

Doors open for First Hearing of International Chamber at Paris Court of Appeal

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When the French Government announced in February this year plans to launch an “English” Commercial court in Paris, eyebrows were raised and, it is fair to say, an element of skepticism expressed in the common law world as to whether such a development would really prove to be a serious competitor to the Commercial Courts on Fetter Lane in London. In what some might say was an uncharacteristically pragmatic fashion, collective judicial sleeves in Paris were pulled up however and the project taken forward with some alacrity. With broad support from the legal and political class given what is seen as re-shuffling of cards post-Brexit, the project was accelerated to such an extent that the first hearing of the new Chamber took place yesterday afternoon. The Court, which is an International Chamber of the Paris Court of Appeal, will hear appeals from the international chamber of the first instance Commercial court in Paris which has been in operation - albeit rather discretely - for almost a decade.

Setting aside the PR and legal spin, the procedural innovations of the new International Chamber are in fact quite radical. The headline-grabbing change is of course the use of English. Proceedings can take place in languages other than French, including English, and indeed it has recently been confirmed by the Court that non-French lawyers will also be granted rights of audience to appear before the International Chamber, as long as accompanied by a lawyer called to the Paris Bar. This is of course a major change in a normally very traditional French institution, though it is interesting to note that written submissions and pleadings as well as the resultant judgments will be in French (and officially translated into English).

Case management is to be stream-lined as well. Gone will be the rather languorous meandering French appellate procedure and in will be ushered a new highly case-managed equivalent with the parties and judge settling a timetable at

the outset with fixed dates for filing written submissions, as well as – strikingly – the actual date of the ultimate judgment being set in stone, usually within 6 months of the first case-management hearing.

A minor revolution has also occurred in terms of the hearing. The approach will mean that the hearings will be more detailed, with the Court placing an emphasis on oral submissions, over and above the traditionally document-based approach where the judicial dossier takes precedence. There is even provision for the cross-examination of witnesses and experts during the hearing, something that rarely occurs in France outside the criminal arena.

Indications are also that there might even be a more fundamental change in the style of judicial judgments handed down by the International Chamber. At a recent seminar at the Paris Bar, the first judge assigned to the Chamber noted that there would be a deliberate attempt to ensure the judgments set out in more detail the reasoning of the Court, and a greater attention to legal certainty in terms of following previous case law – itself a very interesting potential shift in a legal system which has not traditionally adhered to any form of judicial precedent.

Some have also talked of allowing a more expansive approach to the judicially-sanctioned disclosure of documents – a simplified form of discovery where litigating parties are forced to communicate inconvenient files to the other side – which is all the more surprising as often lampooned by French commentators as one of the misdeeds of “American” style litigation.

Whilst this might not all add up to a complete judicial revolution, the changes in France are significant, and along with similar announcements in Amsterdam, Frankfurt, and Brussels, it is clear that there is an attempt across Europe – albeit only an attempt at this stage – to challenge the hegemony of English courts in international commercial litigation.