

Client Update

Paris Commercial Courts Create New International Chambers

In the wake of the Brexit vote in the U.K., the French government asked a group of senior judges and lawyers to consider changes to the French court system as part of initiatives intended to make France more attractive to London-based businesses. These changes were designed to set the stage for the creation of new court chambers, capable of ruling on complex matters, in English and other languages, so that international businesses could turn to French courts to resolve business disputes under the law they have chosen and in the language in which they interact in the ordinary course.

The French Minister of Justice recently announced that international chambers at both the Paris commercial court and the Paris court of appeals will be set up in the coming months. Although general French procedural rules will continue to apply,¹ new rules applying to these chambers have been drafted and should be approved in the first quarter of 2018. These rules provide as follows:

Jurisdiction. Cases filed with the Paris commercial court and the Paris court of appeals will be directed to the new chambers if one or more of the defendants is not based in France, or if the matter will likely involve issues of foreign law or EU law. If one of these criteria is met, choice of forum clauses designating Paris courts will be sufficient to trigger jurisdiction of the new chambers. In the absence of a forum selection clause, the new chambers would also have jurisdiction if Paris courts otherwise have jurisdiction. It is expected that most cases before these chambers will relate to contracts, competition and securities.

Use of English. Parties, witnesses, experts and foreign counsel will be allowed to speak in English in the courtroom, and evidence may be produced in English. As a result, Paris commercial court proceedings should become accessible to a large pool of international lawyers and experts. This should also save time and expense because parties will no longer be required to produce sworn translations of English language evidence. Decisions will be rendered in French, together with

¹ See our book about civil and commercial litigation in France: “10 Things U.S. Litigators Should Know About Court Litigation in France” (April 2017), <https://www.debevoise.com/insights/publications/2017/04/10-things-us-litigators-court-litigation-in-france>.

English versions. As is already the case today in all French commercial courts, parties may be represented before the international chamber of the Paris commercial court by a non-French qualified counsel or any other person. Summons and briefs filed in the new chambers will still have to be in French, although, as noted below, this may change soon.

Live testimony of witnesses and cross-examination. Fact issues will be handled in a manner familiar to many non-French litigators. Indeed, the new chambers are expected to spend significant hearing time discussing fact issues, including taking live testimony of witnesses and experts, and giving counsel the opportunity to cross-examine them in open court. This is currently rarely done in French commercial litigation proceedings.

Slightly-broader discovery. There will be some mandatory production of documents by one party at the request of the other party, under court supervision. While the French judiciary is unlikely to adopt full U.S.-style discovery, procedural rules applicable to the new chambers will make requests for disclosure of documents relevant to a case easier than in regular proceedings, without being unduly intrusive.

Fast track. All cases before the new chambers will be subject to stringent procedural timetables intended to put these cases on a fast-track compared to ordinary cases. Deadlines will be mandatory, unlike those in ordinary courts where parties can often obtain extensions.

Low court costs and some degree of loser-pays system. Court costs will be the same as those for ordinary cases, i.e., in virtually all cases, nominal amounts. As to liability for attorneys' fees, the new chambers will likely take a much more active role than other chambers. Parties should expect substantial awards of attorneys' fees for the benefit of the winning parties, in a departure from the customary practice of French courts to award only a fraction of actual costs.

MORE TO COME?

There may be more in the works to make these new chambers attractive to international litigants. The group of senior judges and lawyers appointed by the government made a number of other proposals that may be considered in a second stage. One would allow parties to submit briefs and other court documents in English. Another would permit the appointment of part-time judges selected for their know-how and experience, including in foreign laws.

The French governmental and judicial circles seem committed to offering international litigants new fora to resolve business disputes, with high quality services and at comparatively modest costs. International business lawyers should closely follow the ongoing implementation of this project. If the new Paris court chambers meet their objective, there will be a new judicial hub in the European Union for international commercial disputes.

Debevoise is well placed to assist clients in this changing environment, with a team of litigators based in Paris, London and New York, who work in 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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