

ARTICLE

JUSTICE IN THE XXIST CENTURY: A NEW REGIME FOR THE ARBITRATION CLAUSE

| 18/11/16 | Marie Danis

The regime applicable to the arbitration clause in domestic arbitrations will be modified further to an amendment from the French Government in the project of Law on Justice Modernisation in the XX1st Century. The Constitutional Council having issued its decision on 17 November 2016, this provision will be enacted in the coming days.

The new version of Article 2061 of the French civil Code will provide that:

« The arbitration clause must have been accepted by the party against whom it is invoked, unless this party has succeeded to the rights and obligations of the party who accepted it in the first place.

If either party has not contracted in the context of its professional activity, the arbitration clause cannot be invoked against it ».

This provision reasserts the key principle that recourse to arbitration requires the parties' consent, except when a party succeeds to the rights and obligations of another party who initially accepted the arbitration clause. This is notably the case for groups of contracts and groups of companies.

French law already provided that recourse to domestic arbitration was valid in the context of business relationships between professionals. The new provision extends this principle to relationships between private individuals (for example in real estate, in relation with joint-ownership rules or statutes of property investment companies...) which will become arbitrable.

Yet, uncertainties remained under the former wording of Article 2061 of the French civil Code, as to validity of the arbitration clause stipulated in consumer and employment contracts. In the context of business relationships between professionals and consumers, and if the contract provides for recourse to arbitration, the consumer will now be allowed to opt either for arbitration, or for litigation. The same solution should be adopted in favour of the employee whose employment contract stipulates an arbitration clause.
