

**PROTOCOL RELATING TO THE PROCEDURE BEFORE  
THE INTERNATIONAL CHAMBER OF THE PARIS COURT OF APPEAL<sup>1</sup>**

---

In the presence of Mrs. Nicole BELLOUBET, Keeper of the Seals, Minister of Justice,

The first President of the Paris Court of Appeal,

The *Procureure générale* of the Paris Court of Appeal,

The Paris Bar, represented by the elected head of the Paris Bar,

Have concluded and decided the following:

***Preamble***

The Paris Court of Appeal has set up a new Chamber designed to hear disputes relating to international commercial contracts, whether they are subject to French law or to the law of another country.

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

The purpose of the present protocol is to organize the procedures by which cases will be examined and judged before this new Chamber, in which ample room has been made for the use of the English language and for testimonial evidence.

The court will apply, to the merits of the case, French law or any other rules of foreign law applicable to the case.

---

<sup>1</sup> Translated by Chloé Vialard and Max Hulme of Shearman & Sterling LLP. Thanks go to Thomas Parigot of Shearman & Sterling LLP for his valuable comments.

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

**1.1** The International Chamber of the Paris Court of Appeal (CICAP) has jurisdiction to hear disputes that involve international commercial interests.

This jurisdiction concerns, in particular, the following disputes:

- disputes regarding commercial contracts and the termination of commercial relationships;
- disputes regarding transport;
- disputes regarding unfair competition;
- actions for damages arising from anticompetitive practices;
- disputes regarding operations on financial instruments, framework agreements, and financial contracts, instruments, and products.

More generally, this Chamber's jurisdiction concerns appeals made against decisions rendered in disputes of an economic and commercial nature with an international dimension, and actions made against decisions rendered in the field of international arbitration.

**1.2** The jurisdiction of the Chamber may derive from a contractual clause giving jurisdiction to the courts situated within the Paris Court of Appeal's judicial authority.

**1.3** CICAP also has appellate jurisdiction over decisions rendered in the first instance by the International Chamber of the Paris Commercial Court.

**1.4** When no judge in charge of the procedure (*conseiller de la mise en état*) has been designated, 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 CICAP, or by a judge delegated by the first President.

## **Article 2 : Languages of the procedure**

**2.1** The procedural documents are drafted in French.

**2.2** Exhibits in English may be submitted into evidence without translation.

**2.3** Pleadings take place in French, without prejudice to what is stated in article 2.4 hereafter.

**2.4** Parties appearing before the judge, witnesses, and any technical witnesses, including experts, as well as parties' 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 the event of a disagreement between the parties with regard to the unofficial translation of exhibits freely filed by one of the parties in its submissions, the judge in charge of the procedure (*conseiller de la mise en état*) may order a sworn translation of all or part of the exhibits, with costs advanced by the party chosen by the judge (article 269 of the French Code of Civil Procedure).
- 3.2** With the court's agreement, trials in French may be subject to a simultaneous translation, for the convenience of one of the parties, by an interpreter of that party's choosing, with costs advanced by that party.
- 3.3** Should a party, an expert or a witness wish to express himself in a foreign language, a simultaneous translation is carried out by a translator chosen by 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 judge in charge of the procedure (*conseiller de la mise en état*), the judge will proceed to designate the translator.

### **Article 4 : Mise en état**

#### **4.1 Hearing noting the parties' agreement that the case be heard and judged pursuant to the present protocol**

- 4.1.1** Upon his designation, the judge in charge of the procedure (*conseiller de la mise en état*) summons without delay the parties to a first hearing to obtain their agreement that the dispute be heard and judged in accordance with the procedures laid down 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 notification of the defendant's submission.

#### **4.2 Hearing on the judicial administration of the taking of evidence**

- 4.2.1** After having considered the appellant's first submission and the defendant's submission in response, the judge in charge of the procedure (*conseiller de la mise en état*) may invite the parties to appear personally.
- 4.2.2** The judge in charge of the procedure (*conseiller de la mise en état*) hears the parties' potential requests for witness or expert testimony; he sets the timeframe in which the appellant and then the defendant must provide the list of persons, if applicable, whose testimony they intend to solicit.
- 4.2.3** After having heard the parties' requests, the judge in charge of the procedure (*conseiller de la mise en état*) renders an order specifying, if applicable, whether such measures will take place 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 any witnesses must provide their written declaration on the basis of which they will be examined (see article 5.4.2 below).

The judge in charge of the procedure (*conseiller de la mise en état*) provides reasons for any decision rejecting such requests.

### **4.3 The determination of a mandatory procedural calendar**

**4.3.1** After ruling on any requests for judicial administration of the taking of evidence made by the parties, the judge in charge of the procedure (*conseiller de la mise en état*) sets a mandatory procedural calendar including, in particular:

- the dates on which the parties must exchange their submissions, 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 personally;
- the date(s) on which the parties must submit the written declarations of the witnesses they have requested to hear and which shall form the basis on which those witnesses will be heard;
- the date(s) on which any witness and expert testimony will take place;
- the date(s) on which counsel will be heard on their pleadings;
- the date of the closing order;
- the date on which the decision of the court on the merits will be rendered.

