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Commentary

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[Editor's Note: Pierre Heitzmann is a Partner at the Paris office of Jones Day whose practice focuses on international arbitration. Johanna Schwartz Miralles is an Associate with Jones Day. Commentary and opinions do not reflect those of Jones Day. *Copyright © 2011 by Pierre Heitzmann and Johanna Schwartz Miralles. Responses are welcome.]*

Decree n° 2011-48 regarding reform of arbitration, passed into law on January 13, 2011 (and published in the Official Journal the following day), enacts what are arguably the most important reforms of French arbitration law since the early 1980's. These reforms are the latest step taken by France to remain a leading forum for international arbitration, with a modern, effective, and intellectually accessible legal regime governing arbitration.

This article highlights the most consequential changes to and codifications of arbitration law adopted by the reform. It also looks at the changes enacted by the Decree in a comparative perspective. Throughout the article, we note, as applicable, the similarities and differences between the new French law and U.S. arbitration law. In engaging in this comparative analysis, we hope to contextualize the French Act for the benefit of readers familiar with U.S. arbitration law and to highlight areas of divergence in the approaches of these jurisdictions.

I. The New Law

On January 14, 2011, the French Ministry of Justice published in the Official Journal its Decree n° 2011-48 regarding reform of arbitration.[1] The announced reforms will be codified in the French Code of Civil Procedure from Article 1442 to Article 1527 and will enter into force on May 1, 2011. In a step rarely taken in France, the Ministry of Justice also published a Report to the Prime Minister explaining the new Decree and clarifying certain issues that may arise under the reformed provisions of the Code.[2]

The Decree was enacted for two primary reasons: First, to codify a number of principles of arbitration law developed by French courts over the past 30 years, and second, to implement changes to France's arbitration law that give even more support to arbitration.

France was one of the first countries to enact a modern arbitration law, by way of a series of reforms in 1980 and 1981.[3] In the years since those reforms were enacted, French courts have strengthened the country's pro-arbitration legal regime by interpreting the Code of Civil Procedure in a manner that generally favors arbitration as a method of dispute resolution.

Consequently, before the Decree of January 13 was issued, a large portion of French procedural law relating to arbitration could be found only in case law, not in the Code of Civil Procedure. By codifying principles that were first developed in case law, the Ministry of Justice has made French arbitration law more accessible to international practitioners. The goal is that this added clarity in arbitration law will make France an even more attractive forum for international arbitrations.

The Decree also introduces a limited number of innovations in French arbitration procedural law, some of

which correspond to provisions in the arbitration laws of other countries. These changes generally tend to make France a more arbitration-friendly jurisdiction, with a court system that supports arbitration and effectively enforces arbitral awards.

The new French arbitration legislation contains provisions that apply exclusively to domestic arbitration, provisions that apply exclusively to international arbitration, and provisions that apply to both domestic and international arbitration. This article focuses on the provisions of the Decree governing international arbitration.[4]

II. Codification Of Established Jurisprudential Principles

One of the primary *raisons d'être* of the Decree and the revised Code provisions it contains is to consolidate and affirm French law governing civil procedure in the field of arbitration that has been developed by the French courts over the past 30 years. Some of the jurisprudential principles that will now be codified are as follows:

A Broad Interpretation Of What Constitutes A Binding Agreement To Arbitrate

Article 1507 codifies the principle, established by French case law, that international arbitration clauses are not subject to any requirement of form. That is, parties are free to agree orally to settle their disputes through arbitration. In this sense, the French provision is progressive: Most other sources of arbitration law, including the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), national arbitration laws, and institutional arbitration rules, do not expressly provide that non-written arbitration agreements have the same legal status as do written ones.[5] U.S. courts, for instance, are more conservative in this regard and will generally not enforce an arbitration agreement absent some written evidence of the agreement.[6] However, notwithstanding the French rule, it remains advisable for parties anticipating arbitration in France to express their intention to arbitrate in writing, so as to avoid unnecessary problems of proof.[7]

An Expansive Set Of Legal Duties Binding Arbitrators

Regarding the duties of the arbitrators composing the tribunal, the new code states that the arbitrators shall perform the mission with which they have been entrusted until they have rendered an award.[8] The new law also imposes a positive obligation of good faith and efficiency on the arbitral tribunal and aims to ensure that arbitrators perform their duty with due care.[9] One may wonder to what extent these provisions broaden the arbitral tribunal's obligations and constitute a potential source of liability for arbitrators.[10] Subsequent court decisions will doubtless provide answers to this question. However, the spirit of the reform is not to increase arbitrators' potential liability, but rather to encourage efficiency in the conduct of arbitral proceedings.

