



COUR D'APPEL DE PARIS



**Protocol relating to procedural rules
applicable to the International Chamber of the Court of Appeal of Paris**

En présence de Mrs. Nicole BELLOUBET, *garde des sceaux*, Minister of Justice,

The First President of the Paris Court of Appeal,

The Public Prosecutor of the Paris Court of Appeal,

The Paris Bar, represented by its President,

Have concluded the following:

Preamble

The Paris Court of Appeal has created a new Chamber specialised in disputes relating to international commercial contracts, whether they are governed by French law or by the law of another country.

This new Chamber is designed to meet the expectations of economic actors who wish to benefit from an attractive judicial system.

The purpose of the present Protocol is to organise the proceedings by which cases will be heard and judged before this new Chamber, providing for the use of the English language to a significant extent and for testimonial evidence.

With respect to the substance, the Chamber will apply French law or any other rules of foreign law applicable to the cause.

Article 1: Jurisdiction of the International Chamber of the Paris Court of Appeal

1.1 The International Chamber of the Court of Appeal of Paris (ICCP) has jurisdiction over disputes that involve international commercial interest, which include, in particular, disputes related to:

- Commercial contracts and the termination of commercial relations
- Transport
- Unfair competition
- Actions for damages arising from anti-competitive commercial practices
- Operations on financial instruments, standard master agreement, and financial contracts, instruments, and products

More generally, this chamber's jurisdiction concerns appeals made against decisions rendered in relation to international economic and commercial disputes, as well as decisions rendered in the field of international arbitration.

1.2 The jurisdiction of the chamber may result from a contractual clause conferring jurisdiction to the courts located within the Paris Court of Appeal's judicial authority.

1.3 In addition, the ICCP has jurisdiction on appeal over decisions rendered in the first instance by the International Chamber of the Paris Commercial Court.

1.4. When no pre-trial judge (*conseiller de la mise en état*) has been appointed, in particular when applying article 905 of the French Code of Civil Procedure, the functions conferred upon him are hereinafter exercised by the President of the ICCP, or by any other judge specifically appointed by the First President.

Article 2 Languages of the proceedings

2.1. Procedural acts are drafted in French.

2.2. Written submissions in English may be given by without translation.

2.3. Pleadings are conducted in French, without prejudice to what is stated in section 2.4 hereinafter.

2.4. Parties appearing before the judge, witnesses, and any specialist witnesses, including

experts, as well as parties' legal counsel, when they are foreign and authorized to plead before the Paris Court of Appeal, are authorized to express themselves in English, if they wish to do so.

Article 3: Translations

- 3.1.** In case any controversy arises between the parties with regard to the translation of documentary evidence freely provided by one of the parties in its submissions, the pre-trial judge (*conseiller de la mise en état*) may order a sworn translation of all or part of the documentary evidence, at the provisional expense paid by the party chosen by the judge (article 269 of the French Code of Civil Procedure).
- 3.2.** With the Court's agreement, oral proceedings held in French may be subject to a simultaneous interpretation, for the convenience of one of the parties, by an interpreter chosen by that party with advanced costs.
- 3.3.** When a party, an expert or a witness wishes to express himself in a foreign language, a simultaneous interpretation is carried out by a translator chosen by mutual agreement of the parties, with costs advanced by the party that requested the testimony. In case of disagreement between the parties on the choice of the translator, within the time limit set by the pre-trial judge (*conseiller de la mise en état*), this judge will appoint the translator.

Article 4: Case management

4.1. Conference acknowledging the parties' agreement that the case be heard and judged pursuant to the present protocol

- 4.1.1.** Upon his designation, pre-trial judge (*conseiller de la mise en état*) must convene without delay the parties for a first hearing to record their agreement that the dispute be heard and judged in accordance with the proceedings contained in the present Protocol.
- 4.1.2.** This first hearing does not interrupt the time limit provided for by article 909 of the French Code of Civil Procedure regarding submission of the respondent's brief.

4.2. Conference on the judicial submissions of evidence

- 4.2.1.** After having considered the appellant's first brief and the respondent's brief in response, the pre-trial judge (*conseiller de la mise en état*), may invite the parties to appear in person at the hearing.

4.2.2. The pre-trial judge (*conseiller de la mise en état*) hears the parties' requests, if any, for witness or expert oral testimony; he sets the time frame in which the appellant then the defendant must provide, if applicable, the list of persons whose testimony they intend to request.

4.2.3. After having heard parties' requests, the pre-trial judge (*conseiller de la mise en état*) renders an order specifying, if applicable, whether such measures will be conducted before him or before the Court, as well as the location, the day, and the time at which such measures will proceed and, finally, the time limit in which witnesses must submit written statements on the basis of which they will be examined (see section 5.4.2 below).

The pre-trial judge (*conseiller de la mise en état*) must justify any decision denying a Party's request.

4.3. Mandatory procedural timetable

4.3.1. After ruling on any requests on judicial evidentiary issues, the pre-trial judge (*conseiller de la mise en état*) sets a mandatory procedural timetable which shall provide for, in particular:

- the dates on which parties must exchange their briefs, other than those referred to in articles 909 and 910 of the French Code of Civil Procedure which, presumably, will already have been notified;
- the date(s) on which the parties will be invited to appear in person;
- the date(s) on which the parties shall submit the written statement of the witnesses they have requested the testimony of, on the basis of which those witnesses will be heard;
- the date(s) on which any witness or expert's testimony will take place;
- the date(s) on which legal counsels will state their oral arguments;
- the date of the closing of the pre-trial examination ;
- the date on which the decision of the Court on the merits will be rendered.

