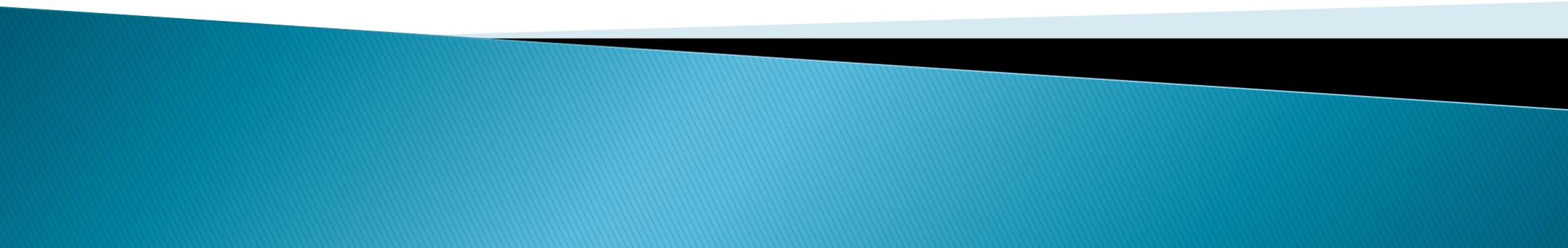


# The International Chambers of the Paris Court of Appeal and of the Paris Commercial Court

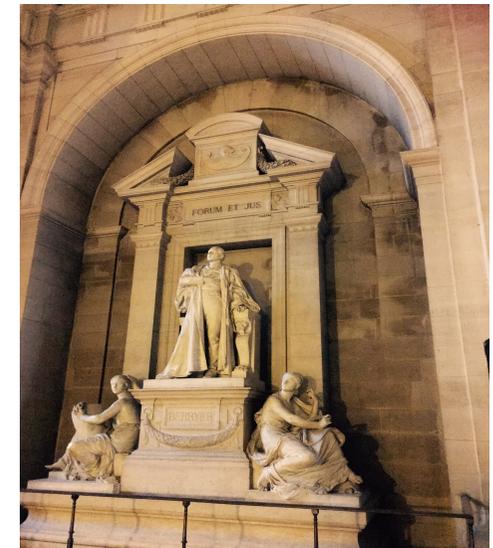
*(Paris: a venue for international dispute resolution)*

Olivier MANDEL, Partner, MANDEL & ASSOCIES Law firm



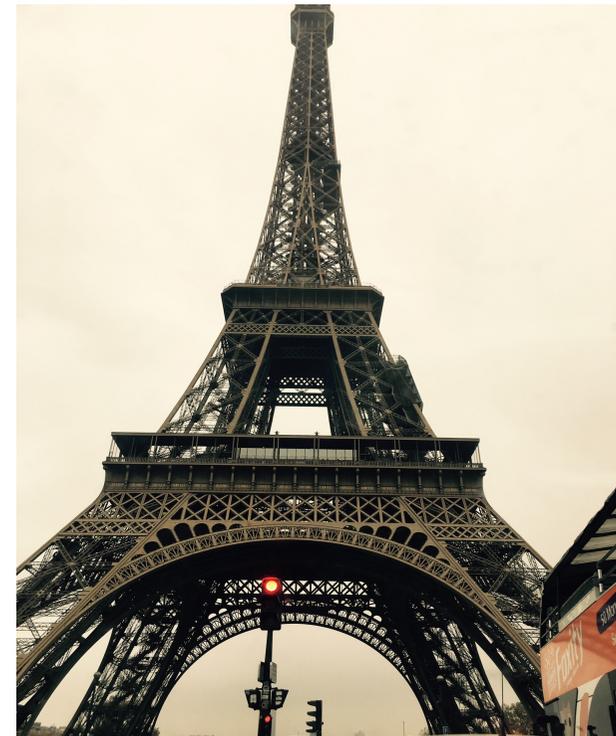
# What was the motivation behind this idea ?