The revised arbitration law also strengthens the power of the arbitral tribunal by providing that if an arbitrator is or becomes aware of a ground that could be asserted against the arbitrator in proceedings challenging the award, the arbitrator must inform the parties, but may resign as arbitrator only with unanimous party consent.[11] This rule therefore reverses the default presumption under the old rule, which provided that the arbitrator could only continue to hear the dispute with the consent of the parties in case of a conflict.[12]

In contrast to the French approach, the U.S. Federal Arbitration Act[13] is silent regarding the duties of an arbitrator. Arbitrators presiding over international arbitrations in the United States are therefore bound by – as applicable – institutional rules, state law,[14] party agreement and the Rules of Professional Conduct of any Bar of which a lawyer-arbitrator is a member.[15] Despite that the FAA does not articulate what an arbitrator's duties are, some courts have held that because the FAA sets forth "evident partiality" by the arbitrator as grounds for vacating an arbitral award,[16] this creates an affirmative duty on the part of arbitrators to investigate and disclose potential conflicts of interest that give rise to a reasonable impression of partiality.[17] Other courts have held that arbitrators do not have a duty to investigate and disclose conflicts of interest under the FAA, but that an arbitrator's failure to do so is indicative of evident partiality and therefore grounds for vacatur.[18]

Arbitrators' Power To Order Interim Measures

The previous arbitration decree of 1981 did not include any provisions regarding the arbitrators' authority to order preliminary or interim relief or to impose daily penalties for a party's failure to comply with a tribunal's interim order. However, this power had been established by court decisions.[19]

The Decree now codifies the power of the arbitral tribunal to order interim measures, with daily penalties for any failure to comply with the measures ordered.[20] The codification of these principles greatly strengthens the authority and powers of the tribunal and thereby favors arbitration. While an arbitral tribunal has no authority to ensure the enforcement of interim measures when a party refuses to comply voluntarily, the Decree will allow a counterparty to ask courts to order performance of such interim measures. In principle, French courts will enforce an interim measure without examining the merits of the measure which has been decided by the arbitral tribunal.

Procedural Estoppel

Article 1466, applicable to international arbitration pursuant to Article 1506, confirms the principle of procedural estoppel developed by French courts, inspired by the common law and the principle of good faith. This principle bars a party from alleging, before a court, that an arbitral award is procedurally defective after the award has been issued if that party failed to raise the procedural issue during the arbitral proceedings.

The principle is firmly-entrenched in U.S. jurisprudence; American courts will generally refuse to grant relief to a party based on an alleged procedural error by the arbitrator where the party did not object before the arbitrator, on the basis that by the party has thereby waived its right to claim procedural error.[21]

The text of the French provision appears to be more permissive to parties who claim procedural error before a court than is U.S. law. The new code provision only prohibits a party from asserting procedural error before a judicial body where the party failed to object to procedural error during the arbitral proceedings "knowingly and without a legitimate reason."[22] A U.S. court may not require actual knowledge of error in order for waiver to apply, and may find that a party has waived a claim of procedural error where the party either knew or should have known of the error, yet failed to object before the arbitrator.[23]

Increased Flexibility In Enforcement Proceedings

The Decree introduces some flexibility in the *exequatur* procedure that must be followed for recognition and enforcement of international arbitral awards in France. The *exequatur* procedure is the procedure by which a party seeks a court order to enforce an arbitral award. New Article 1515 stipulates that the party seeking an *exequatur* must submit the original award and the parties' arbitration agreement, or copies thereof. As before, if these documents are not in the French language, the party must produce French translations of them. However, at least initially, these translations need not have been done by a registered translator. A translation by a registered translator may still be required at a later stage of the proceedings (*e.g.*, if a question is raised regarding the accuracy of a translation that has been submitted).[24]

Juge D'Appui (Support Judge)

The new provisions of the Code of Civil Procedure relating to arbitration employ, for the first time in French codified law, the term "juge d'appui." The term was often used in learned commentary as well as in court decisions prior to appearing in the January 13 Decree, but it now has an official status as a codified principle of law.

