

Investment Treaty Arbitration

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Quick reference guide enabling side-by-side comparison of local insights, including into foreign investment profile and investment agreement legislation; international legal obligations under investment treaties and relevant conventions; foreign investment promotion, domestic laws, regulatory and disputes agencies; investment treaty practice; investment arbitration history; enforcement of awards against the state; and recent trends.

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BACKGROUND

Foreign investment

What is the prevailing attitude towards foreign investment?

In 2020, France was the 18th largest recipient of foreign direct investment (FDI) in the world. France has adopted a positive attitude towards FDI, upon which its economy is reliant. It actively seeks to attract and retain FDI. In 2020, France registered 1,215 new foreign investment projects. This figure is down 17 per cent from 2019 as compared to a 33 per cent decline worldwide. Although the covid-19 crisis has affected the rate of foreign investment in France, the country has fared better than other states in the same situation. In this respect, 2020 was the second-best year in the past 10 years for investment in France. In 2019, just before the covid-19 crisis, France registered a record 1,468 foreign investment projects.

While 64 per cent of all investments in 2020 came from European countries, the main investing country in France was the United States with 20 per cent of all investments. Germany (16.5 per cent) and Italy (8 per cent) were the main sources of European investment in France.

Keeping in line with a positive view towards investment, in 2019, France adopted the PACTE Act (Law of 22 May 2019 on the growth and transformation of companies), which aims to simplify the business environment and encourage innovation. In addition, France adopted the ASAP Act of 2020, relating to the acceleration and simplification of public action, which reduced administrative requirements for companies.

Law stated - 29 October 2021

What are the main sectors for foreign investment in the state?

According to the Organisation for Economic Cooperation and Development, the two largest sectors for foreign investment in France are manufacturing and finance and insurance activities. In 2020, one quarter of new investments in France aimed to establish or expand a production facility whereas research and development accounted for 12 per cent of all foreign investment in France.

Law stated - 29 October 2021

Is there a net inflow or outflow of foreign direct investment?

According to the World Investment Report 2020, published by UNCTAD, in 2019, FDI flows to France decreased by 11 per cent to reach US\$34 billion (compared to US\$38 billion in 2018). This was mainly due to a decline in cross-border M&A sales of assets. Meanwhile, although FDI outflows decreased quite significantly from US\$106 billion to US\$39 billion, there was still a net outflow of FDI.

In 2020, the World Investment Report 2021 confirmed that FDI flows to France fell by 47 per cent in 2020 reaching US \$18 billion in part because of lower M&A sales, which fell from US\$18 billion to US\$5 billion. Despite the covid-19 crisis, investment in certain strategic sectors, such as R&D, healthcare and renewable energy, recorded a rise in 2020. As for FDI outflows in 2020, they increased from US\$39 billion in 2019 to US\$44 billion as French multi-national enterprises provided loans to their foreign affiliates, putting France in fifth place worldwide in terms of FDI outflows.

Law stated - 29 October 2021

Investment agreement legislation

Describe domestic legislation governing investment agreements with the state or state-owned entities.

French law does not provide specific requirements whether on substance or form regarding investment agreements concluded with the state or state-owned entities. Such agreements must comply with applicable French law for the valid conclusion of contracts.

Law stated - 29 October 2021

INTERNATIONAL LEGAL OBLIGATIONS

Investment treaties

Identify and give brief details of the bilateral or multilateral investment treaties to which the state is a party, also indicating whether they are in force.

