits. The defendant may also bring a counterclaim against the claimant provided it is reasonably connected with the original claim.

Defenses on the merits, pleas of nullity and peremptory pleas may be raised at any stage of the proceedings. A plea of nullity may be made where there is some procedural defect (for instance service of process by an invalid method). A peremptory plea is a defense which is not based on the merits, but may nonetheless be a complete answer to a claim (for instance, where the defendant claims that the claimant has identified the wrong defendant, or where the matters in issue have already been decided by the court). All procedural pleas must be raised at the same time and before any defense on the merits or peremptory pleas.

## Schedules of Hearings

After the defendant has given notice of its intention to defend itself, the defendant and any other party involved in the action are summoned by the President of the Court for a preliminary hearing during which the President will schedule a date for the

commencement of the trial and/or give directions (e.g. for further pleadings or evidence).

When the case is presented to the *tribunal de grande instance*, the judge may order that a pre-trial judge supervise the preparation for the trial. His task is to ensure the proper progress of the proceedings, especially the punctuality of the exchange of pleadings and written evidence. He is also empowered to order investigatory measures and to summon the parties to answer questions about matters in the litigation. As soon as the pre-trial judge considers that the case is ready to be decided on its merits, he refers it to the court to be heard on the date set by the President or by the pre-trial judge himself.

If the matter is presented to the commercial court, the President of the Court may appoint a reporting judge who has similar powers to that of the pre-trial judge.

In certain cases of urgency, the claimant may be entitled to obtain a summary judgment on the merits (for instance, to prevent the disclosure of information by the publication of a book).

## Evidence

French civil procedure is based almost exclusively on written evidence.

Each party may produce the relevant documents that are in its possession and submit them to the court, together with the written pleadings explaining the facts and the legal arguments upon which it relies. The parties have to submit to the court any document, which they consider necessary to prove their claim, but there is no obligation to disclose to the court or any other party all of the documents relating to the case.

If documentary evidence is not provided voluntarily, the judge may be requested to order disclosure. The judge may determine the method by which disclosure should be made and a time limit for compliance.

Generally, this will be by exchanging lists of documents and copies of those documents.

The parties are responsible for proving the facts necessary for the success of their claims. The judge may not base his decision upon facts that are not in issue. However, he may invite the parties to give factual explanations that he considers to be necessary for the resolution of the dispute. He also has the power to order investigative measures. For instance, judges frequently appoint an independent expert to investigate technical matters. The work of the expert is governed by the Code of Civil Procedure and is carried out in the presence of the parties. Judges are not bound by the findings of the expert, although they often follow the expert's conclusions. Judges may also order the disclosure of a document in the possession of a third party, or request the oral testimony of third parties.

## Evidence from Third Parties

Judges may admit evidence from third parties by affidavit or by oral testimony (although this is less common). The judge decides whether such evidence is admissible (the test being whether the party making the statement has an interest in the dispute).

Statements of evidence may be produced by the parties or at the judge's request.

Any individual is qualified to be a witness except for people deemed to be incompetent (e.g. minors). If a witness provides oral testimony, the judge may hear the witness alone or in the presence of the parties.

He may also arrange for a confrontation between witnesses whose statements are contradictory.

## Order for an Official Report by a Court Bailiff

A bailiff may be appointed by the judge to investigate and report on facts that are relevant to the litigation. This process is generally used

where information is required from a third party who would not assist voluntarily. It is a mechanism to obtain disclosure from third parties.

## Order to Produce Documents, Permit Inspection, or Appoint an Expert

The court may order a party (or a third party) to produce or preserve documents. Generally, this is only used against third parties where the latter consent to such disclosure. Where the third party does not consent, it is usually necessary to request an order for an official report by a court bailiff (see above).

## Security for Costs

In limited circumstances, a party may be required to deposit funds as security for the costs of the case. Such orders are rare and will generally only be made in respect of part of the relevant costs (e.g. where one of the parties requests that the court appoint an expert). It will normally be the responsibility of that party to secure the expert's costs by making an advance payment to the clerk of the court.

## Summary Proceedings

The claimant may apply to obtain preliminary relief in cases of urgency or where the facts cannot seriously be disputed. The defendant will be notified of the action in the same way as ordinary proceedings and be required to appear, but his absence will not affect the validity of the subsequent ruling.