The term *juge d'appui* refers to the French judge with authority to issue orders related to a particular arbitration.[25] (The term "appui" means "support.") In essence, the *juge d'appui* has the role of acting on behalf of the state to support an arbitration within the bounds of the law. In international arbitrations, the role of *juge d'appui* will be performed by the President of the *Tribunal de Grande Instance* (Civil Court of First Instance) of Paris. It is likely that the *juge d'appui* will be important mostly in *ad hoc* arbitrations, *i.e.*, when the parties have not agreed to an institutional arbitration, since most of the functions of the *juge d'appui* are often performed by the administering institution. For example, in the event that there are difficulties in an *ad hoc* arbitration in the constitution of the arbitral tribunal, the *juge d'appui* may determine the procedure for the constitution of the arbitral tribunal and appoint the arbitrators. The *juge d'appui* may also rule upon the *prima facie* validity of the arbitration clause or a challenge to an arbitrator.

The powers of the *juge d'appui* have been extended under the Decree. However, the Decree appears to preserve successfully the delicate balance that must exist between intervention and interference in the arbitration context. This balance is reflected in the fact, for instance, that the *juge d'appui* may issue orders related to arbitral procedure but cannot make a decision

regarding the outcome of the case. The *juge d'appui* also has the power to extend the six-month period allotted to the arbitral tribunal to render its award pursuant to Article 1463(2), which is applicable to international arbitration pursuant to Article 1506.

III. Procedural Innovations

The Decree also announced a number of legal rules that are entirely new and that are designed to support and facilitate arbitration as a method of dispute resolution.

Increase In The Power Of The Chair Of The Arbitral Tribunal

Article 1513 allows the chair of an arbitral tribunal to decide an issue if no majority can be reached among the members of the arbitral tribunal. This provision is inspired by foreign arbitration laws[26] and institutional rules.[27] Such a provision ensures a prompt issuance of awards, when the members of the arbitral tribunal cannot reach an agreement regarding the decision to be made. Nonetheless, this possibility can be seen as a last resort that the chair should use only in true deadlock situations, and should not be interpreted as giving the chair the power to take arbitrary decisions, without consulting co-arbitrators.

Decrease In The Time Period For Challenging An Arbitral Award

The Decree has shortened several deadlines:

> *Articles 1486 and 1506* decrease the length of time during which a party may request that the arbitral tribunal interpret its award or correct an alleged error or omission. Previously, parties had one year from the day that the award was rendered to make such a request. Now, a party must make such a request within three months of the party's notification of the award, unless the parties have agreed otherwise.
>
> *Article 1519* shortens the time period during which a party may file an action seeking the annulment of an arbitral award. Previously, a party had one month from the date when the party received notification of the decision of *exequatur* to file an action seeking annulment. Now, a party must file an action seeking annulment within one month of the day upon which a party is notified of the award. The additional two-month time period applicable to notifications sent to companies headquartered outside of France should apply, pursuant to Articles 643 to 645 of the French Code of Civil Procedure.[28]

By shortening deadlines for challenging awards, the Decree will reduce delays in proceedings and, as a consequence, promote the overall efficiency of arbitration.

Increase in Party Autonomy To Waive Annulment Proceedings

Article 1522 grants parties the right to waive the possibility of annulment proceedings, giving up their right to challenge the validity of an arbitral award before French courts. Given the consequences of such a choice, the waiver must be expressed in a "special agreement" ("*convention spéciale*"). Thus, it is understood that this requirement would not be satisfied by a general waiver of the right to seek annulment. For example, the waiver provision of Article 28.6 of the ICC Rules, which provides that by submitting a dispute to arbitration under the ICC Rules, parties "shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made," is most likely insufficient to constitute a waiver under new Article 1522.

The second paragraph of Article 1522 states, however, that notwithstanding the fact that parties agreed to waive their right to pursue an annulment action, they can still challenge the enforcement of an arbitral award in France on any of five grounds provided for annulment proceedings. Thus, enforcement of an award in France can still be challenged, even though the validity of the award itself may not be challenged if parties waived that right by special agreement.

Article 1522 represents a substantial divergence from the majority approach in the United States. While the question is not completely settled under U.S. law, many U.S. courts will not enforce an agreement by the parties to limit the grounds for challenging an arbitral award beyond the "floor" created by the FAA.[29]

In light of France's approach to judicial review of arbitral awards, parties that choose France as an arbitral seat have increased assurance of the finality of their award. Yet, Article 1522 protects parties' due process rights in the event of enforcement proceedings. This makes Article 1522 one of the Decree's most important innovations.