- An **alternative** (essentially to London) for business operators in dispute resolution by setting up an attractive judicial system in Paris
  - In order to do so, much room is left for :
    - The use of the English language
    - Testimonial proof



# What was the motivation behind this idea ?

- The idea is to make Paris an advantageous place to settle international trade disputes



# What was the motivation behind this idea ?

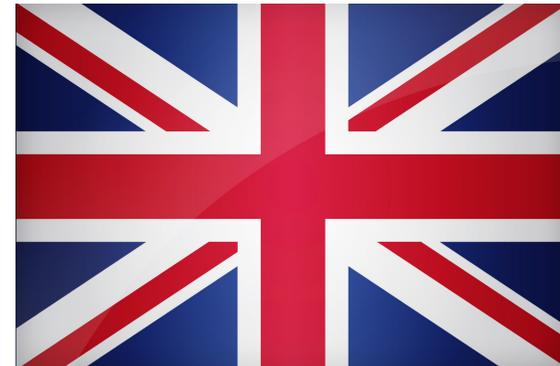
- ▶ Paris is :
- ▶ already a major international arbitration forum
- ▶ the seat of the International Chamber of Commerce (ICC), a global leader for arbitration
- ▶ Paris offers an arbitration-friendly legal environment:
- ▶ French courts are prohibited from intervening in any dispute where an arbitration clause is applicable. Arbitrators have priority to decide on their own jurisdiction. Accordingly, French courts do not interfere before or during the proceedings
- ▶ In the event an award is challenged, French courts will not review the merits of the case. They will limit themselves to verifying the existence of a valid arbitration agreement and ensuring that the arbitral proceedings comply with principles of due process

# What was the motivation behind this idea?

- ▶ Paris is also the seat of the central division of the Unified Patent Court (UPC), with sections in London and Munich
- ▶ The UPC will have exclusive competence with respect to European patents, as well as for the future European patents with unitary effect

# What was the motivation behind this idea ?

- ▶ What really triggered the latest International Chamber's inauguration is **Brexit** and the uncertainties related to UK's continuing participation within the Brussels I framework as from its withdrawal date from the EU



# What was the motivation behind this idea ?

- Brussels 1 Regulation sets out a unified system for the recognition and enforceability of civil and commercial judgments throughout the EU, without the need for initiating exequatur proceedings
- Therefore, currently when a party indicates London for example in a jurisdiction clause, this choice and the decision that the court renders must be respected by and in other EU Member States
- If this regulation no longer applies in the UK, the enforcement of UK judgments across the EU27 will be subject to the different applicable national laws of each EU Member State, because post-Brexit, they will be considered as third state court judgments. These UK judgments will therefore be submitted to longer and more expensive exequatur procedures existing in each of the Member States in order to be recognized and executed in those countries
- All of these uncertainties related to Brexit have therefore encouraged other European capitals to compete with London for dispute resolution matters

## The International Chambers of the Paris Court of Appeal and of the Paris Commercial Court

- On February 7, 2018, the French Ministry of Justice signed two judicial protocols: a protocol relating to the International Chamber of the Paris Commercial Court (“*Protocole relatif à la procédure devant la chambre internationale du tribunal de commerce de Paris*” – CITC) and a second protocol relating to the International Chamber of the court of appeal of Paris (“*Protocole relatif à la procédure devant la Chambre Internationale de la cour d’appel de Paris*” – CICAP)

# The International Chamber of the Paris Commercial Court

- **The CITC has been in place since 1995.** It is composed of 10 « Anglophone » judges and of a president, who can hear cases involving international issues, especially those involving/applying European law or foreign law
- It is a specialized court, part of the Commercial Court of Paris, composed of elected judges
- Commercial courts in France are overseen by peer-elected unpaid non-career judges. This judicial system has been in place for over centuries. Electing peers to act as judges means that they are more aware of the specific needs of the parties. The judges are very involved as they are working within their specialization. They take on this role in addition to their day job and have deep understanding of the hurdles that a manager or company might encounter
- **The CITC's Protocol sets out the rules which will govern the proceedings and hearings before the CITC.** In order to do so, much room is left for the use of the English language and testimonial proof