## The Trial

It generally takes about 12 to 18 months from the start of the action to the issuance of a decision.

The trial is open to the public, except where the law requires otherwise or where the judge decides that it should take place in chambers, for instance if publicity would result in the violation of privacy.

The judge may rule at the end of the hearing, but judgment will usually be given at a later date (normally within a few weeks). The judgment issued by the court sets out the claims, the legal arguments of each party and the grounds for the court's decision.

## Remedies

The court may grant relief appropriate to the claim (e.g. damages, specific performance, injunctions and declarations).

## Attachment of Property

In order to protect the claimant against the defendant's insolvency, attachment may be ordered on all movable goods that belong to the defendant, thus restricting the defendant's ability to sell the assets.

## Temporary Injunctions

In cases of urgency, a claimant may file an application without notice to the defendant requesting that the court issue a temporary injunction restraining the defendant from repeating or continuing any wrongful act, or an order stopping or preventing the damage, transfer, sale, removal or disposal of any property in dispute until the case is finally determined or until the court orders otherwise. The court will grant a temporary injunction where, if such an order were not granted, there would be a risk of the claimant suffering irreparable damage.

## Orders to Pay

It is possible to obtain a court order requiring payment without notice to the defendant. This procedure is only available for certain kinds of debts and only if the sum can be determined precisely by means of supporting documents.

If an order to pay is obtained, the bailiff serves it on the defendant. Any objection to the order must be filed within one month from the date of notification by the bailiff. If no objection is filed within this

period, the order becomes enforceable, and has the force of a final judgment.

If the order is refused, or if the debtor raises an objection (which may relate to the existence of the debt, the amount or any other element of the claim), the action will proceed as a contested action.

## Recovering Legal Costs

There is a distinction between costs and compulsory expenses. Under the Code of Civil Procedure, the party that loses the case is normally ordered to pay the costs of the winning party unless the judge requires another party to pay all or part of them. The costs in question include administrative costs, the charges, taxes and fees levied by court secretariats or the fiscal administration, compensation of witnesses, remuneration of experts and similar costs. In most circumstances, the judge orders that the party that loses the case pay part of the compulsory expenses. Compulsory expenses mainly include legal and translation fees. In practice, such orders normally cover only part of the legal fees actually incurred, the judge deciding at his sole discretion the amount to be paid by the losing party. The fact that the lawyer may be instructed on a conditional or contingency fee arrangement has no impact on the costs recoverable because the court will not be aware of any arrangement existing between the lawyer and his client.

## Appeals

There is one level of appeal, before courts of appeal.

A decision of a court of appeal as well as final and binding decision from first instance courts that are subject to appeal may be challenged before the Supreme Court in civil matters for improper application of the law.

## Court of Appeal

An appeal is a new trial on the merits rather than simply a review of the decision by the lower court. The court of appeal may therefore examine both facts and law.

The court of appeal has jurisdiction to hear appeals from all types of civil cases, regardless of the court of first instance. There is a right of appeal against all first instance judgments, unless otherwise provided for by the law (although the claim must exceed € 4,000 when the decision is rendered by the civil courts). Any party who has an interest in the dispute may appeal provided it has not waived that right.

Generally, the appeal must be made within one month after the judgment has been notified to the parties. Foreign parties generally have two additional months to lodge an appeal.

A party may not submit new claims before the court of appeal. However, in order to support the claims, which they have submitted to the first instance judge, the parties may raise new arguments, produce new documents and introduce new evidence.

## The Supreme Court

The Supreme Court only has jurisdiction to hear challenges on decisions from the court of appeal and from courts whose decisions may not be appealed (e.g. civil actions in the *tribunal d 'instance* or of the *juge de proximité* involving no more than €4,000).

Before being formally submitted to the Supreme Court, a case must pass a preliminary stage, as the Supreme Court may refuse to hear weaker cases (e.g. where the grounds for appeal are trivial or have no real prospects of success).

The jurisdiction of the court is restricted to a review of the proper application of the law by lower courts. The judgment of the court is rendered on the basis of the pleadings submitted by the parties, without any oral argument. Generally the time limit for the petition for

appeal is two months from the date of service of the decision of the court of appeal.

The Supreme Court seeks to ensure harmonious jurisprudence through control and review of lower court decisions. Since 1991, the court has therefore also provided non-binding advisory opinions to judicial authorities in civil cases from which a new and difficult question of law has frequently arisen.