Increase In The Certainty Of Enforcement

Probably the most significant change implemented by the Decree is that, pursuant to Article 1526, if a party seeks to have an award annulled in court or appeals an *exequatur* order, this challenge or appeal will no longer automatically result in a stay of enforcement of the award. This will doubtless result in the speedier enforcement of arbitral awards in France.

However, Article 1526 contains an exception to this principle, whereby a court may suspend or modify the enforcement of an award, pending annulment or enforcement proceedings, if enforcement would seriously prejudice one of the parties.

This new provision is a welcome development since, in practice, annulment proceedings are rarely successful. However, an application for a suspension of enforcement can still be submitted in the (presumably) rare cases where it is necessary.[30]

Confidentiality

The fourth paragraph of Article 1464 states that arbitral proceedings are confidential, and the Ministry's Report to the Prime Minister describes confidentiality as a "major characteristic" of domestic arbitration. However, according to Article 1506, this provision does not apply to international arbitration.

There is a legitimate rationale for not automatically applying the principle of confidentiality to international arbitration. Namely, confidentiality may be inappropriate or explicitly excluded in some international arbitrations where public interests are at stake and/or where state-owned entities are involved, especially in investment treaty arbitrations.[31]

Thus, where parties are not precluded for reasons of public interest from agreeing to keep arbitral proceedings confidential and want their proceedings to be confidential, they should include an appropriate provision in their arbitration clause, taking into account – in the case of institutional arbitrations – whatever confidentiality provisions may be included in the institution's rules.

Entry Into Force

The Decree will enter into force on May 1, 2011. In domestic arbitrations, provisions dealing with arbitration clauses will apply only to arbitration agreements entered into after May 1, 2011. The same principle applies for the provisions excluding the possibility of appeal proceedings. In international arbitrations, provisions pertaining to the jurisdiction of the *juge d'appui* with regard to the constitution of arbitral tribunals will apply to arbitration agreements concluded after May 1, 2011. Furthermore, all provisions affecting the arbitral proceedings *per se* will apply only in cases where the arbitral tribunal has been constituted after May 1, 2011. Finally, the rule that a court proceeding challenging an arbitral award or enforcement proceeding does not result in an automatic stay of enforcement will apply only if the award has been rendered after May 1, 2011.

IV. Conclusion

Interestingly, one of the predominant rationales for the French reform was to clarify French arbitration law, which had become opaque due to the fact that a substantial part of French law on the topic was judge-made and therefore available primarily by means of case law and commentary, rather than statute. Though the American legal tradition does not have the same emphasis on codification as does the French tradition, American lawmakers would be well-served to note – as did the French lawmakers in enacting these reforms – that to clarify legal principles by codification renders the law more accessible, particularly to international practitioners.

This is important in the context of international arbitration, where the fact that the "consumers" of arbitration law are often international makes the clarity and accessibility of the law all the more important.

Endnotes

1. *Décret 2011-48 du 13 janvier 2011 portant réforme de l'arbitrage* [Decree 2011-48 of January 13, 2011 Regarding Reform of Arbitration], *Journal Officiel de la République Française* [J.O.] [Official Gazette of France], 14 Jan. 2011, p. 777 (hereinafter, "Decree 2011-48") available at http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023417517&dateTexte=&categorieLien=id. An English translation is available at http://www.parisarbitration.com/.

2. *See Rapport au Premier ministre relatif au décret n° 2011-48 du 13 janvier 2011 portant réforme de l'arbitrage* [Report to the Prime Minister on Decree 2011-48 of 13 January 2011 Regarding Reform of Arbitration], *Journal Officiel de la République Française* [J.O.] [Official Gazette of France], 14 Jan. 2011, p. 773, available at http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023417498.

3. *See Décret 80-354 du 14 mai 1980* and *Décret 81-500 du 12 mai 1981*.

