

# Litigation in France: Evolving Landscape

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On January 1, 2020, important changes to civil and commercial litigation procedures before French courts entered into force.<sup>1</sup> The comprehensive reform aims to offer a simpler and more effective way to resolve disputes and make French courts more attractive to international litigants. Key changes include expanded provisions for alternative dispute resolution, consolidated first instance courts, provisional enforcement of decisions pending appeal, and transparency of court decisions.

## ALTERNATIVE DISPUTE RESOLUTION

The reforms actively promote alternative dispute resolution (“ADR”) mechanisms such as mediation and conciliation, through two main changes:

- **Mandatory ADR for small civil claims.** Under the previous law, parties were invited to attempt to resolve their dispute out of court, but failure to do so did not carry meaningful consequences. The reform makes an attempt to resolve disputes through ADR before litigation mandatory for civil claims up to €5,000 and for a list of so-called “neighborhood” claims that can usually be resolved without magistrates. Failing to comply will render the claims inadmissible. Depending on the results, the scope of claims subject to this obligation may well be extended in coming years.
- **Extended power of courts to impose ADR.** When they believe an amicable resolution is possible, French courts can now require the parties to “meet” with a mediator at any stage of the proceeding, including in the context of summary proceedings, irrespective of the amount at stake. It remains to be seen what use

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<sup>1</sup> Law No 2019-222 of March 23, 2019, available at [\[https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000038261631&categorieLien=id\]](https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000038261631&categorieLien=id); Decree No 2019-1333 of December 11, 2019, available at [\[https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=125A53AF7E109C465C57E7ADB83F202B.tplgfr32s\\_2?cidTexte=JORFTEXT000039480084&dateTexte=&oldAction=rechIO&categorieLien=id&idIO=JORFCONT00039480071\]](https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=125A53AF7E109C465C57E7ADB83F202B.tplgfr32s_2?cidTexte=JORFTEXT000039480084&dateTexte=&oldAction=rechIO&categorieLien=id&idIO=JORFCONT00039480071).

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courts and parties will make of this provision, including whether such meetings will have real effects or be merely a formality.

These incentives should help ease congested court dockets and improve the relatively slow pace of the French civil justice system.

### CONSOLIDATED FIRST INSTANCE COURTS

French court system is organized at three levels: first instance, appeal and *cassation*. At first instance level, civil cases were previously split between first instance courts (*tribunal de grande instance*) and local courts (*tribunal d'instance*), depending on the nature of the claim and the amount at stake. The intricacies of the respective jurisdiction of these two civil courts created a host of difficulties for parties.

The reform consolidates these first instance courts into a new court called the “judicial court” (*tribunal judiciaire*) with jurisdiction over all civil litigation cases. The commercial courts’ jurisdiction over commercial disputes and bankruptcy remains untouched; as does the labor courts’ jurisdiction over employment-related cases.

### PROVISIONAL ENFORCEMENT

The reform makes first instance decisions generally immediately enforceable, unless the judge decides that such enforceability is not compatible with the nature of the case. This reverses the previous rule that first instance decisions were generally not enforceable pending appeal, unless the first instance judge had granted provisional enforcement (*exécution provisoire*). The reversal of the principle limits the collateral benefits of appeals and gives first instance decisions more teeth.

### TRANSPARENCY

Many more French court decisions will now be freely available online, with party names redacted. Identifying information for judges and clerks will also be redacted if disclosure is likely to jeopardize their security or privacy. In addition, the law expressly prohibits using judge or clerk names “with the purpose or effect of evaluating, analyzing, comparing or predicting their actual or alleged professional practices”—an emerging practice for some legaltech businesses—under penalty of imprisonment and a fine (€1.5 million for legal entities).

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**OUTLOOK**

The reform entered into force only a few weeks after the implementing decree was published, and the first few months under the new regime will certainly require some fine-tuning and adjustments.

In the long run, however, the hope is that the new landscape will make litigation before French courts easier and faster. These reforms are consistent with other efforts to make France more attractive to international business, including the creation of a new international chamber of the Paris Court of Appeal that allows proceedings in English, cross-examination and fast-track procedures.<sup>2</sup>

Debevoise is well placed to assist clients in this changing environment, with a team of dual-qualified litigators based in Paris, London and New York, who work in both French and English and routinely argue cases before French courts.

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Please do not hesitate to contact us with any questions.

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<sup>2</sup> See Debevoise Update, Paris Commercial Courts Create New International Chambers, January 12, 2018 [<https://www.debevoise.com/insights/publications/2018/01/paris-commercial-courts-create>].



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