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France
Litigation

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in France.

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France: Litigation

1. What are the main methods of resolving disputes in your jurisdiction?

Litigation, arbitration, mediation, conciliation and informal negotiation are the main methods for resolving commercial disputes. Successive reforms of the Civil Procedure Code have promoted the development of mediation and conciliation as methods of alternative dispute resolution.

2. What are the main procedural rules governing litigation in your jurisdiction?

The Civil Procedure Code lays down the guiding principles of trial and specifies the rules governing civil and commercial litigation before French courts at each court level. Trials are conducted on the basis of two main principles: cooperation between the judge and the parties and the adversarial system.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

French judicial courts form a three-tier hierarchy. In first instance, commercial claims are usually brought before one of the commercial courts, which are overseen by non-professional judges from the business world who are elected by their peers, and civil claims are brought before one of the civil courts, which are overseen by professional judges. Before both civil and commercial courts, a case can be heard by a single judge or by a panel of three judges depending on its complexity. Except for decisions ruling on claims of less than € 5.000, which may not be appealed, either party can freely appeal the judgment to a court of appeal within the timeframe provided by the law. Three professional judges review the case, in law and in fact. The Court of Cassation is the highest court of the judicial order and its role is not to retry the case, but to state whether the law has been correctly construed and applied to the facts by the lower court.

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

In standard court proceedings, the parties exchange their written materials until the case is ready to be tried. This stage is overseen by a judge, who may set deadlines. It typically takes 12 to 18 months to get to trial. This period may be longer, particularly in complex cases or in the event of a procedural incident. However, parties can apply to the President of the court for an authorisation to litigate under emergency procedures on the merits, in which case decisions can be obtained within six months.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

Neither written submissions nor exhibits are available to the public. Oral arguments are held in public hearings, save where the law requires or allows that they be held in the judge's council chamber. Thus, hearings may be held in private, in particular to protect trade secrets or individual privacy, or should all parties request it. Judgments are available to the public but their wording can be adapted to ensure trade secret protection for instance.

6. What, if any, are the relevant limitation periods in your jurisdiction?

The general limitation period applicable to civil and commercial matters is five years from the day on which the plaintiff discovers or should have discovered facts giving rise to a cause of action. However, there are several special statutes of limitations depending on the type of dispute, the subject of the claim and the persons involved (e.g. an action for liability against the directors or managing director of joint stock companies (sociétés par actions) must be brought within three years).

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

If the parties had provided for a compulsory mediation or conciliation clause prior to litigation, then failure to comply with such clause may render the claim inadmissible. In certain cases, the parties are required by law to attempt a conciliation or mediation before

commencing a trial (e.g. payment of an amount not exceeding 5,000 euros) but exceptions such as emergency may apply. Non-compliance with such obligation to first attempt a conciliation or mediation may render the action inadmissible.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Proceedings usually commence when a writ of summons is served on the defendant and subsequently registered with the court. The summons contain, inter alia, a statement of the facts, the claim and its legal basis, and a list of exhibits on which the claim is based. Service shall be carried out by a bailiff appointed by the claimant.

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

In domestic cases, territorial jurisdiction of the French courts is determined pursuant to Article 42 and seq. of the Civil Procedure Code. To determine whether they have international jurisdiction over a claim, French courts apply European Regulation 1215/2012 of 12 December 2012 ("Brussels I bis" Regulation). This Regulation applies in civil and commercial matters and thus covers most commercial disputes. Both under Brussels I bis Regulation and French law, French courts usually have jurisdiction if the defendant is domiciled in France. French courts may also have jurisdiction over a claim in such cases where relevant international treaties have designated them as competent jurisdictions. In the event there is no applicable European or international provision, French courts then have to determine if they have jurisdiction in light of French choice of jurisdiction rules. In contractual matters, French courts may also have jurisdiction pursuant to a valid jurisdiction clause.

10. How does the court determine which law governs the claims in your jurisdiction?

French courts determine the law applicable to (i) contractual obligations in light of European Regulation 593/2008 of 17 June 2008 ("Rome I" Regulation) and (ii) non-contractual obligations in light of European Regulation 864/2007 of 11 July 2007 ("Rome II" Regulation). Rome I and Rome II Regulations apply to civil and commercial matters. Under Rome I Regulation, contracts are governed by the law chosen by the parties. In the absence of such choice, the Regulation provides for rules to determine the applicable law. For instance, according to Rome I, a contract for the sale of goods is governed by the law of the country where the seller has its habitual residence. Under Rome II Regulation, the law applicable to a noncontractual obligation arising out of a tort is usually the law of the country in which the damage occurs. In the event there is no applicable European or international provision, French courts determine the applicable law with regard to French choice of law rules.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

There is no specific mechanism under French law allowing a party to obtain the dismissal of a claim at an early stage of the proceedings based on legal deficiencies such as statute of limitations or lack of valid cause of action. However, during the proceedings the parties may request the judge to rule on a procedural issue (incident) that may result in a dismissal of the claim without examination of its merits. Such procedural issue is generally related to the jurisdiction of the court or the regularity of the writ of summons.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