Between 1963 and 2014, France signed 116 bilateral investment treaties (BITs), of which 25 have been terminated, eight are signed (but not in force), and 83 are in force, covering a diverse geographic area. France has also signed an additional 56 treaties with investment provisions and is party to multilateral agreements containing provisions on investment protection and investor–state dispute resolution such as the Energy Charter Treaty, which aims to strengthen cooperation on energy issues by creating a unitary set of rules to be observed by the participating countries to manage, among other things, risks generated by energy-related investments. The overwhelming majority of French investment treaties provide for investor–state arbitration under the ICSID Convention, and many also provide for ad hoc arbitration. Approximately 12 BITs provide for ICSID arbitration if the two states are parties to the ICSID Convention, failing which the BITs provide for ad hoc arbitration. A handful of BITs provide for an option between domestic courts, ICSID arbitration or ad hoc arbitration. Others provide an option before competent courts of the host state or ICSID arbitration. A few BITs provide a choice between ICSID arbitration, ICC Arbitration, and ad hoc arbitration under the United Nations Commission on International Trade Law’s rules. The France–Haiti BIT provides exclusively for ICC arbitration.

On 5 May 2020, France signed the agreement for the termination of intra-EU BITs (the Termination Agreement). The Termination Agreement follows from the 6 March 2018 European Court of Justice judgment in the Achmea case, where the Court found that investor–state arbitration clauses in intra-EU BITs are incompatible with the EU Treaties. The Termination Agreement entered into force on 29 August 2020, as a result of which France’s BITs with 12 other EU countries were terminated (ie, Malta, Hungary, Bulgaria, Croatia, the Czech Republic, Latvia, Lithuania, Estonia, Romania, Slovakia and Slovenia).

France also became a member of the Multilateral Investment Guarantee Agency (MIGA) by signing the Convention Establishing the MIGA in 1985. The MIGA aims to promote and insure foreign direct investment (FDI) in developing countries to facilitate economic growth.

In June 2019, France ratified the Comprehensive Economic and Trade Agreement between the EU and Canada, which contains an investment chapter providing for an investor–state dispute resolution mechanism.

Law stated - 29 October 2021

If applicable, indicate whether the bilateral or multilateral investment treaties to which the state is a party extend to overseas territories.

French bilateral or multilateral investment treaties do not expressly exclude French overseas territories. Thus, such treaties would likely be considered as extending to French overseas territories, although this has not been tested before an arbitral tribunal.

Law stated - 29 October 2021

Has the state amended or entered into additional protocols affecting bilateral or multilateral investment treaties to which it is a party?

In light of the Achmea decision, on 15 January 2019, France, along with 21 other EU member states, issued a joint declaration stating that arbitral tribunals have no jurisdiction to decide investor claims based on intra-EU BITs, due to the lack of valid offers to arbitrate by the member states. The signatories committed to terminate all intra-EU BITs without undue delay. The January 2019 declaration was superseded by the agreement for the termination of intra-EU BITs signed by France on 5 May 2020.

Law stated - 29 October 2021

Has the state unilaterally terminated any bilateral or multilateral investment treaty to which it is a party?

France has not unilaterally terminated any of its BITs. However, certain of its BITs were unilaterally terminated by other parties. For example, the France–South Africa BIT was terminated by South Africa on 1 September 2014, with investments made before this date covered for an additional period of 20 years. The France–Bolivia BIT was terminated by Bolivia on 6 May 2013, with investments made before this date covered for an additional period of 20 years. The France–Ecuador BIT was terminated by Ecuador on 18 May 2018, with investments made before this date covered for an additional period of 15 years. The France–India BIT was terminated by India on 15 April 2017, with investments made before this date covered for an additional period of 15 years. The France–Indonesia BIT was terminated by Indonesia on 25 April 2015, with investments made before this date covered going forward.

Older French BITs with China, Tunisia, Morocco and the Philippines were terminated and replaced with new BITs.

On 5 May 2020, France signed the agreement for the termination of intra-EU BITs (Termination Agreement), bilaterally terminating intra-EU BITs. The Termination Agreement entered into force on 29 August 2020, as a result of which France's BITs with 12 other EU countries were terminated. The Termination Treaty also expressly abrogates 'sunset clauses' in the French BITs that otherwise extend investment protections for an additional 10, 15, or 20 years following termination.

Law stated - 29 October 2021

Has the state entered into multiple bilateral or multilateral investment treaties with overlapping membership?

