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## WHY PARIS IS AN ATTRACTIVE PLACE FOR YOUR CROSS BORDERS LITIGATIONS

The organization of the **Paris Arbitration Week** is the occasion to explain why Paris is moreover a right place for all cross borders' cases<sup>1</sup> and not only arbitration<sup>2</sup>, thanks to:

- the recognized expertise of the French professionals (lawyers, judges, arbitrators) and the French legal rules; and
- competitive prices (the costs of litigation proceedings in Paris are cheaper than in other countries).

### I. The reason why Paris is a right choice

Paris national jurisdiction is a right choice for litigation since Paris contains international courts of justice and judges fluent in English (A) and is competent to apply foreign legal rules (B).

#### *A/ International courts of justice and judges are fluent in English*

Paris proposes international courts of justice divided into the international commercial chamber of Paris in first instance and international commercial chamber of the Paris court of appeal.

On the one hand, the Paris commercial court has an international chamber whose purpose is to deal with commercial disputes with an international dimension (party domiciled abroad, place of performance or conclusion abroad, dispute subject to foreign law).

The strong point of this chamber is its versatility, as its judges are not professional judges but businessmen elected as judges, competent to intervene in various fields (contract, competition, transport, finance, etc.), have serious experience in international business and speak English.

The parties who decide to have recourse to this chamber may choose to use a language other than French for the proceedings and the judges appointed to hear the case are chosen on the basis of their knowledge of the subject matter.

On the other hand, after the decision in first instance, the international commercial chamber of the court of appeal of Paris either takes over from the international chamber of Paris commercial court or is competent thanks to a jurisdiction clause.

The international commercial chamber of the Paris court of appeal deals with:

- disputes that involve the interests of international trade: a dispute is likely to be distributed to the international chamber when the economic operation at the origin of the dispute is not

<sup>1</sup> This article concerns business law and not family law, area with particular rules, neither relationship with individual persons.

<sup>2</sup> For arbitration, we know that there is the presence of major arbitration institutions (such an International Arbitration court of the International Chamber of Commerce)

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intended to be settled economically in one and the same State and when it involves a movement of goods, services or capital across borders (commercial agreements, transport, competition matters, transactions in financial instruments, etc.);

- appeals against international arbitral awards (in particular, appeals for annulment).

The international commercial chamber of the Paris court of appeal is composed of three judges, a clerk and a legal adviser. These members have often practiced law abroad (New York, England) or exercised various jurisdictional functions or contributed to the elaboration of laws in economic matters and, obviously, have a particular affection for economic and international law.

For these reasons, Paris judges are also able to apply foreign legal rules and contributes to the fact that the number of cases assigned to this court increases every year.

*B/Competence for application of foreign legal rules by the French judge*

Once the Parisian judge is competent as jurisdiction, the question will arise as to which law to apply to the dispute submitted to him.

To determine the applicable law, the European regulation named "Rome I" dated June 17, 2008 must be applied, taking into account the universal nature of this regulation according to which this regulation is intended to apply to any judge for whom the regulation is binding, in particular the Parisian judge (paragraphs 45 and 46 of Rome I regulation; "*Répertoire de droit européen - Loi applicable aux obligations contractuelles : matières civile et commerciale - Champ d'application - Stéphanie FRANCO - Mars 2013 (actualisation : Septembre 2021)*").

According to this European regulation, the principle is the freedom of choice of the parties: the judge will therefore apply the law, even foreign law, that the parties have chosen to apply to their agreement; it being specified that this choice must have been made or must result in a certain way from the provisions of the contract or the circumstances of the case.

In absence of choice by the parties, the general principle is that the contract will be governed by the law of the country with which it is most closely connected. Thus, depending on the type of contract, the characteristic performance of the contract (sale, provision of services, distribution, etc.) will be sought, followed by the country to which the party providing the performance is attached. The connection to the current residence of the party providing the characteristic service will determine the applicable law.

However, if it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country than the one designated by virtue of the above connection, the law of that other country will be applicable (this is the "exception clause").

For the sake of simplicity, it is recommended to clearly and expressly stipulate that the relationship between the parties will be subject to a specific law, as well as to a specific jurisdiction, such as the courts of Paris.

**II. The way to choose Paris**

There are two ways to choose Paris: either you are required to because of international or French rules of procedure (A) or because the parties decided to choose Paris in an agreement (B).

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*A/Paris is competent because of international or French rules of procedure*

An international rule (international treaties, European laws for example) may designate the French courts as competent to hear a dispute.

In civil and commercial matters, the international jurisdiction of French courts often results from the application of the European regulation named "*Bruxelles I bis*" dated December 12, 2012.

For example, according to this regulation:

- Persons domiciled in France shall, whatever their nationality, be sued in the French courts (with some exceptions);
- In matters relating to a contract concluded with a consumer, the French courts can be competent if the consumer is domiciled in France or if the other contracting party is domiciled in France.

In the absence of international rules, the principle is that the jurisdiction of French courts is determined by extending the rules of internal territorial jurisdiction to international disputes.

Therefore, for example, since under French law the competent court is the one where the defendant resides or where the agreement is performed, then the Parisian courts will have jurisdiction if the defendant in an international dispute resides in Paris or if the service is performed in Paris.

Finally, in any case, the French judge has jurisdiction by virtue of the existing privileges of jurisdiction under French law. According to these privileges of jurisdiction:

- A foreigner, even one not resident in France, may be summoned before the French courts for the performance of obligations contracted by him in France with a French person; he may be brought before the French courts for obligations contracted by him in a foreign country towards French persons;
- A French person may be brought before a court in France for obligations entered by him/her in a foreign country, even with a foreigner.

However, in business law (agreements between professionals or between partners), the French courts (including Paris) can be competent thanks to the contracting parties' choice.

*B/Paris is competent because of parties' choice*

On the one hand, the parties may choose the Paris courts to hear their dispute by stipulating a jurisdiction clause in their contracts.

By such a clause, the parties decide, in advance, to submit all disputes arising from their agreement to the Parisian courts, regardless of the law applicable to the contract and even if the court of another country or another city should have been competent under another domestic or international law.

Such a clause is deemed lawful by the French law (Article 48 of Code of civil procedure; Article 25 of European regulation "*Bruxelles I bis*").

In order to be valid, such a clause must be expressly stipulated in the agreement and accepted by all contracting parties at the date of the conclusion of the agreement.

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From all the main rules presented above, it results that Paris is an international economic place with specialized jurisdictions as well as experienced professionals (with a strong appetite for international law) capable of hearing disputes in foreign languages and applying foreign law, while having an economic and practical vision of law.

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