

New jurisdiction clause to insert in your international contracts

Conseils pratiques publié le 13/01/2020, vu 547 fois, Auteur : [Stratégies et solutions internationales \(France, USA, Canada\)](#)

How to improve the quality and reduce the costs of your proceedings? A look at the new bilingual and international chambers of the Paris Commercial Court and Court of Appeal.

As the fifth wheel in the negotiations, the choice of jurisdiction clause in the event of future dispute is often negotiated at the last minute. By compromise or by default, an arbitration clause is then frequently inserted.

But arbitration procedures are not always the most appropriate, nor the easiest to implement. The time spent agreeing on available arbitrators is significant, and the costs incurred in submitting to arbitration proceedings can be considerable and disproportionate to the stakes of the dispute, thereby limiting access to justice. Moreover, the rules of international arbitration only allow in a few limited situations to bring an action for annulment, thus leaving the litigant powerless in the event of an arbitral award which is erroneous as a matter of law.

A new alternative is however open to international contract negotiators since 2018: inserting a choice of jurisdiction clause in favour of the international chambers of the Paris Commercial Court and the Paris Court of Appeal.

The judges on these panels are not only bilingual but also have a dual legal culture: they have usually studied in France, in the United States, or in England and have often lived and worked abroad. As for the International Chamber of the Court of Appeal, even the lawyers and clerks have a dual French and Anglo-Saxon legal culture.

The procedure gives an important room for the use of English language: English-language exhibits do not have to be translated, parties, experts, witnesses and even in some cases lawyers can speak in English, without translation.

Above all, regardless of the language, the procedure used makes it possible to focus on the study of the facts as in an arbitration procedure and much more than in a classic French procedure, since several days may be allocated to hear each of the parties, but also their witnesses or experts, which will allow the judge to question them, test their credibility and ask questions during the hearings on the pleadings.

The procedural schedule is set in advance and ensures the predictability of the course of the proceedings: four physical procedural hearings are planned in order to provide a framework for the proceedings and schedule the dates for hearings of the parties and witnesses, pleadings and the date of the judgment.

Decisions are rendered in French with an English translation prepared by the Court Registry. These decisions, in bilingual versions, will be easily enforceable throughout Europe without the need for an additional exequatur procedure.

Another advantage is that the debates can - if both parties wish so - take place in closed hearing, as is the case in arbitration. The only difference is that the decision is ultimately made public.

The two-tier jurisdiction also allows to encourage the first judge to be rigorous in his legal reasoning in order to avoid leaving it wide open to an appeal.

Finally, while in France very little compensation is traditionally awarded for legal and lawyers' costs, the new international chambers of the Court of Appeal show the willingness to allocate costs based on article 700 of the Code of Civil Procedure that correspond to the costs and fees actually incurred by the parties.

To this date, the first decisions rendered by the International Chamber of the Paris Court of Appeal concern in particular the companies Thales, Fedex, Unilever, Eloi, Consar.

In the spring of 2020, a practical guide will be published from a joint effort of the Paris Bar and the Paris Commercial Court and the Paris Court of Appeal, which will draw on the experience of a two-year-practice and provide more details on the functioning of these chambers.

By Audrey Weissberg, Attorney at the Paris and Québec Bars