

## PARIS UNVEILS A NEW INTERNATIONAL COURT

Paris like London is a leading centre for international arbitration. It is the seat of the highly respected ICC Arbitration Court. But the French capital's commercial court or Tribunal de Commerce does not enjoy anywhere near the same prestige as the Commercial Court in London for the resolution of international disputes. With Brexit looming on the horizon it seems the tide may well be changing for the ambitions of the French capital. In March 2018 Paris launched a new international commercial court whose ambition is to attract more cases from the European business community. One of the factors cited in a government report to promote this initiative was Brexit and the opportunities it could present if the United Kingdom is unable to secure access to the legal market place of the European Union on the same terms as when it was an EU Member. The French government acknowledged that the Commercial Court in London is widely regarded as the most important forum for the resolution of commercial disputes in Europe. But Paris like London is a major financial centre and it was decided more effort should be made to improve the facilities its courts can offer to the business community for the resolution of disputes. The first step is the promotion of a new chamber of the existing Paris Tribunal of Commerce and Court of Appeal which will be devoted exclusively to international dispute resolution.

The key feature of the new Chamber is the adoption of English common law practice and procedure to make it more attractive to international business than the existing Tribunal de Commerce. The new Chamber will effectively be attempting to offer most of the court services in the English language in so far as the traditionally conservative French constitution rules allow the French language to be displaced. All the judges and staff of the new chamber will be trained to be fluent in English as well as perfectly conversant with English common law principles and practice. The government report leading to the initiative accepted the inevitable conclusion that the universal language of international business today is English and alas not French. In the new court not only will it be possible to produce documents in the English language without translations but it may also be permissible for the parties and their legal representatives to address the court in English. And the procedural revolution does not stop there. The Court will be amenable, subject to the agreement of the parties, to adopt common law practices hitherto unknown or at least unexplored by the French courts like cross examination of witnesses and obligatory disclosure of documents.

For the uninitiated English reader it may be beneficial to make a short parenthesis in order to explain the existing procedures before French commercial courts. Unlike in England a typical dispute tried before a French tribunal of commerce will not involve any obligatory disclosure

of documents, there will be no witness statements or oral examination of witnesses let alone production of the parties' expert reports. There will normally just be an exchange of relatively short submissions with purely voluntary disclosure of the essential documents in support of their claims. There may, depending on the complexity of the case, be more than one exchange of written submissions before the judge will fix a short hearing at which the parties' legal representatives will address the court. The practice before most commercial courts (each French town will have its own commercial court) will require the parties to produce a hearing bundle or dossier de plaidoirie which will be sent to the court two or three weeks before the hearing. This bundle will simply consist of the parties' last submissions and supporting documents with any case law if appropriate on legal issues raised by the dispute. At the hearing the lawyers will be encouraged to be brief ideally presenting a succinct summary of their arguments and evidence to the court. On average a hearing last an hour or two at most is not unusual. The criticism often raised in connection with this practice is that it does not give adequate time to present a complex case to the court. In the new international chamber the Paris court will be encouraged to improve its resources to accommodate complex litigation and give assurance to litigants that the cases will be examined in the depth required.

And last but by no means least the new court will be able to determine disputes not just in accordance with French law but applying English common law or other foreign laws. The judges of the new international chamber will all be fluent in English and trained to have knowledge of English common law. So too will the court staff and clerks. The idea that a French court can apply English law or another foreign law to determine a dispute is not in itself a novelty. French courts like many other national courts may occasionally be required to consider questions of a foreign law where it applies to the contract in dispute. But what is quite innovatory is the idea that French judges will, on a regular basis, be proposing the service of determining commercial disputes in accordance with English common law. This will no doubt come as a surprise to the English legal community. The ability of a French civil law judge as opposed to an experienced English legal practitioner to determine a difficult point of English law may give rise to legitimate doubts. The English common law and French civil law systems are radically different in many respects. A judge in the Paris commercial court with a civil law background may well be influenced by the civil law culture and traditions of his country which could affect his decision. One of the areas targeted by the French government for the new court is the law of the international carriage of goods. And this is precisely a field where there are significant differences between the English and French law interpretation of international conventions like the Hague Rules Convention on the Carriage of Goods by Sea. The ability of a French court to apply English common law effectively and correctly is most likely the feature of the new court which will attract most criticism. Otherwise encouraging the use of the English language in dispute resolution where the contractual documents and most of the exchanges between the parties will be in English is clearly to be welcomed. The ability to offer a much more detailed procedure to examine evidence through obligatory disclosure and oral examination of witnesses will equally be a very constructive initiative. But the idea that litigants will have confidence in the ability of a French civil law judge to apply English common law principles if not correctly at least in accordance with traditional English legal thinking is much more questionable.

So what conclusions can we tentatively draw from the inauguration of the new international business chamber of the Paris court? From the French side of the channel it is unanimously accepted that in order to gain the confidence of the international business community the French court practice had to improve and adapt its procedure to the conditions of the modern commerce. The ultimate objective will be to persuade more commercial parties to refer their disputes to the Paris courts. And this may perhaps be facilitated if post Brexit the enforcement and recognition of English judgments is rendered more difficult and complicated.

From the English side of the channel most legal practitioners will not at first sight treat the new international chamber in Paris as a credible competitor to the prestigious Commercial Court in London. But there is no room for complacency. Even if it is accepted that the long established predominance of the London commercial court will be very difficult to displace in the post Brexit era, English commercial lawyers must not take it for granted that London will be able to maintain its position without realising that there will be increasing pressure for competition from other courts. The creation of the Paris international court is very much a first step. Other EU countries notably the Netherlands and Germany are taking similar initiatives. And there is ever increasing criticism of the cost and complexity of proceedings before the English courts which will also inevitably influence decision makers in the dispute resolution area in the not too far as opposed to distant future. What is unquestionable however is the importance of the role of English law in international commercial contracts. There is certainly no other national law in the EU which holds the same respect. But the English courts certainly have their critics and the existence of alternative forums which are able to apply English law must be seen as a serious challenge to the future of the Commercial Court in London without steps to improve and maintain its position.

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