

client alert

DISPUTE RESOLUTION | BANKING & FINANCE | FRANCE |

FEBRUARY 2018

CREATION OF THE INTERNATIONAL COMMERCIAL COURT

Gide is pleased to announce the creation of international chambers within the Commercial Court and the Paris Court of Appeal, which contribute to Paris' influence as a leading centre for international commercial litigation disputes.

The protocols governing the creation of international chambers within the Commercial Court and the Paris Court of Appeal were signed on 7 February 2018, in the presence in particular of the French Minister of Justice, Nicole Belloubet, upon recommendation of the Legal High Committee for Financial Markets of Paris (*Haut Comité Juridique de la Place Financière de Paris*), chaired by Guy Canivet, Honorary First President of the *Cour de Cassation*. The protocols were made public on 21 February 2018.

These protocols aim to clarify the manner in which the International Chamber of the Paris Commercial Court (created in 1995) and the newly created International Chamber of the Paris Court of Appeal (CICAP) will instruct and rule on the cases submitted to them.

Signing these protocols places France ahead of other European states, in particular Germany, Belgium and the Netherlands, which are also looking into the creation of specialised courts to handle international commercial disputes.

The creation of such international chambers presents opportunities, but also significant challenges for all those concerned, namely the commercial companies that will be the future parties to these procedures, the lawyers who will assist them, and the judges responsible for instructing the cases.

It is one of the consequences of Brexit. As a financial centre, London has so far had to deal with the vast majority of transnational business law disputes. Among the many repercussions of the United Kingdom's exit from the European Union, and subject to the upcoming negotiations, decisions rendered by the English courts will no longer benefit from recognition and automatic enforcement within the European Union. Post-Brexit, such decisions will have to submit to the longer and more expensive exequatur procedures in force in each of the Member States in order to be recognised and executed in those countries.

Several innovations reflect France's desire to facilitate access to French jurisdictions and to break down the reservations – justified or otherwise – of foreign companies, in particular by:

- recognising the competence of international chambers to deal with economic and commercial disputes with an international element,
- giving the parties the possibility of choosing the language of the proceedings,
- providing for a more flexible procedure, similar to that of international arbitration.

- **The competence of international chambers to deal with economic and commercial disputes with an international element**

These chambers are intended to hear disputes relating to international trade contracts, whether subject to French law or a foreign law, concluded between two companies of different nationalities. The protocols specify that the cases they will hear will include "*disputes of an economic and commercial nature with an international element, and in particular those in which provisions of EU law or a foreign law apply or are likely to apply*" (Article 1). CICAP will also be responsible for appeals against decisions handed down in international arbitration, as well as all decisions handed down at first instance by the International Chamber of the Paris Commercial Court.

These chambers can be used by the parties inserting a clause in their contracts designating them explicitly. In the absence of such clause, the allocation chamber (*chambre de placement*) of the Paris Commercial Court will also refer all international economic and commercial disputes to the international chamber.

- **The use of a foreign language**

The main innovation lies in the possibility for the parties to choose the language of the procedure. The parties may produce exhibits in the chosen language, and any witnesses, experts, as well as the parties and their lawyers, may speak in that language. Nevertheless, since the Ordinance of Villers-Cotterêts imposes the use of French for all acts of justice, the judge, as a representative of the State, will only speak French, and all procedural acts (in particular, the final decision) will be in French.

English is given a prime position: the parties will be able to submit their exhibits directly in English, without translation (unless one of the parties raises an objection), and debates (pleadings, hearings of witnesses, etc.) can be carried out in English. As regards other foreign languages, all documents must be translated and oral exchanges must be translated simultaneously, the cost of which will be paid by the parties.

- **A more flexible procedure, similar to that of international arbitration**

The procedure before these chambers is deliberately flexible and allows the parties to be involved in its organisation and conduct. The parties and the judges will meet several times (after the referral to the court, after the first submissions of the parties, and before opening the hearings) and together will determine the timetable of the procedure and the court administration measures concerning evidence, including the possible hearing of witnesses and experts.

These specialised courts also benefit from probative rules similar to those applicable to international arbitration (requests for the forced production of documents held by the opposing party, or a third party, using examination and cross-examination of experts, etc.), which are particularly popular with foreign companies, particularly for their flexibility.

The protocols will come into effect on 1 March 2018, and the courts are expected to be operational within two to three months.

The protocols can be viewed here (in French) [here](#) and [here](#).

You can find this legal update on our website in the News & Insights section: gide.com

This newsletter is a free, periodical electronic publication edited by the law firm Gide Loyrette Nouel (the "Law Firm"), and published for Gide's clients and business associates. The newsletter is strictly limited to personal use by its addressees and is intended to provide non-exhaustive, general legal information. The newsletter is not intended to be and should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein and the Law Firm shall not be held responsible for any damages, direct, indirect or otherwise, arising from the use of the information by the addressee. In accordance with the French Data Protection Act, you may request access to, rectification of, or deletion of your personal data processed by our Communications department (privacy@gide.com).

CONTACTS

STÉPHANE PUEL
Managing Partner
puel@gide.com

MICHEL PITRON
Partner
pitron@gide.com

ISABELLE ROUCHE
Counsel
isabelle.rouche@gide.com