4.3.2. The procedural timetable may be modified pending the proceedings, in particular, in the event of a motion (*incident*) or additional requests that may delay the review on the merits of the case.

4.4. Preparation of oral proceedings

- 4.4.1.** Before closing the pre-trial examination, the judge (*conseiller de la mise en état*), convenes the parties for a last hearing which aims to organise, by agreement with the parties, the oral part of the trial.
- 4.4.2.** The procedural judge (*conseiller de la mise en état*) specifies, on this occasion, the measures for simultaneous translation that must be put in place, to guarantee the publicity of the trial and establish the minutes of hearings recording the statements made by the parties and the witnesses in a language other than French (articles 194 and 219 of the French Code of Civil Procedure).

4.5. Participative Procedural Agreement

The rules set out at in sections 4.1 to 4.4 above do not preclude the parties from entering into a participative procedural agreement as set forth in articles 1544 and seq. of the French Code of Civil Procedure. In such a case, the parties may have recourse to an expert who may pursue his task and communicate with them in the English language.

Article 5: Rules on judicial submissions of evidence

5.1 Compulsory production of documents held by a party or by a third party

- 5.1.1.** Requests for compulsory production of documents held by a party or by a third party are examined by the pre-trial judge (*conseiller de la mise en état*), pursuant to the rules set forth in articles 11 and 138 to 142 of the French Code of Civil Procedure.
- 5.1.2.** Parties may request the production of categories of documents that are specifically identified.

5.2 Personal appearance of the Parties

- 5.2.1.** Personal appearance of the parties takes place under the conditions set forth in articles 184 to 198 of the French Code of Civil Procedure. The judge carries out the examination of the parties, by asking questions he deems relevant to the facts that are supported by legally admissible evidence. Each party may thereafter be invited by the judge to answer to the questions that the other parties wish to ask.

5.2.2. The personal appearance of a legal entity means the appearance of a party's legal representative or of any corporate officer (mandataire social) or employee of the legal entity pursuant to a specific power of attorney.

5.3 Third parties' written statements

5.3.1 Written statements issued by third parties to the proceedings take the form of affidavits (attestations) meeting the requirements set forth in article 202 of the French Code of Civil Procedure.

5.3.2 As an exception to article 202 of the French Code of Civil Procedure, third parties' statements may be in typewritten form, the parties waiving their right to claim any procedural defect on that basis.

5.4 Witnesses' examination (articles 199 and seq. of the French Code of Civil Procedure)

5.4.1. Any person may be heard as a witness, upon the decision of the pre-trial judge (conseiller de la mise en état), or of the Court, as the case may be, ruling on its own initiative or at the request of a party, as provided in section 4.2 above.

5.4.2. In accordance with what is indicated in section 4.2.3 above, witnesses' examination (third parties, knowledgeable parties, etc.) proposed by a party will take place on the basis of a statement written, which may be typewritten, and which shall contain the information provided for by article 202 of the French Code of Civil Procedure.

5.4.3. Witnesses' examination is conducted in accordance with articles 206 and seq. of the French Code of Civil Procedure. In accordance with articles 206 and 207 of the French Code of Civil Procedure, whoever is legally compelled to testify must do so, under penalty of a civil fine.

5.4.4. The judge carries out the examination of witnesses, by asking questions he deems relevant to the facts that are supported by legally admissible evidence. Witnesses may thereafter be invited by the judge to answer to the questions that the parties wish to ask.

5.4.5. The pre-trial judge (conseiller de la mise en état), or the Court, as the case may be, is free to take into consideration the written statement of a witness who, for a legitimate reason,

did not appear, and to draw any conclusion resulting from a non-appearance for which there is no legitimate reason.

5.4.6. Each party shall ensure the summons of the witnesses whose party requests their hearing and shall advance payment of those witnesses' costs.

5.5 **Expert witnesses' examination (articles 245 and 283 of the French Code of Civil Procedure)**

5.5.1 The pre-trial judge (*conseiller de la mise en état*), or the Court depending on the case, orders the examination of judicially appointed expert witnesses, when requested by the parties, unless he or she makes such an order on its own initiative.

5.5.2 The pre-trial judge (*conseiller de la mise en état*) or the Court, as the case may be, uses its discretion to grant requests for the examination of expert witnesses designated by the parties. In support of their requests, parties produce the report prepared by the specialist witness who they wish to hear, as well as his last name, first name and address.

5.5.3 Proceedings provided for in sections 5.4.2 to 5.4.6 above apply, to the extent relevant, to expert witnesses whose examination is organized.

Article 6: Oral Proceedings

6.1. Oral proceedings are public, unless the Court decides otherwise pursuant to article 435 of the French Code of Civil Procedure.

6.2. In order for the Court to decide upon the allocation of the costs and fees of the proceedings (*frais et dépens*), the Court shall ensure that the parties have the time to provide all relevant facts and data that they consider to be appropriate to support their requests.

6.3. Upon conclusion of oral proceedings, and unless particular circumstances dictate otherwise, the Court shall declare the hearings closed and adjourn the decision on the date set by the procedural timetable.

Article 7: Court's judgment

The judgement of the Court shall be drafted in French together with a sworn translation

in English.

Article 8: Entry into force

The present protocol applies to proceedings referred to the Court of Appeal from March 1st 2018.

Paris, _____ 2018

In two original copies