

**The international chambers of the Paris Commercial Court and of the Paris Court of Appeal**



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*As part of the modernisation of the French justice system, on 7 February 2018, an appeal body has been set up for the International Chamber of the Paris Commercial Court at the Paris Court of Appeal. At the beginning of year 2018, multilingual judges were appointed at the International Chamber of the Paris Court of Appeal based on the model of International Chamber of the Commercial Court, and the Chamber could commence its activity. In both instances the parties may agree on the use of a series of procedural tools and simplifications, which have proven to be effective in the context of international arbitration, for instances the use of the English language for parts of the proceedings, the cross-examination of witnesses and experts or the use of a binding procedural calendar.*

After the appointment in 2017 of ten multilingual judges to the International Chamber of the Commercial Court, the Court of Appeal also benefited from the appointment of three multilingual judges in the year 2018. Both Chambers are fully operational and numerous cases are already pending.

According to their own statement, the purpose of the International Chambers is not to compete with arbitration, but to better adjust and tailor the existing proceedings before Commercial Courts to international proceedings.

The procedural options available to the parties have been provided for in two for the most part identical protocols, with following main provisions:

- The so-called CICAP (Chambre Internationale de la Cour d’Appel de Paris). This is the 16th Chamber of 5th Division of the Court of Appeal in Paris, which is competent for commercial disputes.
- The Chamber has been operational since 1 March 2018 and has rendered its first judgment on the merits on 15 January 2019.
- It is noteworthy that the two assessors have several years of experience as lawyers in international law firms.

- **Jurisdiction:**

Both Chambers have jurisdiction mainly over commercial disputes with an international dimension. Jurisdiction may be based on contractual agreement between the parties, which the CICAP provides following model clause for:

“All disputes arising between the parties in connection with the validity, interpretation or performance or, more generally, with the present contract, shall be submitted, in first instance, to the jurisdiction of the International Commercial Chamber of the Paris Commercial Court and, on appeal, to the jurisdiction of the International Commercial Chamber of the Paris Court of Appeal”.

In contrast to the Protocol for first instance proceedings, the Protocol for proceedings before the Court of Appeal provides that the parties shall in principle agree upon the fact that the procedural techniques and procedural simplifications provided for in the Protocol will actually be applied. It remains to be seen how this requirement will be addressed in practice. In any event, in cases where the parties have already expressly agreed beforehand on the jurisdiction of the Chamber, the consent of the parties should automatically be presumed.

It is also to be welcomed that the Chambers are competent for summary proceedings (“référé”).

- **Procedural tools and simplifications**

- **Procedural Calendar:** Usually, the court’s calendar is only set from one hearing to the next, especially in first instance, and there often is a risk of multiple adjournments, at least from the point of view of the claimant. This is remedied by the establishment of a tight and comprehensive procedural calendar, which contains in particular binding deadlines for the exchange of briefs and evidence, the oral hearing and the judgement which allows to anticipate the overall duration of the proceedings even at an early stage.

Furthermore, it should be noted that the procedural calendar is not imposed unilaterally by the Court: it is to be discussed and drawn up jointly by both parties during a preliminary hearing.

• Since 1 January 2019, the Court of Appeal has also had jurisdiction for challenges and enforcement of arbitral awards, which was previously heard by another chamber.

• This is justified by the fact that the Protocol contains important deviations from civil procedural law.

**- Use of English as a secondary language of the proceedings:**

Documents written in English may be filed without translation; witnesses, experts and lawyers may express themselves in English, if necessary with simultaneous French translation; court orders shall be drawn up only in French, but will automatically be translated into English.

• This applies to court-appointed experts and private experts appointed by the parties.

**- Hearing of witnesses and experts:**

A real novelty introduced by the Protocols is the hearing of witnesses and experts by the judge and cross-examination, which is uncommon in France unlike the practice of many other countries. Further, witnesses and experts are required, as in arbitration proceedings, to give a written testimony beforehand. The parties are involved in the determination of the persons to be questioned. In addition, it is possible for one party to question the witnesses and experts of the other party as part of a cross-examination under the control of the judge.

• Although Article 202 of the Civil Procedure Code allows in principle the filing of written testimonies, in practice this is rarely used against the background that witnesses are usually not summoned and heard.

**- Enforcement of the document production:**

As is practiced in arbitration proceedings, the parties may request the production of documents which were not readily submitted by the opposing party, to be ordered by the judge. However, in order to prevent excessive requests, the documents requested must be precisely identified and specified by the requesting party.

• However, by way of derogation from Article 202 of the Code of Civil Procedure, the written testimony does not have to be made by hand.

**- Decision on costs:**

The parties' counsels will be given additional time in their closing arguments to report in detail on the costs incurred. This is to be welcomed in international proceedings in which the costs are inherently higher.

• The possibility of addressing a request to the court for the production of documents by the opposing party is also provided for in the Civil Procedure Code. However, it is not used in common court practice.

• This is expressly provided for solely in the Protocol on the proceedings before the Court of Appeal.

- In summary

With the creation of a two-tiered system of courts in which it is possible to resort to modern and internationally approved evidentiary methods, France is responding adequately to the growing prominence of international disputes. As a side effect, the judges of the Court of Appeal, which have also jurisdiction to decide on the challenge and enforcement of arbitral awards, gain first-hand experience of arbitration evidentiary methods through their work in the International Chamber, which can only create a better understanding of this field as part of their functions.

Since only very few jurisdiction clauses in this respect have been contractually agreed at present, the application of the Protocols can in fact in many cases be easily prevented by one side. It would therefore be advisable that judicial practice to develop in such a way that jurisdiction is automatically given to the International Chambers for international matters.

- On 7 January 2019, jurisdiction to challenges and enforcement of arbitral awards was transferred from the 1st Chamber of the 1st Division to the 16th Chamber of the 5th Division.

- However, this may require an adaptation of the existing legal framework.