France is party both to bilateral and multilateral investment treaties and, as such, overlapping membership may occur. For example, France is party to the Energy Charter Treaty, to which member state parties are also parties to BITs with

France.

Law stated - 29 October 2021

ICSID Convention

Is the state party to the ICSID Convention?

France signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (the ICSID Convention) on 22 December 1965 and ratified it on 21 August 1967. It entered into force on 20 September 1967.

The High Court was designated by France as the competent authority for the recognition and enforcement of arbitral awards rendered pursuant to the ICSID Convention. However, further to a 2019 reform on civil procedure in France, starting on January 2020, the high courts were combined with the district courts to create the judicial courts. Thus, the judicial courts are now competent to recognise and enforce arbitral awards rendered pursuant to the ICSID Convention. France has neither excluded any territories nor has it made any notification concerning a class of disputes that it would or would not consider submitting to the jurisdiction of the International Centre for Settlement of Investment Disputes (ICSID). It has not designated any constituent subdivisions or agencies as possible parties to an ICSID dispute.

Law stated - 29 October 2021

Mauritius Convention

Is the state a party to the UN Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention)?

France signed the UN Convention on Transparency in Treaty-based Investor-state Arbitration (Mauritius Convention) on 17 March 2015 but has not yet ratified it.

Law stated - 29 October 2021

Investment treaty programme

Does the state have an investment treaty programme?

Yes. As a member of the European Union, foreign investment inflow and outflow is encouraged via the free movement of people, services, goods, and capital (save limited exception) across the 28 member states of the EU.

Law stated - 29 October 2021

REGULATION OF INBOUND FOREIGN INVESTMENT

Government investment promotion programmes

Does the state have a foreign investment promotion programme?

Business France is a French government agency created on 1 January 2015 through a merger between UBIFRANCE and the French Agency for International Investment (InvestInFrance). It has the status of a public institution of an industrial and commercial character under the supervision of the Ministry of Economy and Finance, the Ministry of Foreign Affairs and International Development, and the Ministry of Rural Spatial Planning and Development Territory. It supports the international development of the French economy by, in particular, promoting and facilitating international

investment in France.

Business France is responsible for the identification and support of 56 per cent of international investment projects in France in 2020, in collaboration with regional partners. In total, since 2017, Business France and its partners have supported more than 7,000 projects in French territories. Over the same period, the agency facilitated, through its Welcome desk, the installation in France of more than 4,500 international talents and their families.

Business France has established itself as a one stop shop for investors looking to set up a business in France. Present in over 40 countries, it boasts access to various business and legal experts that can assist in advising investors in the regulatory frameworks, on state aid schemes, as well as any reforms, and offers access to a wide network of contacts to streamline financial, industrial, R&D, logistical and administrative needs.

Business France also publishes an annual report summarising investment activities in France in English, acting as a helpful resource for interested investors.

Business France and InvestInFrance (whose activities now fall under the Business France umbrella) maintain easily accessible and regularly updated websites with information on the leading industries for investment in France, information on why to invest in France, help and support, covid-19 related information explaining the financial, tax and social measures taken in response to the pandemic to assist investors, finding a ready-to-use industrial site in France, and news and events relevant to investors.

Law stated - 29 October 2021

Applicable domestic laws

Identify the domestic laws that apply to foreign investors and foreign investment, including any requirements of admission or registration of investments.

The French investment regime is one of the least restrictive globally. Under article L 151–1 of the French Monetary and Financial Code, financial dealings between France and foreign countries, and their nationals, are as a general matter unrestricted.

However, since 2005, certain types of investments are subject to prior authorisation of the Minister of Economy and Finance. Under article L 151–3 of the French Monetary and Financial Code, prior approval from the Minister of Economy is required for foreign investment in any activity in France that, even occasionally, is part of the exercise of public authority or pertains to activities likely to jeopardise public order, public safety or national defence interests, or research, production or marketing of arms, munitions, explosive substances or powders.