## 5. Enforcement of Judgments

Generally, only a final and binding court decision is enforceable. But decisions from a court of first instance can be enforced even if an appeal is pending provided that the first instance court declared it enforceable. A special judge, the *juge de l'exécution*, is appointed to deal with disputes relating to execution matters and conservatory measures.

The defendant is expected to voluntarily comply with a final and binding decision. If the defendant refuses to pay, the claimant may enforce the judgment in the following ways:

### Garnishee Proceedings

The claimant may request that a person who owes money to the defendant pay the claimant directly (*e.g.* the claimant may seize the debtor's salary). In this situation, a court order is not required. A request is served on the third party by a bailiff and this must be notified to the defendant within eight days from the service on the third party.

### Attachment of the Defendant's Personal Property

The unpaid claimant may without any additional order from the judge attach movable physical goods owned by the debtor (whether or not in his possession) to keep them for himself or have them sold. He is then entitled to payment from the proceeds of the sale.

## Execution Against Real Property

The claimant may request an order for the sale of real property owned by the debtor in order to be paid from the proceeds of the sale. The procedure to obtain such an order is often protracted. A summons to pay within eight days must first be served on the debtor by a bailiff and must inform the debtor that if he does not pay, the summons will be published at the mortgage registry. The claimant must publish the summons within two months from the date of the service. As of the date of publication, the debtor may not sell the real property or charge it by way of security. The claimant's lawyer must draft the conditions of the sale. Finally the sale is announced to the public and sold via an auction.

## Provisional Enforcement

The judge may order any of the above measures on a provisional basis in advance of the trial. Provisional enforcement may be made conditional upon the claimant providing security (whether on movable goods or land or by personal third party guarantee) sufficient to repay the defendant should the claimant not succeed at trial.

## Recognition and Enforcement of Foreign Judgments

A foreign court's decision will have effect in France only if a French court recognizes and enforces the judgment. There are three types of enforcement procedure:

### Enforcement of Judgments Unaffected by a Treaty

If there is no bilateral or multilateral treaty between France and the country where the initial decision was rendered, an order must be obtained from the *tribunal de grande instance* to enforce a judgment. For example, decisions rendered by courts in the United States are subject to this enforcement procedure. Before a court will make such enforcement order, the following conditions need to be satisfied:

- The foreign court has jurisdiction in light of the elements linking the foreign court to the dispute;
- The foreign judgment complies with French international public policy pertaining to both procedure and the merits;
- The circumstances show that fraudulent acts were carried out in order to circumvent the law normally applicable.

If enforcement is granted, the foreign judgment becomes, in effect, a French judgment and may be enforced in the same way as a French judgment.

### Enforcement of Judgments by Reference to a Bilateral Treaty

France is a party to many bilateral treaties for the enforcement of foreign judgments. Such treaties generally provide for enforcement after obtaining an order of the court. The courts will enforce the foreign judgments where the conditions provided by the treaty are fulfilled.

### Enforcement of Judgments from European Community Countries

The European Regulation simplifies the formalities for recognition and swift enforcement of any judgment delivered by a court in another Member State by a simple uniform procedure.

The procedure is very efficient and quick. The registrar of the *tribunal de grande instance*, the competent authority designated by France to examine applications, simply makes a formal check of the documents accompanying an application for registration. The sole ground for not recognizing or enforcing a decision is where the recognition or enforcement is manifestly contrary to public policy. If the registrar rejects the application, its decision could be brought before the presiding judge of the *tribunal de grande instance*, whose decision would not be subject to appeal by the claimant.

# 6. Arbitration Law

Parties to a contract may choose to arbitrate before or after a dispute has arisen. The Civil Code determines the extent to which parties are able to turn to arbitration and the Code of Civil Procedure, which differentiates domestic arbitration from international arbitration, sets out the procedural rules governing both types of arbitration.

Under article 1504 of the Code of Civil Procedure, an arbitration is deemed international when it involves the interests of international trade.

The arbitration agreement may directly appoint arbitrators and determine, either directly or by reference to specific arbitration rules, the procedure to be followed in the arbitration proceedings.