## The International Chamber of the Paris Court of Appeal

- The CICAP is a **new International Chamber**. It is a specialized court, part of the Court of Appeal of Paris, composed of highly professional judges
- Its opening date was expected for **March 1, 2018** and it is therefore already **OPERATIONAL**

## The International Chamber of the Paris Court of Appeal

It is currently composed of 2 judges : Mr. David PEYRON, who temporarily presides the Chamber and Mrs. Fabienne SCHALLER

As from September 2018, the Chamber shall be composed of 3 judges

The recruitment of the judges followed strict criteria : confirmed civil & commercial law judges, strong competencies in litigation, previous experience/strong skills in court hearings, writing up judgments and the English language

## The International Chamber of the Paris Court of Appeal

- The CICAP's Protocol sets out the rules which will govern the proceedings and hearings before the CICAP
- The CICAP's Protocol is very similar to the CITC's Protocol

# What kind of cases can be brought to the International Chambers ?

- **International trade disputes** regarding a variety of matters, including for example :
  - Disputes relating to international trade contracts and unlawful termination of business relations,
  - Cross-national financial contracts,
  - International transportation,
  - Actions for damages for infringements of competition law,
  - Unfair competition, etc.

# What kind of cases can be brought to the International Chamber ?

- ▶ CITC and CICAP form a two-story complete judicial system
- ▶ CITC and CICAP shall have jurisdiction if the parties insert a forum clause in their contracts, designating them explicitly
- ▶ In the absence of such a clause, the allocation chamber of the Paris Commercial Court shall refer all international economic and commercial disputes to CITC (in first instance cases)
- ▶ CICAP will also have exclusive jurisdiction for all decisions handed down in first instance by CITC and for appeals against awards handed down in international arbitration
- ▶ CITC and CICAP will apply either French law or foreign law, and the parties can choose English law for instance as the governing law of their agreement

# What are the procedural rules before CITC and CICAP ?

- It is necessary to obtain the agreement of the parties to abide by the rules of the Protocols
- These rules are **inspired by the common-law system**, so as to attract businesses accustomed to English courts to come to Paris instead for dispute resolution

# Languages and translations

- ▶ Proceedings before CITC and CICAP are adapted to introduce the use of English, whilst respecting the rules of the French Constitution, which require the use of the French language before the courts
- ▶ Litigants can provide documentary evidence in English, without the need to translate it in French
- ▶ The parties, their lawyers, the witnesses and the judicially appointed experts will have the right to speak and to plead in English
- ▶ If a party, a witness and/or a judicially appointed expert speaks English or another foreign language, a simultaneous translation shall be organized by a translator chosen by the parties. The costs of translation shall be borne by the party which has requested the audition
- ▶ The judge will conduct the hearings in French. However, an English simultaneous translation shall be organized
- ▶ The judgment and the findings shall be written in French but a sworn translator will translate the judgment in English. The costs of this translation should normally be borne by the losing party

# Hearings, evidence and timetable

- ▶ Proceedings before CICAP shall consist of the following steps: a written procedure, an interim procedure and an oral procedure which shall include an oral hearing of the parties
- ▶ The Court's hearings shall be public. However, the oral hearings can also be confidential if the parties agree as such
- ▶ In that case, some simultaneous translations may be avoided, so as to reduce the cost of the proceedings, it being said that one of the criteria for the recruitment of the judges will be their ability to understand and speak English fluently

## Other key procedural rules include :

- ▶ Efforts have been made so as to try and correct some of the criticisms sometimes addressed by common law lawyers about French legal proceedings
- ▶ Proceedings shall be flexible
- ▶ Sufficient time shall be granted for lawyers to present and argue their cases
- ▶ Parties will have the right to cross-examine the witnesses and the judicially appointed experts