Pursuant to article R 151–3 of the French Monetary and Financial Code, the activities referred to in article L 151–3 are defined as those that can affect, for example, the 'integrity, security and continuity of' energy, water, transport and electronic communication, as well as other activities relating to agricultural products, media and critical technologies. In the Order of 31 December 2019 relating to foreign investments in France (the Order), the French government defined 'critical technologies' as including:

- cybersecurity;
- artificial intelligence;
- robotics;
- additive manufacturing;
- semiconductors;
- quantum technologies; and
- energy storage.

The Order also lowered the threshold of acquisition of an investment (whether direct or indirect) by a non-EU or non-EEA investor that triggers mandatory investment review from 33.33 per cent to 25 per cent.

In response to the covid-19 crisis, since 27 April 2020, biotechnology was added to the list of critical technologies and the threshold of acquisition of an investment by non-EU or non-EEA investors which triggers the mandatory review procedure was temporarily lowered from 25 to 10 per cent for listed companies only. In 2020, the government blocked at least one transaction – the attempted acquisition of a French firm by a US company in the defence sector.

If an investment has been made in violation of article L 151–3-1 of the French Monetary and Financial Code, the same article provides that the investor may be ordered by the Minister of Economy to file an application for authorisation, change the nature of the investment or restore the status quo prior to the making of its investment at its own expense. These orders may be combined with a fine.

Under article R 151–4 of the French Monetary and Financial Code, interested entities may submit a request for an opinion from the Minister of Economy to see whether or not all or part of that entity's activity falls within the scope of section I of article L 151–3, requiring prior authorisation. The Minister commits to reply within two months.

Furthermore, an EU Investment Screening Regulation (Regulation) entered into force in April 2019 and became applicable from October 2020. This regulation, among other things:

- encourages international cooperation on investment screening, including sharing experiences, best practices and information on issues of common concerns;
- sets certain requirements for member states that wish to maintain or adopt a screening mechanism at a national level;
- creates a cooperation mechanism where member states and the Commission will be able to exchange information and raise concerns related to specific investments; and
- allows the Commission to issue opinions when an investment poses a threat to the security or public order of more than one member state, or when an investment could undermine a project of interest to the whole EU.

Under the Regulation, the decision on whether to set up a screening mechanism or to screen a particular foreign direct investment remains the sole responsibility of the member state concerned.

Law stated - 29 October 2021

Relevant regulatory agency

Identify the state agency that regulates and promotes inbound foreign investment.

The Ministry of Economy and Finance regulates and promotes inbound foreign investment as per articles L 151–1 to L 151–7 and R 151–1 to R 151–18 of the French Monetary and Financial Code.

Law stated - 29 October 2021

Relevant dispute agency

Identify the state agency that must be served with process in a dispute with a foreign investor.

There is no formal requirement under the law regarding service of process, however according to Decree No. 2020–868 of 15 July 2020 relating to the powers of the Ministry of Europe and Foreign Affairs the ministry responsible for negotiating bilateral and multilateral commercial treaties is the Minister of European and Foreign Affairs. In this respect, in the only ICSID case brought against France, the state was represented by the Minister of Foreign Affairs and

International Development, the precursor to the Minister of European and Foreign Affairs.

Law stated - 29 October 2021

INVESTMENT TREATY PRACTICE

Model BIT

Does the state have a model BIT?

The latest French model bilateral investment treaty (BIT) is from 2006. BITs generally set forth in their preambles the purpose and aim of such treaties as instruments of economic cooperation and development. Similarly, the preamble to the French model BIT generally emphasises the 'desire to strengthen the economic cooperation' between both states and to 'create favourable conditions for investments' of each party's nationals in the territory of the other party.

Article 1(1) of the French model BIT has adopted a broad, asset-based definition of 'investment' referring to 'every kind of assets' followed by an expressly non-exhaustive list of assets including moveable and immoveable property, shares, title to money, intellectual property, or business concessions. The French model BIT also contains a legality requirement: investments must have been made in accordance with the laws of the host state be protected under the BIT. Temporally, the treaty extends to investments made before or after its entry into force. Nevertheless, the French model BIT is silent as to whether disputes which may be submitted to arbitration must have arisen after the entry into force of the BIT.

