

Brexit: Is Opportunity Knocking for Paris' New International Chamber of the Paris Court of Appeal'

February 26, 2018

PRACTICES Europe, Middle East and Africa, International, Litigation

On 7 February 2018, a new specialist International Chamber within the Paris Court of Appeal was launched by the French Ministry of Justice together with the Paris Bar Association. The chamber is intended to deal with international commercial matters governed by French as well as foreign law, and the use of English as well as certain common law procedures will be permitted.

Paris has long been positioned as a leading centre for international commercial arbitration disputes, but the French Government has expressed its clear intent to capitalize on the forthcoming departure of the UK from the EU by announcing several initiatives to strengthen Paris' attractiveness as a financial centre. These include the development of a specialized international chamber within the Paris Court of Appeal as a way to boost the attractiveness of its own courts to English-speaking litigants engaged in cross-border transactions.¹

The salient features of the new Paris International Chamber, which will be competent to determine appeals of international commercial disputes decided at first instance by the international division of the Paris Commercial Court² and actions against international arbitration awards including *exequatur* or registration procedures of international arbitral awards for all actions commenced after 1 March 2018, are as follows:³

- a) Such cross-border disputes will relate to international commercial contracts, carriage of goods, competition, and financial instruments and securities
- b) Disputes may arise under international commercial contracts where the parties have chosen French law as the governing law but where a foreign law is applicable to the dispute (generally this will be cases under the common law and in English)
- c) The written pleadings and submissions are to be in French, but in order to avoid the costs of translation or interpreters, documentary evidence may be submitted in English without translation, and the parties, their counsel, witnesses, and experts may all also be heard in English (or another foreign language)
- d) The procedure adopts common law approaches, in that the parties may call witnesses and experts to give written evidence on which they may (in addition to questioning by the judge) be cross-examined at the hearing, as well as in relation to the production of documents by allowing certain document requests (but not going so far as US discovery or English court disclosure)
- e) A strict procedural timetable will be fixed up to and including the date that judgment is to be issued, although this can be modified in limited circumstances, which is intended to reduce procedural delays and promote a swift and timely resolution of disputes
- f) The judgment will published in French together with a sworn translation in English

English law has long been the preferred choice of law for international commercial and financial transactions, and English is globally used as the language of international commerce, and will likely remain so for some time given the many factors which make English law attractive to international business. The UK's legal market is currently the largest legal services sector within the EU (the commercial law market is worth around £14 billion) being some six times the size of the French market, operating both as a global centre for international commercial transactions and disputes, as well as the European hub for legal services enjoying as it still does the advantage that judgments are currently freely enforceable within the EU.⁴

However, the enforceability of English judgments once the UK no longer has access to the EU regime for recognition of judgments in the EU is at present uncertain and still being worked on in the negotiations between the UK and the EU. As it is generally expected that some part of the banking and financial services sector, which has traditionally litigated in the courts of the historical financial sectors such as London, may have to relocate from London, its users may need to consider alternatives to litigation in London following Brexit. However, the international arbitration market in London is expected to remain attractive to its users since awards rendered in this jurisdiction will continue to be enforceable across the EU, and this may also be the case in the banking and financial services sectors where there is a recent trend towards the use of international arbitration for the resolution of disputes.

Against the uncertainty of Brexit for the UK, competitor jurisdictions in the EU⁵, such as the Paris International Chamber, are now seeking to offer alternative courts where parties can litigate their English language and/or English law disputes combined with the certainty that their decisions will be freely enforceable across the EU. The rules and practices of common law or the English commercial court are not intended to be transposed into the French court system, but the latter is seeking to develop a system within the French legal tradition suited to international commercial contracts. This objective brings with it some considerable uncertainty for parties, because the outcomes may be less predictable and difficult to assess than litigation in the English courts.

A significant consideration for parties when deciding on jurisdiction clauses and contemplating where to litigate their disputes is whether the expertise to decide English law cases exists in competitor jurisdictions. It may take some time, resources, and training to ensure that the judges dealing with international and financial disputes within the Paris International Chamber are able to deal with these cases under a foreign law, in particular the common law, and in a foreign language, and that they are supported by appropriately qualified assistants.

The Paris legal market already has a significant presence of English and US law firms, as well as numerous French law firms with an international dimension, and a significant number of lawyers at the Paris bar are both dual qualified and English speaking, including a large number presently practising in London, so such expertise may be readily available. Nevertheless the immense concentration of business (in particular financial business) and legal competence in London will likely mean that London maintains its position in legal market for the foreseeable future, but the developments in Paris will no doubt be keenly followed from across the English Channel in the current uncertain climate of Brexit, especially when the first cases start to be heard in the Paris International Chamber, as will the initiatives in other jurisdictions. *A suivre!*

¹ "Recommendations for the creation of special tribunals for international business disputes," Report of May 3, 2017 of the Haut Comité Juridique de la Place financière de Paris.

² This specialist international chamber of the Tribunal de Commerce de Paris, which is made up of 10 English speaking judges, has jurisdiction in international commercial disputes giving rise to matters of European or foreign law.

³ Protocols have been agreed between the Paris Court of Appeal, the Tribunal de Commerce, and the Paris Bar Association dated 7 February 2018 defining the procedures applicable to cases before the International division of the Paris Commercial Court as well as the International Chamber.

⁴ The Law Society of England and Wales' "Brexit and the Law" Report published January 2017.

⁵ There are similar initiatives in Dublin, Amsterdam, Brussels and Frankfurt.