

# ENFORCING IN FRANCE A FOREIGN AWARD THAT HAS BEEN SET ASIDE AT THE SEAT OF ARBITRATION

21 February 2018 | France

Legal Briefings - By **Thierry Tomasi and Greg Travaini**

---

## Is it possible and what are the practical consequences for the parties?

As a matter of principle, French courts hold that the setting aside of an international arbitral award by the courts of the seat of the arbitration is irrelevant and does not prevent, per se, its recognition and enforcement in France (*Hilmarton v. OTV*, Cass. Civ 1st, 23 March 1994, n° 92-15137; *Putrabali v. Rena Holding*, Cass. Civ 1st, 29 June 2007, n° 05-18053).

### [First published in Inside Arbitration, Issue 5](#)

The rationale behind this position is twofold. First, Article VII of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (**NY Convention**)<sup>1</sup> allows signatory countries to adopt rules that are more favourable to the recognition and enforcement of foreign awards than the NY Convention itself. Article 1520 of the Code of Civil Procedure (CPC)<sup>2</sup>, which lists the grounds under which recognition and enforcement of an award may be refused, does not include the setting aside of an award at the seat of arbitration. Second, from a more theoretical standpoint, French courts consider that an international award is an international judicial decision, detached from any particular domestic legal system. Therefore, the decision of the courts of the seat setting aside an international award does not carry any particular weight or authority (*Cass. 1st Civ.*, 9 October 1984, *Pabalk Ticaret Sirketi v. Norsolor*, n° 83-11355).

Conflicting awards rendered abroad relating to the same dispute between the same parties cannot coexist within the French legal order. Accordingly, when an award has been recognised in France, any other international award rendered between the same parties and on the same subject matter cannot be recognised in France, irrespective of whether the second award was issued after the annulment or setting aside of the first award at the seat (*Cass. Civ 1st, 29 June 2007 N° 06-13.293*).

The position of French courts therefore carries important practical consequences when some of the parties' assets are located in France, or when recognition of the award in France may be relevant:

**The party in favour of whom an international award is made may consider, irrespective of whether proceedings for the setting aside of the award are pending at the seat of the arbitration, or of whether the award has been annulled or set aside:**

- Requesting without delay recognition of the award, through an enforcement order (*ordonnance d'exequatur*). Applications are filed with the Paris Court of First Instance (Article 1516 CPC), and the order of enforcement is issued on an ex parte basis within an average of four weeks, on the basis of an original copy of the award and of the arbitration agreement (or certified copies thereof), duly translated into French (Article 1515 CPC). The issuance of the *ordonnance d'exequatur* of the first award would prevent any attempt to have any subsequent award, issued further to its annulment or setting aside, recognised and enforced in France.
- Attaching, on a provisional basis, assets belonging to the award debtor (or held by third parties on behalf or to the benefit of the award debtor) located in France, if any, on the basis of the award, which is considered as having res judicata effect (Article 1484 CPC). Provisional attachments may then be converted once the *ordonnance d'exequatur* has been obtained.

**The party against whom an award is made may consider, in cases where this award is being challenged before the courts of the seat, and it is subsequently annulled or set aside:**

- Appealing without delay the *ordonnance exequatur* for the first award<sup>3</sup>, in order to make it possible for the award issued subsequently to the annulment or setting aside of the first award to be recognized and enforced in France. The grounds for appeal are, however, limited: (i) the arbitral tribunal wrongly upheld or declined jurisdiction, (ii) the

arbitral tribunal was irregularly constituted, (iii) the arbitral tribunal ruled without complying with the mandate conferred upon it, (iv) due process was violated, or (v) recognition or enforcement of the award would violate French international public policy (Articles 1520 and 1525 CPC)

- Requesting that the Court of Appeal seized of the appeal against the *ordonnance d'exequatur* stay or adapt the enforcement of the first award, as the appeal itself does not have this effect (Article 1526 CPC). This is possible, by way of exception, where enforcement of the award pending the appeal "could severely prejudice the rights of one of the parties" (Article 1526(2) CPC), for instance where the debtor would become insolvent or bankrupt due to enforcement, or there is a significant risk that the award creditor may not repay the amounts to the debtor in case of reversal of the *ordonnance d'exequatur* (because it is insolvent, etc.).
- Moving without delay to have any subsequent award issued in its favour recognized in France, subject to the reversal of the *ordonnance d'exequatur* of the first award.

- 
1. France is a party to the New York Convention, which came into force on 24 September 1959
  2. Pursuant to the 2011 French Arbitration Act (Decree No. 2011-48 of 13 January 2011)
  3. Once the award debtor is notified of the exequatur order, it can lodge an appeal against the order within 30 days from the date of notification, with an additional two months if the award debtor is domiciled outside of France (Articles 1525 and 643 CPC)

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



**THIERRY TOMASI**  
PARTNER, PARIS

+33 1 53 57 70 92  
thierry.tomasi@hsf.com

---

## LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2021

---

**SUBSCRIBE TO STAY UP-TO-DATE WITH LATEST THINKING, BLOGS, EVENTS, AND MORE**

Close

© HERBERT SMITH FREEHILLS LLP 2021