Its standards of protection include 'fair and equitable treatment' to the investments made on the territory of the host state (article 4), national and most favoured nation treatment (article 5), full and complete protection and security (article 6), expropriation (article 6), and free transfer of capital (article 7).

The investor–state dispute resolution clause (article 8) extends to any dispute relating to investments between one of the contracting parties and an investor of the other contracting party. In case of such dispute, the parties to the dispute must first attempt to resolve it by amicable means. Should the parties fail to reach an amicable settlement within six months after the dispute has been raised by either party to the dispute, it can be submitted to International Centre for Settlement of Investment Disputes (ICSID) arbitration, by either party. The French model BIT does not provide for other arbitration rules outside ICSID.

It is also relevant to note that article 12 relating to the treaty's entry into force and duration provides that the treaty enters into force following the reciprocal notification of the accomplishment of internal procedures and applies following the initial period of validity of 10 years unless the treaty has been denounced by one of the contracting parties with a one-year notice. In a case of denunciation, the treaty provides a survival clause of 20 years for investments that were made while the treaty was in force.

Law stated - 29 October 2021

Preparatory materials

Does the state have a central repository of treaty preparatory materials? Are such materials publicly available?

France does not have a centralised publicly available central repository of treaty preparatory materials. However, some preparatory treaty material can be obtained from the relevant ministries upon request. French BITs can also be found on other public platforms such as the UNCTAD website.

Law stated - 29 October 2021

Scope and coverage

What is the typical scope of coverage of investment treaties?

The overwhelming majority of French BITs in force contain a broad asset-based non-exhaustive definition of investment. Occasionally, a French BIT will expressly exclude certain operations from the definition of investment (eg, the France–Mexico BIT). Although many French BITs contain a requirement that the investment is made in accordance with the host state’s laws, some do not (eg, the France–Turkey BIT and the Ethiopia-France BIT). In most cases, French BITs do not require that an investor also have substantial economic activity in the host state. French BITs generally do not contain denial of benefits clauses.

Law stated - 29 October 2021

Protections

What substantive protections are typically available?

French BITs tend to contain numerous typical substantive protections. Most fair and equitable treatment provisions are qualified by wording requiring treatment in line with international law principles or some other qualifier, however a few BITs, in particular the earlier ones, guarantee fair and equitable treatment that is not subject to any qualifier. A few French BITs contain full protection and security provisions (eg, the France–Kenya BIT and the France–Saudi-Arabia BIT). French BITs always contain expropriation clauses, with some expressly setting forth that they protect investors against direct and indirect expropriation (eg, the France–Iran, France–Uruguay, France–Kenya and France–Saudi-Arabia BITs). The overwhelming majority of French BITs do not contain umbrella clauses.

Law stated - 29 October 2021

Dispute resolution

What are the most commonly used dispute resolution options for investment disputes between foreign investors and your state?

Despite lacking the benefit of practical experience because only one investment dispute has been brought against France, French BITs offer a variety of dispute resolution options. In particular, the overwhelming majority of French investment treaties provide for investor–state arbitration under the ICSID Convention (eg, Costa Rica, Egypt, Kuwait, Turkey and Tunisia), and many also provide for ad hoc arbitration (eg, Bahrain, Cambodia, Congo, Ecuador, Indonesia, Malaysia, Singapore and Uganda).

Twelve BITs provide for ICSID arbitration if the two states are party to the ICSID Convention failing which the BITs provide for ad hoc arbitration (eg, South Africa and the United Arab Emirates) or ad hoc arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL) (eg, Dominican Republic, Qatar, Vietnam).

A handful of BITs provide for an option between domestic courts, ICSID arbitration, or ad hoc arbitration under the United Nations Commission on International Trade Law (UNCITRAL) rules (eg, Argentina, Ethiopia, Honduras and Iran).