4. The French Code of Civil Procedure distinguishes between rules applicable to domestic arbitration and rules applicable to international arbitration, based on a very broad definition of international arbitration. The FAA also contains two chapters that apply exclusively to international arbitration. *See* 9 U.S.C. §§ 201-08 (New York Convention) (Chapter 2), §§ 301-07 (Inter-American Convention on Commercial Arbitration) (Chapter 3). The remaining provisions of the FAA, 9 U.S.C. §§ 1-16, apply (i) to domestic arbitration and (ii) to international arbitration, but only to the extent they do not conflict with the applicable provisions of FAA Chapter 2 and Chapter 3. Similarly to the French approach, the FAA and judicial decisions interpreting it have defined "international" quite broadly. *See* 9 U.S.C. § 202 (providing that an arbitration is international where it is not "entirely between citizens of the United States," or, when an agreement is entirely between citizens of the United States, "[the] relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states"); *see also F. Hoffmann La Roche Ltd. v. Qiagen Gaithersburg, Inc.*, 730 F. Supp. 2d 318, 325 (S.D.N.Y. 2010) (citing cases).

5. *See* United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958 (1970), 330 U.N.T.S. 38 (1958) ("New York Convention"), Arts. II(1), II(2) (requiring Contracting States to recognize arbitral agreements "in writing"); International Chamber of Commerce (ICC) Court of Arbitration Rules (1998), Rule 6.1 (rule is silent regarding formal requirements of arbitration agreement); LCIA Arbitration Rules (1998) (preamble) (suggesting written agreement to arbitrate under Rules may be required).

6. *See* 9 U.S.C. § 2 ("A *written provision* in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.") (emphasis added). However, U.S. courts do not require that a party have signed an arbitration agreement in order for the agreement to be enforceable against the party, and will require a non-signatory to arbitrate when common law contract principles (like agency, alter ego, estoppel, incorporation by reference, or assumption) render the provision enforceable against that party. *See, e.g., Todd v. Steamship Mut. Underwriting Assn.*, 601 F.3d 329, 335 n.9 (5th Cir. 2010); *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 417 (4th Cir. 2000); *Thomson-CSF, S.A. v. American Arbitration Ass'n*, 64 F.3d 773, 776 (2d Cir. 1995). Also, a significant though little-explored exception to the rule that an arbitral agreement must be in writing to be enforceable might arise where parties commence or complete arbitral proceedings absent a written agreement to arbitrate without objecting to the jurisdiction of the arbitral tribunal. In such a case, a U.S. court might apply the doctrine of equitable estoppel and require a party to the proceedings to continue to arbitrate or enforce an award rendered against a party pursuant to arbitral proceedings. *Cf. Opals on Ice Lingerie v. Bodylines Inc.*, 320 F.3d 362, 368 (2d Cir. 2003) ("[I]f a party participates in arbitration proceedings without making a timely objection to the submission of the dispute to arbitration, that party may be found to have waived its right to object to the arbitration."); *Valley Casework, Inc. v. Comfort Construction, Inc.*, 76 Cal.App.4th 1013, 1021, 90 Cal. Rptr. 2d 779 (1999) ("A person who voluntarily joins an arbitration proceeding becomes a party to it and may be estopped from claiming to be exempt from the mandatory arbitration procedure.").

7. Indeed, the new Article 1516 of the Decree provides that an application to request the recognition and enforcement of the award must be filed "together with the original award and arbitration agreement, or duly authenticated copies of such documents," which suggests that an arbitration agreement in

written form must exist, and that only the consent to arbitrate may be established in any form.

8. *See* Decree 2011-48, Art. 1457.

9. *See id.*, Art. 1464.

10. *See, e.g.*, Judgment of 9 December 1992, 1996 Rev. Arb. 438 (Paris Tribunal de Grande Instance) (assessing damages on arbitrator who failed to disclose an obvious conflict of interest after arbitral award was annulled); Judgment of 12 May 1993, 1996 Rev. Arb. 411 (Paris Tribunal de Grande Instance) ("The relationship between the arbitrator and the parties, which is contractual in nature, justifies [] liability being assessed in the light of the ordinary legal conditions [for breach of contract].").

11. *See* Decree 2011-48, Arts. 1456, 1458.

12. *See* Code civil [C. civ] art. 1452 (Fr.), abrogated by Decree 2011-48.

13. 9 U.S.C. § 1 *et seq*.

14. *See, e.g., Johnson v. Gruma Corp.*, 614 F.3d 1062 (9th Cir. 2010) (applying California law pursuant to parties' choice of law provision, including state rules regarding duties of arbitrators).

