

Free translation

**COMMERCIAL COURT
OF
NANTERRE**

- TCN -

**INTERNATIONAL LITIGATION
CHAMBER**

16 DECEMBER 2019

**AGREEMENT PERTAINING TO THE INTERNATIONAL
LITIGATION CHAMBER OF THE COMMERCIAL
COURT OF NANTERRE**

In the presence of the first presiding judge of the Court of Appeal of Versailles,
the principal state prosecutor attached to the Court of Appeal of Versailles,
and
the state prosecutor for the French Republic in Nanterre,

the presiding judge of the Commercial Court of Nanterre
and
the Bar Association of Hauts-de-Seine, represented by the chairman of the Bar,

Have agreed and decided as follows:

Preamble

An international litigation chamber has been re-established at the Commercial Court of Nanterre for the purpose of hearing litigation pertaining to economic or commercial matters of an international nature, and in particular litigation in which the provisions of European Union or foreign law and/or international conventions apply or may apply.

The purpose of this agreement is to set out the procedures and terms according to which cases falling within the remit of this chamber are to be investigated and ruled on.

The international litigation chamber of the Commercial Court of Nanterre is made up of Anglophone judges with experience in international cases. It adopts appropriate judgment methods, largely making use of the English language and testimony, taking into account the key principles of speed and punctuality, which are essential for commercial courts, while complying with and upholding the provisions of the French Civil Procedure Code.

Decisions handed down by the international litigation chamber of the Commercial Court of Nanterre may be appealed at the Court of Appeal of Versailles.

Article 1 – Jurisdiction

The jurisdiction of the international litigation chamber of the Commercial Court of Nanterre extends to:

- 1.1 Litigation for which a contractual clause assigns jurisdiction to the Commercial Court of Nanterre, international litigation chamber,
- 1.2 Any other litigation of an economic and commercial nature over which the Commercial Court of Nanterre has jurisdiction which is international in nature, in particular when at least one party is of a foreign nationality or the litigation involves the application of a foreign law or an international convention. With the agreement of the parties, such litigation shall then be directed towards the international litigation chamber, either:
 - by the investment chamber of the court (*chambre de placement*),
 - by the presiding judge of the court or his or her authorised representative, having authorised an urgent summons (Article 858 of the French Civil Procedure Code),
 - by one of the court's litigation chambers,
 - by the urgent applications judge (*juge des référés*), having decided that the matter needs to be judged on its merits,
 - following a duly motivated motion by the parties, at any time during the course of the preparation of the case for trial (*mise en état*), subject to the agreement of the court.
- 1.3 Any urgent proceedings (*procédures en référé*) that show characteristics of being international in nature, for which the urgent applications judge may refer the case to a judge of the international litigation chamber, sitting in urgent proceedings (*en référé*),
- 1.4 Any cases that may fall under the jurisdiction of the international litigation chamber including, but not limited to, the following economic sectors, with an international dimension:

- transportation,
- insurance,
- corporate law,
- finance and banking,
- construction,
- marketing and media,
- equipment and hardware,
- agriculture and food,
- international trade,
- energy,
- health and pharmaceuticals,
- information technology,
- digital technologies,
- blockchain.

The rules set out in this agreement shall not rule out an appeal by parties to conciliation proceedings or mediation proceedings as provided for in the French Civil Procedure Code.

Article 2 – Composition of the international litigation chamber

The international litigation chamber of the Commercial Court of Nanterre is composed of judges appointed by the presiding judge of the court, with a minimum seniority of 4 full years, and they must speak English and, where applicable, speak another foreign language fluently and have confirmed professional experience in international business practices.

Any pre-trial hearings (*audiences de mise en état*) for litigation on the merits falling under the jurisdiction of the international litigation chamber shall, at the discretion of the trial bench, be carried out by the bench itself or by a judge responsible for investigating the case. The trial hearings shall be conducted, by a bench of judges, composed of 3 or more judges, with the requirement that the chosen number be an odd number. However, the judge responsible for investigating the case may also, if the parties are not opposed, conduct the hearing alone to hear the arguments. The court may include on the trial bench a judge specialising in the relevant economic sector.