Others provide an option before competent courts of the host state or ICSID arbitration (eg, Algeria, Chile and Jamaica).

A few BITs provide for options between ICSID arbitration, International Court of Arbitration (ICC) Arbitration, and ad hoc arbitration under the UNCITRAL Rules (eg, Libya and Mexico).

One BIT provides exclusively for ICC arbitration (Haiti).

Law stated - 29 October 2021

Confidentiality

Does the state have an established practice of requiring confidentiality in investment arbitration?

As the only investment dispute brought against France was ultimately discontinued, there is not enough data to make a statement about whether France has an 'established practice of requiring confidentiality in investment arbitration'. That said, the 2011 reform of French arbitration law explicitly removed confidentiality with respect to international arbitrations. The justification for this change at the time was to ensure greater transparency in regard to investment arbitrations seated in France.

Law stated - 29 October 2021

Insurance

Does the state have an investment insurance agency or programme?

France does not have a state investment insurance agency or programme.

Law stated - 29 October 2021

INVESTMENT ARBITRATION HISTORY

Number of arbitrations

How many known investment treaty arbitrations has the state been involved in?

To date, only one public case was brought against France. *Serter v France*, ICSID Case No. ARB/13/22 was brought on the basis of the France–Turkey BIT. This case was discontinued in 2018, pursuant to ICSID Arbitration Rule 45.

Law stated - 29 October 2021

Industries and sectors

Do the investment arbitrations involving the state usually concern specific industries or investment sectors?

There are not enough examples of investment arbitrations involving France to provide any meaningful insight into whether specific industries or investment sectors are particularly implicated. With only one claim (which was discontinued) brought under a BIT, no sectors are particularly subject to such claims.

Law stated - 29 October 2021

Selecting arbitrator

Does the state have a history of using default mechanisms for appointment of arbitral tribunals or does the state have a history of appointing specific arbitrators?

In *Serter v France* (ICSID Case No. ARB/13/22 Discontinued), France appointed Thomas Clay to serve as co-arbitrator.

In *The Channel Tunnel Group Ltd And France–Manche SA v the United Kingdom and France*, France appointed Judge

Gilbert Guillaume to serve on the tribunal of five arbitrators. While this was not an investment dispute per se (having been brought on the basis of a concession agreement not a treaty and not clearly dealing with a foreign investment), Judge Guillaume is an experienced arbitrator in the investment field.

France would be very unlikely in the future rely on default mechanisms for the appointment of arbitral tribunals.

Law stated - 29 October 2021

Defence

Does the state typically defend itself against investment claims? Give details of the state's internal counsel for investment disputes.

In cases brought against France thus far, France has relied on a mix of internal and external counsel.

In *Serter v France* (ICSID Case No. ARB/13/22 – Discontinued), France elected to be represented by external (Cleary Gottlieb Steen & Hamilton) and internal counsel (Ministry of Foreign Affairs and International Development, Paris, France).

In *The Channel Tunnel Group Ltd And France–Manche SA v the United Kingdom and France*, although not an investment dispute per se (having been brought on the basis of a concession agreement not a treaty and not clearly dealing with a foreign investment), France was represented by a team of government lawyers and external counsel composed of legal experts and law professors. The team's members were:

- Mr Jean-Luc Florent, Deputy Legal Director at the Ministry of Foreign Affairs, Agent;
- Alain Pellet, Professor at the University of Paris X-Nanterre, member and former Chairman of the International Law Commission of the United Nations, Counsel and Advocate;
- Mathias Forteau, Professor of Law at the University of Lille 2, Counsel and Advocate;
- Pierre Bodeau-Livinec, Legal Affairs, Department, Ministry of Foreign Affairs, Deputy-Agent;
- Jean-Pierre Ghuysen, General Inspector of Transport and Public Works, President of the French Delegation to the Intergovernmental Commission on the Channel Tunnel, Expert-Counsel;
- Arnaud Tournier, project manager, General Secretariat for the Channel Tunnel, Expert-Counsel; and
- Franck Latty, doctor of law, project manager, General Secretariat for the Channel Tunnel, Expert-Counsel).

