

# THE INTERNATIONAL CHAMBERS OF THE PARIS COURTS: A FLEXIBLE AND EFFICIENT APPROACH TO RESOLVE INTERNATIONAL COMMERCIAL DISPUTES

Date: 5 April 2019

## International Arbitration Alert

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The Paris courts feature international chambers ("International Chambers") that offer litigants attractive conditions for the resolution of their international commercial disputes:

- Inexpensive application fee (maximum €235)
- Possibility to produce exhibits and conduct oral debates in English
- Flexibility in the administration of evidence

The Paris International Chambers should be considered a first-rate alternative for international clients whose pending or future disputes do not appear suited for resolution by an arbitral tribunal or by the courts of states from which the parties originate.

Here is the standard jurisdiction clause for the Paris International Chambers:

All disputes arising out of or relating to this contract, including issues relating to the performance, interpretation, validity, breach or termination thereof, shall be subject to the [exclusive] jurisdiction of the International Chamber of the Paris Court of First Instance (Tribunal de commerce de Paris), and all appeals from any decision of such court shall be subject to the [exclusive] jurisdiction of the International Chamber of the Paris Court of Appeals. The parties hereby unconditionally agree on the protocols which set out the terms pursuant to which the cases will be examined and adjudicated before these chambers.

[1]

The procedure before these International Chambers is set out in detail below.

On February 7, 2018, two international jurisdictions were set up within the Paris Commercial Court and the Paris Court of Appeal, following the adoption by the Paris Bar Association and the relevant courts of two protocols designed to offer litigants a set of innovative and flexible procedural rules for the resolution of their international commercial disputes. [2]

The creation of these two international jurisdictions aims to confirm Paris as an attractive jurisdictional forum for

foreign parties involved in disputes of an economic or commercial nature.

For that purpose, the protocols provide for an innovative application of French civil procedure rules that allows for more flexibility in the conduct of the proceedings, especially regarding the use of a foreign language, and places greater emphasis on evidence and oral testimonies, as prescribed under a common law approach.

In fact, many of the innovations brought about by the Protocols are already common practice in international arbitration.

## **THE INTERNATIONAL CHAMBER OF THE PARIS COMMERCIAL COURT (FIRST INSTANCE COURT)**

### **Its composition and jurisdiction**

The International Chamber of the Paris Commercial Court is composed of ten English-speaking judges who, because of their professional backgrounds as former company executives, have a thorough understanding of commercial and financial issues.

This chamber has jurisdiction to hear disputes of an economic and commercial nature with an international dimension and disputes that are governed by provisions of European law or foreign law. [3]

More specifically, it has jurisdiction to hear disputes regarding international commercial contracts and the termination of commercial relationships, transportations, unfair competition, and actions for damages arising from anti-competitive practices, as well as disputes related to transactions on financial instruments and products.

The International Chamber of the Paris Commercial Court's jurisdiction may derive from a contractual clause that broadly refers to the Paris courts as the competent jurisdictions. However, parties can also choose to specifically refer to the sole jurisdiction of the International Chamber of the Paris Commercial Court in their contract (see standard clause above).

### **Its procedural rules**

For the sake of efficiency, the proceedings before the International Chamber of the Paris Commercial Court are organized in close cooperation with the parties.

During a preliminary hearing, the parties may submit to the pre-trial judge a certain number of requests regarding the conduct of the proceedings, such as requests to hear witnesses or experts or requests for mandatory production of documents held by a party or third party. The pre-trial judge may then establish a procedural timetable in accordance with these requests and in agreement with the parties (Article 3).

The parties are thus entitled to debate before the pre-trial judge and agree beforehand on some pre-trial procedural matters, such as:

- The language used during the proceedings
- The translation of exhibits and oral debates
- The administration of evidence
- The calendar of the proceedings

*The language used during the proceedings* (Article 2): Although all procedural documents (i.e., writ of summons, submissions) must be drafted in French, parties may produce exhibits in English without having to provide any translation, which will save time and expenses.

In addition, the protocol provides that the parties, witnesses, technical specialists (including experts), and foreign counsels—provided that the latter are qualified to plead before this tribunal—may speak and argue in English. [4]

*The translation of exhibits and oral debates* (Article 6): The protocol addresses the various issues that could arise with respect to the translation of exhibits and oral debates:

- Although it should be recalled that exhibits in English may be disclosed without any translation, exhibits produced in any other languages require a translation. In this respect, the protocol provides that if one of the parties challenges the translation of an exhibit disclosed by the other party, the pre-trial judge may order a sworn translation of this exhibit at the expense (advanced costs) of the party he chooses.
- Oral debates can take place in English. Debates taking place in French, including any expert or witness testimonies, may be subject to a simultaneous translation for the convenience of one of the parties and with costs advanced by that party. In such a case, the translator will be appointed by the tribunal upon the advice of the party requesting such translation.
- Should a party, its counsel, an expert, or a witness wish to speak in a foreign language (i.e., other than French), a simultaneous translation may be arranged at one of the parties' request. The translator should be appointed by mutual agreement of the parties, such appointment being at the expense (advanced costs) of the party who wishes to speak in a foreign language. If the parties fail to agree on a translator, the latter will be appointed by the pre-trial judge.