**4.3.2** This calendar may be modified throughout the proceedings, in particular in the event of an incident or of additional requests that delay the review of the merits of the case.

### **4.4 Hearing in preparation for the trial**

**4.4.1** Before the close of the *mise en état*, the judge in charge of the procedure (*conseiller de la mise en état*) summons the parties to a last hearing, the purpose of which is to organize, by agreement with the parties, the oral phase of the trial.

**4.4.2** The judge in charge of the procedure (*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 draw up the minutes of hearings recording the statements of the parties and the witnesses expressing themselves in a language other than French (articles 194 and 219 of the French Code of Civil Procedure).

### **4.5 Participatory procedural contract to end the *mise en état***

The rules set out at paragraphs 4.1 to 4.4 do not exclude the possibility for parties to conclude a participatory procedural contract to end the *mise en état* in accordance with articles 1544 et seq. of the French Code of Civil Procedure. The parties may, in this context, have recourse to an expert who can conduct his or her assessment and exchange with the parties in English.

## **Article 5 : Judicial administration of the taking of evidence**

### **5.1 Requests for mandatory production of documents held by a party or by a third party**

5.1.1 Requests for mandatory production of documents held by a party or by a third party are examined by the judge in charge of the procedure (*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 seek the production of precisely identified categories of documents.

### **5.2 Personal appearance of parties**

5.2.1 The personal appearance of parties will take 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 those questions he considers useful on all facts upon which evidence is admitted by law. Each party may thereafter be invited by the judge to respond 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 *mandataire social* or employee of the legal entity with the power to represent it.

### **5.3 Written declarations by third parties**

5.3.1 Declarations by third parties to the procedure take the form of statements conforming to 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 typed, with the parties giving up the right to claim any defect of form on that basis.

### **5.4 Witnesses testimonies (articles 199 et seq. of the French code of civil procedure)**

5.4.1 Any person may be heard as a witness, upon the decision of the judge in charge of the procedure (*conseiller de la mise en état*), or of the court depending on the case, ruling on its own initiative or at the request of a party, as this has been recalled at article 4.2 above.

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

5.4.3 Testimony of witnesses is governed by articles 206 et seq. of the French Code of Civil Procedure. It is noted that in accordance with articles 206 and 207 of the French Code of Civil Procedure, whoever is legally required to testify must do so, under penalty of a civil fine.

- 5.4.4** The judge carries out the examination of witnesses, by asking those questions he considers useful on all facts for which evidence is admitted by law. Witnesses may thereafter be invited by the judge to respond to the questions that the parties wish to ask.
- 5.4.5** The judge in charge of the procedure (*conseiller de la mise en état*), or the court depending on the case, is free to take into consideration the written statement of a witness who, for a legitimate reason, did not appear, and to draw any inferences from a non-appearance for which there is no legitimate reason.
- 5.4.6** Each party ensures the summons of the witnesses whose testimony it is soliciting and will bear any advance payment of those witnesses' costs.
- 5.5** **Technical witnesses' testimonies (articles 245 and 283 of the French code of civil procedure)**
- 5.5.1** The judge in charge of the procedure (*conseiller de la mise en état*), or the court depending on the case, orders the testimony of judicially appointed technical witnesses<sup>2</sup>, when requested by the parties, unless he or she makes such an order on its own initiative.
- 5.5.2** The judge in charge of the procedure (*conseiller de la mise en état*), or the court depending on the case, uses its discretion to grant requests for the testimony of technical witnesses designated by the parties. In support of their requests, parties produce the report prepared by the technical witness who they wish to hear as well as his last name, first name and address.
- 5.5.3** The procedures provided for in articles 5.4.2 to 5.4.6 above apply as reasonable to technical witnesses whose testimony is organized.

## **Article 6 : Oral arguments**

- 6.1** Trials are public unless the court decides that they will take place in Council Chamber (*Chambre du Conseil*), pursuant to article 435 of the French Code of Civil Procedure.
- 6.2** The court, in order to decide on the allocation of the costs (*frais et dépens*) of the proceedings, reserves time for pleadings sufficient to allow the parties to present the factors they consider pertinent in support of their claims.
- 6.3** At the end of this phase of oral argument, the court declares the trial closed and, barring particular circumstances, sends the matter for deliberation until the date set by the procedural calendar.

## **Article 7 : The decision**

The decision made by the International Chamber of the Paris Court of Appeal will be drafted in French and accompanied by a sworn translation in English.

---

<sup>2</sup> In particular experts.

**Article 8 : Entry into force**

The present protocol applies to actions referred to the Court of Appeal on or after 1 March 2018.

---

*Paris, 7 February 2018*  
*In two original copies*

**Mrs. Chantal ARENS**  
**First President of the Paris Court of**  
**Appeal**

**Me Marie-Aimée PEYRON**  
**Head of the Paris Bar**

**Mrs. Catherine CHAMPRENAULT**  
*Procureure générale près la Cour*  
*d'appel de Paris*