Law stated - 29 October 2021

ENFORCEMENT OF AWARDS AGAINST THE STATE

Enforcement agreements

Is the state party to any international agreements regarding enforcement, such as the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards?

France is party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention), which entered into force on 24 September 1959. Nevertheless, provisions of the French Code of Civil Procedure (CCP) prevail over the New York Convention in France by virtue of the 'more favourable law' provision contained in article VII(1) of the New York Convention, as the French regime on recognition and enforcement is more liberal than that of the New York Convention.

Law stated - 29 October 2021

Award compliance

Does the state usually comply voluntarily with investment treaty awards rendered against it?

There is no relevant data to consider. Out of the two cases known to have been brought against France, one was discontinued (*Serter v France* (ICSID Case No. ARB/13/22)) and the other (*The Channel Tunnel Group Ltd And France–Manche SA v the United Kingdom and France*) led to a partial award on liability with no indication of whether a subsequent award on quantum was ever rendered and complied with or whether the case settled. Note that, while the latter case is included for completeness, it is not an investment case per se (having been brought on the basis of a concession agreement not a treaty and not clearly dealing with a foreign investment).

Law stated - 29 October 2021

Unfavourable awards

If not, does the state appeal to its domestic courts or the courts where the arbitration was seated against unfavourable awards?

There is no relevant data to consider. Out of the two cases known to have been brought against France, one was discontinued (*Serter v France* (ICSID Case No. ARB/13/22)) and the other (*The Channel Tunnel Group Ltd And France–Manche SA v the United Kingdom and France*) led to a partial award on liability with no indication of whether a subsequent award on quantum was ever rendered and complied with or whether the case settled.

Law stated - 29 October 2021

Provisions hindering enforcement

Give details of any domestic legal provisions that may hinder the enforcement of awards against the state within its territory.

Under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (the ICSID Convention), national courts place no review role in International Centre for Settlement of Investment Disputes (ICSID) awards. Thus, there are no French legal provisions that may hinder the enforcement of ICSID awards against France.

For non-ICSID award rendered against the state, before attempting to enforce a foreign arbitral award (an award made outside France) against France (or any arbitral award debtor for that matter) in France, an arbitral award creditor must obtain an exequatur order as per article 1516 of the French Code of Civil Procedure (CCP). Under article 1514 CCP, an exequatur order is granted if the recognition or enforcement of the foreign award is not prima facie contrary to international public policy.

Nevertheless, the arbitral award debtor has an opportunity to lodge an appeal against the exequatur order before the Paris Court of Appeal within one month (or within three months in case the appellant is a foreign resident) of the service of the exequatur order (article 1525 CCP). Pursuant to article 1520 CCP, the exequatur order may be repealed only if:

- the arbitral tribunal wrongly upheld or declined jurisdiction;
- the arbitral tribunal was not properly constituted;
- the arbitral tribunal ruled without complying with the mandate conferred upon it;
- due process was violated; or

- the award is contrary to public policy.

The appellate process is not suspensive; therefore the arbitral award creditor can pursue enforcement measures unless a stay of enforcement is sought and obtained by the debtor in line with article 1526 CCP. The Paris Court of Appeals' decision can also eventually be challenged before the Supreme Court (the Court of Cassation) but this challenge also has no suspensive effect.

Any enforcement actions must be stopped immediately if the exequatur order is overturned by the Paris Court of Appeals or the Supreme Court and the successful appellant may claim back all of the assets that were seized on the basis of the cancelled exequatur.