The final urgent applications hearing (*audience de référé*) of each month shall be dedicated to urgent application hearings (*audiences de référé*) of the Commercial Court of Nanterre, international litigation chamber.

In the event of a proven urgency, the presiding judge of the court to which any urgent application (*requête en référé*) is referred at an hour's notice shall appoint a judge from the international litigation chamber to hear the case.

Article 3 – Language

3.1 – Principles

The international litigation chamber of the Commercial Court of Nanterre is composed of Anglophone judges.

Furthermore, taking into consideration any other linguistic knowledge of its members, applications made by parties, and the specific nature of the litigation, other languages may, on a case by case basis, be accepted by the international litigation chamber of the court.

The international litigation chamber of the Commercial Court of Nanterre, in light of the importance of English in international business, allows the parties, in accordance with procedural rules in French law, both during the course of the hearings and in the examination of the evidence submitted to the case files, to express themselves in English, thereby obviating the time and costs associated with translations and interpretation.

3.2 – Language of the proceedings

The proceedings before the Commercial Court shall take place orally.

Procedural documents shall be drafted in French in accordance with the provisions set out in the French Civil Procedure Code.

Any exhibits in the English language may be submitted to the proceedings without a translation. However, the trial bench reserves the right to request a sworn translation, in particular in the event of a dispute regarding the interpretation of an exhibit, in which case the costs shall be advanced by the party that submitted the document to the proceedings.

Any exhibits in another foreign language are to be translated, unless otherwise agreed by the trial bench responsible for investigating the case, in accordance with the conditions set out in Article 7.1.

3.3 – Language of the arguments

Arguments shall be made in French.

However, the parties, witnesses, specialists and any experts appointed by the parties which appear before the trial bench, as well as the counsels of the parties who are authorised to plead before the Commercial Court of Nanterre are authorised to speak in English or in a foreign language authorised by the trial bench. Their examination, at the discretion of the trial bench or judge responsible for investigating the case, may take place in English or in another foreign language.

Any arguments in French, including any potential examination of witnesses and specialists, may be subject to simultaneous translation by an interpreter, at the request of one of the parties provided that said party advance the costs thereof.

Arguments made in another foreign language other than English may be subject to simultaneous translation by an interpreter at the request of one of the parties, provided that said party advance the costs thereof.

The party requesting the presence of an interpreter shall propose the name of a sworn translator/interpreter from the list kept by the Court of Appeal of Versailles and, failing that, from the list kept by the Court of Appeal of Paris.

The hearing notes and, where applicable, hearing transcripts shall be drawn up in French.

3.4 – Language of the judgment

The judgment handed down and any orders handed down by the international litigation chamber shall be drafted in French. The translation into English of the judgment and any orders shall be the responsibility of the parties and shall be carried out at their initiative and at their expenses. In all cases, the wording of the judgment in French shall prevail.

Article 4 – Preparation for trial (*Mise en état*)

The settlement of international litigation must satisfy the time constraints that the court endeavours to fulfil, in particular during the pre-trial preparation stage (*Mise en état*).

To this end, the judges responsible for preparing the case for trial (*Mise en état*) shall draw up, with the agreement of the parties, a binding procedural schedule, which shall set out, in particular:

- the dates for the exchange of briefs between the parties,
- the dates on which the parties must disclose the written statements of witnesses who they seek to be heard and on the basis of which they will be examined,
- the dates for filing expert reports,
- the dates of potential hearings of parties invited to appear in person, as well as experts and witnesses,
- the deadline for submitting case files to the trial bench,
- the dates for the arguments to be made,
- the date on which the judgment is to be handed down.

This schedule may be amended during the course of the proceedings, in particular in the event of an incident or additional applications being made.

Article 5 – Hearings and examinations

The hearings and examinations shall be held in such a way that the arguments, and in particular the hearing of the parties, their witnesses, their counsels and the experts can be carried out with no time constraint.

According to the circumstances, the hearing for the pleadings shall take place over several days.

In application of Article L. 153-1 of the Commercial Code on protecting business secrets, the judges bench or the single judge may decide that the arguments shall take place in the judges' chambers (*chambre du conseil*).

