

Specialised Chambers for International Commercial Disputes: Paris in the Spotlight

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In 2010, the Commercial Court of Paris created a specialised international and European court chamber in order to judge all international complex commercial cases in the first instance. Although French procedural rules continue to apply before this court chamber, evidence and oral debates can take place in a foreign language, if the judges and the parties so agree. Judges of this special chamber are competent, both linguistically and substantially, to adjudicate complex international commercial cases. Parties cannot elect this special chamber to hear their dispute, they can only choose the Commercial Court of Paris as the competent jurisdiction. Once the dispute is submitted to the Commercial Court, it is distributed among the different court chambers. Disputes with an international character are more likely to be heard by the international chamber (although in practice it is difficult to predict if that will be the case). If the decision in first instance is appealed, the ordinary procedure designates the Paris Court of Appeal as competent to hear the case since no international chamber exists at the Court of Appeal.

Background

On 7 March 2017, the French Minister of Justice asked the High Legal Committee of the financial market of Paris (HLCP) to prepare a report on the opportunity of creating court chambers specialised in hearing international commercial litigation disputes within the Paris Court of Appeal.

This initiative aimed at increasing French jurisdictions' international visibility, especially for those businesses choosing London to solve their disputes. The success of the Commercial Court of London with foreign companies is a reality: each year, 80% of the cases submitted have at least one foreign party and in almost 50% of these cases both parties are foreign companies. Moreover, in the UK, the market of commercial litigation legal services, represented a total of 16 billion euros in 2016. The success of London in the field of commercial litigation is justified, among others, by the UK's access to the mechanisms of mutual recognition of awards among the Member States of the European Union. This access will certainly be modified once the UK will no longer be part of the EU.

The report of the HLCP was rendered on 15 May 2017 and proposed the creation of specialised court chambers competent to judge all international commercial disputes, including the recourses against international arbitral awards.[fn]In France, the Paris Court of Appeal is generally competent to hear all actions against international arbitral awards and against exequatur procedures of international arbitral awards or awards rendered abroad. All such actions initiated after 1 March 2018 will take place in front of the International Chamber.[/fn]

The agreements creating an international court chamber within the Paris Court of Appeal (the « International Chamber ») have been signed on 7 February 2018 and define the procedure applicable

before these specialised court chambers, both in first and second instance.

What Are the Cases Judged by the International Chamber?

The International Chamber will be competent for hearing appeals introduced against decisions rendered by the international court chamber of the Commercial Court of Paris, between a French and a foreign entity as well as between two foreign entities, or whenever a foreign law is applicable to the dispute.

The competence of these international court chambers should be automatic whenever at least one of the parties is a foreign entity or a foreign law is applicable to the dispute. If either of these two criteria is fulfilled, the contractual designation of the Commercial Court of Paris should be sufficient to have the case heard by these international court chambers. Parties can also make a specific reference to these court chambers in the contract.

What Are the Particularities of the International Chamber?

The creation of the International Chamber allows France to have two degrees of jurisdiction in front of which international commercial disputes can be heard according to adapted procedural rules, partly in English and by experienced and highly qualified judges.

- The use of English or of another foreign language during the procedure

In front of the International Chamber, in accordance with the agreement of the parties:

- all documentary evidence can be presented in the language chosen by the parties without need for a translation,
- witnesses, experts, parties and foreign lawyers will be able to intervene orally in the chosen language[fn]As a default rule, pleadings will be held in French.[/fn],
- all procedural acts will be drafted in French,
- the award will be drafted in French, with a sworn translation in English.

The possibility to chose English in front of these court chambers will not only save time and expenses

- because the parties will no longer have to produce sworn translations - but will also give access to a larger pool of international lawyers and experts.

- Qualified judges

The specialised court chambers will be composed of permanent judges, experienced in commercial, financial and economic cases, with a knowledge of the main foreign applicable laws but also able to use English during the procedures. In addition to these permanent judges, the possibility of having highly qualified part-time judges is currently under discussion.

- Adapted procedure

The procedure in front of the specialised courts will be shorter and more efficient, with, for example, time extensions more difficult to obtain than in front of ordinary courts. Judges will define procedural timetables in close cooperation with the parties and their representatives.

A large place will be given to testimonial evidence: witnesses and experts can be called to testify in court, to answer questions by the judges, and be cross-examined by the parties' counsels (which is currently not a common feature of French commercial litigation).

- Recognition and enforcement of French decisions

In the context of Brexit, the fact that France will continue to benefit from the automatic recognition and enforcement of the French decision in all Member States is an advantage. The UK's exit from the European Union will also mean that it will no longer be integrated in the EU legal system. In practice, all decisions rendered in London will have to be submitted to the exequatur procedures of each Member State, in order to be recognised and enforced.

- Start of the operations

The International Chamber will be operational as soon as its President and his/her two advisers will be appointed by the Superior Council of Magistrates. All procedures initiated after 1 March 2018 will be heard by the International Chamber.

- An increased choice of French law

The International Chamber will judge cases in which a foreign law is applicable to a dispute, but also cases in which French law has been chosen by the Parties, whenever at least one party is not French. The authorities expect that once these specialised court chambers become operational and popular with the Parties, French law will be chosen more frequently as the governing law of international contracts.

Similar European Initiatives

The French initiative to set up court chambers specialised in international commercial litigation in which English can be used is not unique. Similar projects are ongoing in different EU countries. The Irish bar is in talks with large solicitor firms in Dublin and the solicitors' professional body in order to see how to best market the Irish legal system abroad. In the Netherlands, the new Netherlands Commercial Court is due to open in 2018 with English and Dutch as the languages of the proceedings, specialised Dutch judges and effective and shorter proceedings. The Brussels International Business Court should be operational in 2018, with proceedings and judgements in English, no appeal possible and a procedure inspired by international arbitration. Finally, also in 2018, the regional court of Frankfurt will establish an English-speaking chamber for commercial matters, in front of which – if the parties so request – the dispute can be litigated in English.

France hopes to benefit from the eminent place it already occupies in international arbitration and litigation. The ICC and its Arbitration Court are based in Paris and the only ICSID hearing facilities outside of Washington D.C. are in Paris. The market of legal services counts an important number of law firms offering strong international arbitration and litigation practices and court costs remain rather modest compared to the high quality of services delivered. The success of these different European specialised court chambers will depend on the procedural features offered to the Parties, but most importantly on the trends that will emerge from the case law and which will allow international litigators to make an informed choice.