Foreign states (and their emanations) enjoy, as a matter of principle, immunity from execution. Exceptions to the immunity of foreign states and their emanations have been clarified by the Law No. 2016-1691 dated 9 December 2016 and codified under articles L 111-1-1 to L 111-1-3 of the Civil Code of Enforcement Procedures (CCEP). Thus, an arbitral award creditor attempting to carry out enforcement measures on assets owned by a foreign state such as France must seek the prior authorisation of the judge in an ex parte application (article L 111-1-1 CCEP). A judge will only authorise enforcement measures against assets owned by a foreign state if:

- a foreign state has expressly agreed to such measures;
- a foreign state has reserved or assigned the concerned assets to the satisfaction of the creditor's request; or
- if the foreign state's asset is a commercial asset (article L 111-1-2 CCEP).

Enforcement measures against non-commercial assets, such as diplomatic assets, will only be authorised if the foreign state has expressly and specifically waived its immunity rights (article L 111-1-3 of the CCEP).

Law stated - 29 October 2021

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics in your jurisdiction?

France passed a new law in 2019 providing a supportive framework for online dispute resolution (Law 2016-1547 of 23 March 2019). Under article 4-1 of the law, an individual or legal entity offering conciliation, mediation or arbitration services online, whether for free or not, must comply with several obligations, including French regulations on the protection of personal data, confidentiality, and the obligation to provide information on conciliation, mediation and arbitration proceedings towards the parties. Regarding arbitration, article 4-2 states that the arbitral award may be rendered in electronic form unless the parties object.

In 2019 and 2020, France also updated its legislation to expand and clarify the foreign investment screening regime. See:

- articles L 151-1 to L 151-7 and articles R 151-1 to R 151-18 of the Monetary and Financial Code;
- Decree No. 2019-1590 of 31 December 2019, along with the implementing Ministerial Order, which entered into force on 1 April 2020;
- Ministerial Order of 27 April 2020; and
- Decree No. 2020-892 of 22 July 2020).

France has taken a multi-step approach to respond to the covid-19 pandemic, implementing numerous measures to support the economy in various sectors. With €500 billion, France put in place a series of massive emergency measures to protect companies and workers across various sectors including aerospace, automotive, construction, tourism, retail and tech. The measures entail a Solidarity fund, state-guaranteed loans and a partial unemployment scheme. From March 2020 through July 2021, the Solidarity fund has benefited more than 2 million companies to the tune of €35 billion. The government made state-guaranteed loans for more than €300 billion available to eligible companies in need. Since March 2020, more than 25 million employees have benefited from the partial unemployment scheme and €32 billion was invested preserve jobs. A further €100 billion with €40 billion in direct EU subsidies have been agreed to boost the economy looking forward until 2022 and will focus on energy-efficient programmes, major reductions in business taxes, and massive investments in skills and training.

Interested parties are advised to stay up to date on all available emergency legislation, relief programmes, and initiatives by visiting the website of the French Ministry of Economy on the page dedicated to this purpose (available in the French language only) and the website of InvestInFrance (under the umbrella BusinessFrance, a public institution under government supervision) that maintains a database of detailed and practical responses to the most commonly asked questions on how to benefit from specific tax, financial and social measures taken in response to the covid-19 pandemic.

While these resources can be helpful starting points, affected parties are always advised to consult with experienced counsel to stay up to speed as this is a quickly evolving situation.

Law stated - 29 October 2021

Jurisdictions

	Austria	OBLIN Attorneys at Law
	Bangladesh	Vertex International Consulting
	Belgium	Linklaters LLP
	China	Zhong Lun Law Firm
	Egypt	Shahid Law Firm
	European Union	Van Bael & Bellis
	France	DLA Piper
	Japan	Anderson Mōri & Tomotsune
	Malaysia	Cecil Abraham & Partners
	Mexico	Holland & Knight LLP
	Romania	STOICA & Asociații
	Russia	BGP Litigation
	Spain	DLA Piper
	Switzerland	Homburger
	Ukraine	Sayenko Kharenko
	United Kingdom	Quinn Emanuel Urquhart & Sullivan LLP
	USA	Quinn Emanuel Urquhart & Sullivan LLP