Article 6 – Production and examination of evidence

6.1 – Personal appearance of the parties

The trial bench may order the personal appearance of the parties, or either one of the parties. The personal appearance of parties shall take place in accordance with the conditions set out in Articles 184 to 198 of the French Civil Procedure Code. The parties shall be questioned by the trial bench and may be cross-examined if either of them so request.

The registrar shall draw up a record of the hearings of witnesses and specialists, their absence or their refusal to respond, at the request of the presiding judge of the hearing as dictated by him or her.

The appearance of a legal entity shall involve the appearance of its legal representative or corporate representative or an employee of the legal entity who is duly authorised to do so and bears a power of attorney to represent it.

Following a duly motivated request by a party, the personal appearance of the parties may take place in the judges' chambers (*chambre du conseil*).

The court may derive any legal consequence from the hearings of the parties, a refusal to respond or a failure to appear without due motive by a party that has been duly summoned.

6.2 – Collection of testimonies

The Court may seek hearings of third parties so as to shed light on the objective facts of the dispute. Such hearings may take place by means of written statements or collected by means of an inquiry.

By way of departure from Article 202 of the French Civil Procedure Code, the written statements of witnesses may be typed, with the parties waiving their right to invoke any formal defect on this ground.

Any person may be heard as a witness, at the discretion of the court ruling *ex officio* or at the motion of a party.

The hearings of witnesses (third parties, experts, etc.) proposed by a party shall take place on the basis of a written declaration from such witnesses, which may be typed, and shall contain the information set out in Article 202 of the French Civil Procedure Code. The hearing of witnesses is governed by Articles 206 et seq. of the French Civil Procedure Code.

The party that requested the hearing of a witness shall ensure that the witness is summoned on the date set by the court and shall be responsible for advancing any potential costs.

Witnesses shall take an oath to tell the truth. They shall be heard in the presence of the parties or those called.

The Court shall conduct the hearing of the witnesses by asking any questions that it deems necessary with respect to facts for which proof is admitted by law. They may then be invited by the Court to answer any questions that the parties wish to ask. The Court may cross-examine the witnesses or with the parties and, where applicable, examine them in the presence of a specialist.

The Court shall derive any and all consequences resulting from non-appearance without due motive on the part of a witness that it has summoned. It shall be noted that in application of Articles 206 and 207 of the French Civil Procedure Code, anybody who is legally required to do so is required to testify, on pain of being sentenced to pay a civil fine.

6.3 – Hearing of specialists

The Court may order the hearing of specialists appointed by the court when it is requested by a party, unless it proceeds to do so *ex officio*. In support of its request, the party shall submit a report drawn up by the specialist that it wishes to be heard, as well as his or her full name and domicile. Expert reports for the courts shall be drafted in the French language.

The terms set out in Article 6.2 above shall apply as appropriate to specialists who are due to be heard.

6.4 – Video-conferencing

For testimonies and hearings, at the motion of the parties and with the agreement of the trial bench, a video-conferencing system may be used if appropriate. The possibility of using a video-conferencing system shall become available once the system put in place by the Commercial Court of Nanterre is operational.

Article 7 – Costs and Article 700 of the French Civil Procedure Code

7.1 – Translation costs and other costs

The costs associated with translating exhibits shall be borne by the parties producing them.

If the Court requests the hearing of a witness or a specialist, the costs shall be advanced by the applicant.

Any party requesting the hearing of a witness or a specialist shall advance the costs thereof.

The costs shall ultimately be made the responsibility of one of the parties as per the judgment.

7.2 – Article 700 of the French Civil Procedure Code

To comply with international practices, in order to simplify and clarify the finding of the trial bench, whose decision is sovereign, with respect to the irrecoverable costs which one or more parties may be ordered to pay (Article 700 of the French Civil Procedure Code), the parties may submit to the proceedings supporting evidence of the costs that they have incurred including, in particular, the fees incurred for their counsels.

Article 8 – Entry into force

This agreement shall apply to proceedings added to the cause list with effect from 1 January 2020 onwards.

Executed in Nanterre, 16 December 2019

Drawn up on two original counterparts

Frédéric Dana
Presiding Judge of the Commercial Court of
Nanterre

[signature]

Vincent Maurel
Chairman of the Hauts-de-Seine Bar

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