## Role of the State Courts in Arbitration Proceedings

There is a tradition of non-interference in arbitration proceedings by state courts. French courts may nevertheless intervene in order to assist the parties in four cases: i) the place of arbitration is France, ii) the parties have chosen to submit the arbitration proceedings to French procedural law, iii) in order to prevent a denial of justice and iv) the parties have specifically given French courts jurisdiction over disputes pertaining to the arbitration proceedings. For instance, if there is a problem concerning the constitution of the arbitration tribunal, e.g. a party refuses to appoint an arbitrator, a party may seek the assistance of the President of the *tribunal de grande instance*.

If a party initiates court proceedings in relation to a dispute which appears to be subject to a valid arbitration clause, French courts will reject jurisdiction on the ground that the arbitral tribunal has priority to hold on its jurisdiction provided the arbitration clause is not manifestly void or inapplicable.

A party may, however, initiate an action before French courts despite the existence of an arbitration clause, in order to request temporary or protective measures in cases of urgency and provided the arbitral

tribunal has not yet been constituted. French courts may also assist in the enforcement of the arbitration award in the event the unsuccessful party does not comply voluntarily.

## Institutional and *Ad Hoc* Arbitration

Aside from those set out above, there are no prohibitions on parties conducting ad hoc arbitrations in France or on parties turning to international arbitration institutions, if they so wish.

There are a number of arbitral institutions based in France, many of which are specialized in specific types of disputes. These institutions include:

- The International Court of Arbitration of the International Chamber of Commerce (I.C.C.);
- The *Chambre arbitrale de Paris* (which is involved in the resolution of all types of commercial disputes by mediation and arbitration);
- The *Centre de Médiation et d'Arbitrage de Paris* (CMAP) a body established by the Paris Chamber of Commerce and Industry;
- The *Chambre Arbitrale Maritime de Paris* (CAMP) (which deals mainly with maritime disputes);
- The *Comité Central de la Laine et des Fibres Associées* (C.C.L.F.A.) (which deals with arbitration pertaining to disputes regarding wool and related fabrics);
- The *Comité d'Arbitrage de la Fédération des Travaux Publics* (which deals with disputes in construction matters).

## Enforcement of Arbitration Awards

In domestic arbitrations, an arbitral award is binding on the parties once it is rendered, but it may only be enforced after an enforcement

order is issued by the *tribunal de grande instance* of the place where the award was rendered. Provisional enforcement orders are also available.

An arbitration award shall be declared enforceable in France by the enforcement judge if such enforcement is not obviously contrary to international public policy.

France is a party to a number of bilateral and multilateral treaties on recognition and enforcement of foreign arbitration awards, including the New York Convention of 1958, the Geneva Convention of 1927, the European Convention of Geneva of 1961 and the Washington Convention of 1966. These conventions provide for mutual recognition and enforcement of arbitral awards in countries that are parties to the Conventions.

## Appeal and/or Set Aside of Award

An award rendered in a domestic arbitration may not be appealed unless the parties have expressly agreed otherwise. The appeal will be heard by the court of appeals that has jurisdiction over the seat of the arbitration and may be brought within one month of the official notification of the award.

However, awards rendered in France in an international arbitration may not be appealed.

If no appeal is possible, the parties may attempt to have the award set aside by domestic courts. An award may be set aside on the following grounds:

(1) the arbitral tribunal wrongly upheld or declined jurisdiction; or

(2) the arbitral tribunal was not properly constituted; or

(3) the arbitral tribunal ruled without complying with the mandate conferred upon it; or

(4) due process was violated; or

(5) recognition or enforcement of the award is contrary to international public policy in case of international arbitration and domestic public policy in domestic arbitration;

(6) the award failed to state the reasons upon which it is based, the date on which it was made, the names or signatures of the arbitrator(s) having made the award; or where the award was not made by majority decision (only for domestic arbitration).

Set aside proceedings do not normally suspend the enforcement of the award.

A decision that refuses recognition or enforcement of a foreign arbitration award may be appealed.

The appeal of the decision recognizing or enforcing a foreign arbitral award may be brought only the same grounds as for the setting aside of an award.

## 7. Alternative Dispute Resolution

In an attempt to resolve the problem of excessive workload of French courts, there have been efforts in recent years to institutionalize mediation and conciliation proceedings in the French legal system.

Conciliation is compulsory in certain cases, such as in labour law where conciliation is the first phase of the proceedings. ADR is, like arbitration, consensual and is a way to achieve resolution of a dispute more speedily and with greater confidentiality than formal court proceedings.

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