15. *See generally* Gary B. Born, International Commercial Arbitration 1615-45 (2009); Mark Kantor, *Arbitrator Disclosure: An Active but Unsettled Year*, 11(1) Int'l Arb. L. Rev. 20 (2008).

16. *See* 9 U.S.C. § 10.

17. *See, e.g., New Regency Prods., Inc. v. Nippon Herald Films, Inc.*, 501 F.3d 1101 (9th Cir. 2007).

18. *See, e.g., Applied Indus. Materials Corp. v. Ovalar Makine Ticaret Ve Sanayi, A.S.*, 492 F.3d 132, 138 (2d. Cir. 2007). The better-reasoned cases are those that hold that an arbitrator does not have a duty to investigate or disclose conflicts under the FAA, but that failure to do so can give rise to an inference of partiality. U.S. courts do not impose any penalties on arbitrators for failure to disclose conflicts of interest, and so it would be inaccurate to say that an arbitrator has a legal duty to disclose potential conflicts, yet not articulate to whom this duty is owed and what the ramification is for the arbitrator in case of breach.

19. *See, e.g.*, Paris Court of Appeal, October 7, 2004, JCP 2006 II, 10071, Rev. Arb. 2005, 737. Note that whether, and to what extent, arbitrators are empowered to order provisional relief under U.S. law has not been provided for clearly by statute, and courts have made varying pronouncements on the matter. *See generally* Neil E. McDonell, *The Availability of Provisional Relief in International Commercial Arbitration*, 22 Colum. J. Transnat'l L. 273 (1984).

20. *See* Decree 2011-48, Art. 1468.

21. *See, e.g., Fidelity Fed. Bank, FSB v. Durga Ma Corp.*, 386 F.3d 1306, 1313 (9th Cir. 2004); *Island Creek Coal Sales Co. v. Gainesville*, 729 F.2d 1046, 1049 (6th Cir. 1984); *Campbell v. Am. Family Life Assur. Co. of Columbus*, 613 F. Supp. 2d 1114, 1119 (D. Minn. 2009); *Halliburton Energy Servs. v. NL Indus.*, 553 F. Supp. 2d 733, 784 (S.D. Tex. 2008).

22. *See* Decree 2011-48, Art. 1466 ("La partie qui, *en connaissance de cause et sans motif légitime*, s'abstient d'invoquer en temps utile une irrégularité devant le tribunal arbitral est réputée avoir renoncé à s'en prévaloir.") (emphasis added).

23. *See, e.g.*, *Fidelity Fed. Bank, FSB v. Durga Ma Corp.*, 386 F.3d 1306, 1313 (9th Cir. 2004) (holding that in light of FAA policy favoring the finality of arbitral awards, constructive knowledge is sufficient for waiver).

24. For enforcement procedures under U.S. law, *see* 9 U.S.C. § 207; New York Convention Art. IV.

25. The closest analogue to the "*juge d'appui*" in U.S. law is probably the judge of any federal district court where venue is proper. Under the FAA, this includes the federal district court for the district in which the arbitration is seated. *See* 9 U.S.C. § 204.

26. *See, e.g.*, Belgian Judicial Code, Art. 1701.2; English Arbitration Act, 1996, § 20.4; Swiss Statute on Private International Law, Art. 189.2; Swedish Arbitration Act, § 30.

27. ICC Rules, Art. 25.1; LCIA Rules, Art. 26.3.

28. For time limits for filing an action to vacate an arbitral award under the Federal Arbitration Act, *see* 9 U.S.C. § 12 (notice of a motion to vacate, modify or correct an award must be served on adverse party within three months after award is filed or delivered).

29. *See, e.g.*, *Hoeft v. MVL Group, Inc.*, 343 F.3d 57, 63-64 (2d Cir. 2003); *MACTEC, Inc. v. Gorelick*, 427 F.3d 821, 829-30 (10th Cir. 2005) (permitting parties to restrict appellate court's, but not district court's, review of arbitral award); *but see Kim-C1, LLC v. Valent Biosciences Corp.*, 2010 U.S. Dist. LEXIS 130852 (E.D. Cal. 2010) (permitting parties to limit scope of judicial review of arbitral award).

30. U.S. courts exercise discretion to suspend enforcement proceedings where a party has commenced proceedings to set aside an arbitral award, pursuant to New York Convention Art. IV.

31. *See, e.g.*, Article 32(2) of the ICSID Rules. ■

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