# Other key procedural rules include :

- ▶ Before the CICAP, once the claimant and defendant have exchanged their first findings / conclusions (as per articles 909 and 910 of the French *Code de procédure civile*), an interim procedure shall be held
- ▶ During the interim procedure, the “judge-rapporteur” shall make all necessary preparations for the oral hearing
- ▶ The interim conference shall enable the “judge-rapporteur” to:
  - ▶ (a) identify main issues and determine which relevant facts are in dispute;
  - ▶ (b) where appropriate, clarify the position of the parties with regards to those issues and facts;
  - ▶ (c) establish a schedule for the further progress of the proceedings;
  - ▶ (d) where appropriate, issue orders regarding production of further pleadings, documents, experts (including court experts), further written evidence, the matters to be the subject of oral evidence and the scope of questions to be put to the witnesses and judicially appointed experts;
  - ▶ (e) probably order the parties to submit, prior to the decision at the oral hearing, a preliminary estimate of the legal costs that they will seek to recover;
  - ▶ (f) decide whether or not and to what extent simultaneous interpretation is appropriate and instruct the Registry to make all necessary arrangements for simultaneous interpretation

# The oral hearing

- ▶ Before the CICAP, nobody knows yet how the oral hearing will resemble. It will depend on future practices and it could be a combination of French and common law “standard” oral hearings
- ▶ The oral hearing shall consist of:
  - ▶ (a) the hearing of the parties’ oral submissions;
  - ▶ (b) if ordered during the interim procedure, the hearing of witnesses and experts under the control of the presiding judge
- ▶ The presiding judge and the judges of the panel may provide a preliminary introduction to the action and put questions to the parties, to the parties’ representatives and to any witness or expert.
- ▶ Under the control of the presiding judge, the parties may put questions to the witness or expert. The presiding judge may prohibit any question which is not designed to induce
- ▶ admissible evidence
- ▶ **Duration:** based on current practices before French courts, the presiding judge should probably endeavour to complete the oral hearing within a day. In all cases, the presiding judge may set time limits for parties’ oral submissions before the oral hearing

# COSTS

- ▶ Costs to be paid to the Registry of Commerce of Paris for the lodging of a writ of summons: **Euro 78**
- ▶ Costs to be paid to the French Ministry of Justice to lodge an appeal: **Euro 225 (it can be paid on-line)**
- ▶ No other mandatory court fees
- ▶ The successful party shall normally be entitled to recover representation costs, as well as costs of witnesses/experts, and other expenses (article 700 et dépens)
- ▶ However, concerning compensation for representation costs, the successful party shall be entitled to recover only reasonable and proportionate amounts (article 700 of the *Code de procédure civile*)

# Future outcome... ?

- ▶ Perspectives of success will depend on several factors :
  - The recruiting and appointment of French judges having a strong understanding of the English language and the common law legal system
  - Paris' ability to compete with other such international chambers
  - Gathering litigants' trust
  - Attracting the attention of business operators on these Chambers and convincing litigants that this is another solid option to arbitration, known to be relatively costly

# Future outcome... ?

Due to Brexit, competition has already started between France and other European countries

However, Paris is already the home to a community of hundreds of legal professionals dedicated to the practice of international arbitration and litigation (attorneys, arbitrators, experts, interpreters, etc.). Many of these specialists are internationally recognized leaders in those fields, and include members of the world's most reputed arbitration and litigation law firms

# Some pictures of the new Court of Justice of Paris: the symbol of a modern and accessible justice



Olivier MANDEL – Eurolegal Conference Zurich  
– April 2018

# Some pictures of the new Court of Justice of Paris: the symbol of a modern and accessible justice



Credit: <https://www.avocatparis-tgi.com/>

# THANK YOU

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