Additionally, even though the protocol does not provide for it, the parties may agree on resorting to a stenographer, at their expense.

It should also be noted that the tribunal's decision or the pre-trial judge's orders are delivered with a copy of a sworn English translation, which the tribunal's clerk undertakes to provide and the cost of which is included in the cost of the proceedings.

*The administration of evidence* (Article 4): Inspired by the common law procedure, the protocol places great emphasis on evidence and provides parties with various procedural tools to secure evidence:

- Requests for mandatory production of documents held by a party or by a third party [5]
- Parties' oral testimonies
- Third parties' written statements [6]
- Witnesses' testimonies
- Experts' testimonies

The pre-trial judge may order ex officio, or at a party's request, that a witness, party, or expert be called to testify. Witness and expert hearings shall take place on the basis of a written statement from them that may be typed. If a witness or expert has a legitimate reason not to attend the hearing, his or her written statement may still be considered by the judge. If not, the judge may draw adverse inferences from his or her absence. Each party will ensure that witnesses or experts requested to attend the hearing are given sufficient notice and will advance any of those witnesses' or experts' costs.

The pre-trial judge carries out the hearing of parties, witnesses, or experts by asking any questions he or she deems relevant about all the legally admissible factual evidence. Based on the common law procedure of witness examination and cross-examination by the opposing counsel, the protocol also provides that the parties, witnesses, or experts may be invited by the pre-trial judge to answer questions that the parties wish to ask them. Decisions rendered in the first instance by the International Chamber of the Paris Commercial Court may then be appealed before the International Chamber of the Paris Court of Appeal.

## **THE INTERNATIONAL CHAMBER OF THE PARIS COURT OF APPEAL**

### **Its composition and jurisdiction**

The new International Chamber of the Paris Court of Appeal is composed of panels of three English-speaking judges who have prior experience in adjudicating international commercial disputes.

Just like the International Chamber of the Paris Commercial Court, it has jurisdiction to hear disputes of an economic and commercial nature with an international dimension. In fact, it is the appellate jurisdiction for decisions rendered in the first instance by the International Chamber of the Paris Commercial Court.

This chamber also has jurisdiction to adjudicate disputes regarding international arbitration, such as appeals and actions to set aside arbitral awards rendered in Paris and appeals regarding the recognition or enforcement of an international arbitration award made in France or abroad (Article 1).

Its jurisdiction may derive from a contractual clause that broadly refers to the Paris courts as the competent jurisdiction. However, parties can also choose to specifically refer to the jurisdiction of the International Chamber of the Paris Court of Appeal in their contract (see example of contractual clause above).

### **Its procedural rules**

The procedural rules concerning the language used during the proceedings, the translation of exhibits and oral debates, and the administration of evidence are identical to those outlined above, which govern the proceedings before the International Chamber of the Paris Commercial Court.

However, greater emphasis is placed before this chamber on the preliminary phase designed to coordinate pre-trial procedural matters before the case is heard by the court. Such a preliminary phase is conducted by a pre-trial judge (referred to as the "Conseiller de la mise en état") and requires at least three procedural hearings:

1. The first hearing aims at securing the parties' agreement that the dispute be heard and adjudicated in accordance with the procedural rules laid down in the February 7, 2018 Protocol;
2. During a second procedural hearing, which takes place once the pre-trial judge has reviewed the initial briefs filed by the claimant and respondent, the parties may submit requests for witnesses' or experts' examination. After having ruled on these requests, the pre-trial judge establishes a procedural timetable; and
3. The pre-trial judge then summons the parties to a final procedural hearing, the purpose of which is to organize the oral phase of the trial and, in particular, discuss the translation measures that should be implemented.

Although similar international chambers have been recently set up in other European Union ("EU") jurisdictions, such as Brussels, Amsterdam, and Frankfurt, the International Chambers should stand out since they offer litigants a double degree of jurisdiction—the International Chamber of the Paris Court of Appeal being the only appellate jurisdiction in the EU for international commercial matters—and at a particularly low cost, with a maximum application fee of €235.

These two new International Chambers should also benefit from the prominent position that Paris already holds in international arbitration.

Renowned for its knowledgeable handling of complex transnational commercial disputes before both state courts and arbitral tribunals, the K&L Gates litigation and arbitration team in Paris is at your disposal to answer any questions that you may have about the proceedings before the International Chambers.

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## NOTES

[1] Wording of jurisdiction clause provided by "Paris place de droit": [Click here](#)

[2] The two Protocols are available in their English version here: [Paris Commercial Court Protocol](#); [Paris Court of Appeal Protocol](#)

[3] Article 1 of the Protocol dated February 7, 2018.

[4] Indeed, pursuant to Article 3 of the French Civil Procedure Code, "*The judge supervises the proper progress of the proceeding; he has the authority to define the time-limits and order the necessary measures.*"

[5] The parties may only request the production of precisely identified categories of documents in order to avoid

any "fishing expedition."

[6] Third-party affidavits or statements may be typed (instead of being handwritten) if the parties waive claims to any defect of form in this respect.

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