Several types of interim remedies are available before French courts in civil and commercial matters, including the following: in all urgent cases, the judge may order any measures that do not raise any serious challenges or which the existence of the dispute justifies. The judge may where necessary order protective measures or measures to restore the parties to their previous state, either to avoid imminent damage or to stop a manifestly illegal nuisance. In certain cases, the judge may award an interim payment to the creditor or order the mandatory performance of the obligation even where it is a non-monetary obligation.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

Before commercial courts, the parties in principle address the judge orally and are not required to submit written submissions. Nonetheless, they are allowed to submit written briefs and exhibits to support their oral arguments, which they usually do when they are represented by counsels. Before civil courts, the parties

are required to submit written briefs. In case of written briefs, each party usually has 4 to 6 weeks to reply in writing to the other party, until such date when the case is ready to be tried. When deemed appropriate, the judge may set a tighter schedule with mandatory deadlines. Before courts of appeal, the parties are also required to submit written briefs. The appellant has 3 months as from the date of his appeal to submit his brief. The respondent then has 3 months as from the submission of the appellant's brief to file his own brief in reply. Thereafter, the parties may in principle exchange briefs with no specific schedule, up to a date set by the court for closure of the discussions. This timetable is shortened in expedited procedures.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

Under French law, each party bears the burden of proving the facts supporting its case. Accordingly, the parties are not required to disclose documents or information that might be harmful to their case. As a result, a party who wishes to obtain evidence from the other party must seek an investigative measure from the judge, either during litigation or pre-litigation. The investigative measures available range from ordering a party to produce a specific piece of evidence, to authorizing a bailiff to visit one of the parties' premises in order to search for documents and take a copy of emails and electronic files. The existence of privileged or confidential information (including trade secret) is not in itself an obstacle to an investigative measure. However, the judge may if deemed appropriate provide for protective mechanisms, such as putting in an escrow documents seized by a bailiff during a search, in order to identify those that are privileged or confidential (or protected by trade secret) and exclude (completely or partially) their communication to the party who requested the measure.

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Parties usually produce witnesses' written affidavits. In theory, judges may proceed with an oral examination of witnesses. This can be requested by a party or ordered ex officio by the judge. Such procedure takes place in presence of the parties and their counsels, although they may not address the witness directly. The judge may ask questions submitted by the parties but there is no procedure of cross-examination available. In practice, however, it is rare for witnesses to be subjected to an oral examination.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

Expert evidence is permitted. The court can decide to appoint an expert, either on its own initiative or at the request of a party. Court appointed experts have an obligation to inform the court of the progress of the operations and to comply with the adversarial principle. The expert's opinion is most often contained in a written report filed with the court and notified to both parties. If the court does not find sufficient clarifications in the report, it may hear the expert, the parties being present or summoned. The court is not bound by the expert's conclusions. In complex cases, it is not unusual for each party to appoint its own expert, whether on a legal or technical issue. In such case, the expert's report is simply a piece of evidence that either party submits to the court.

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

Final decisions can be appealed before courts of appeal, except for decisions ruling on claims of less than € 5.000, which may not be appealed. In most cases, appeals must be lodged within one month as from notification of the decision. Two types of decisions may be referred to as interim decisions under French law: (i) provisional orders rendered in summary proceedings or ex parte proceedings by the president of the court, which do not rule on the merits of the case (e.g., an injunction to refrain from acting in a particular manner, an investigative measure ordered pre-litigation, etc.). These decisions can be appealed before courts of appeal within 15 days as from notification of the decision; (ii) provisional orders rendered by the court called to rule upon the merits (e.g. appointment of an expert, order to produce a piece of evidence, etc.). Unless the law provides otherwise, these decisions cannot be appealed immediately but may be appealed along with the final decision of the court.

18. What are the rules governing enforcement of

foreign judgments in your jurisdiction?

Judgements given in member states of the EU are in principle directly enforceable in France. The applicant simply has to provide a bailiff with a copy of the judgement and a certificate issued by the court of origin confirming that the judgement is enforceable, pursuant to Brussels I bis Regulation. Unless a bilateral treaty provides otherwise, enforcement of judgements rendered outside the EU requires an exequatur, i.e. a judgement of the relevant French judicial court (*tribunal judiciaire*) stating that the judgement is enforceable in France. Exequatur is subject to the following conditions: jurisdiction of the foreign court, compliance of the foreign judgement with French international policy and absence of fraud.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

In principle, the losing party bears court costs, which are very low in France. The court may also order the losing party to pay the winning party an amount to cover its costs. However, the awarded amount is left at the court's discretion. In practice, this amount rarely covers the actual costs borne by the winning party (the amount usually ranges between €1.000 and €50.000).

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

Class actions were introduced in French law in 2014. A class action may be brought in relation to consumer and competition law disputes, health product liability, environmental liability, discrimination and personal data protection. The French class action is an opt-in mechanism and may only be initiated by certified associations or given specific groups (labour unions). Other mechanisms enable claimants to act jointly, such as legal actions introduced by associations representing their members in connection with a collective harm.

Class actions are not common in France due amongst other things to the complexity and restrictive nature of the procedure (only 32 since 2014). A law proposal dated 15 September 2020 was submitted for a new class action regime in order to simplify access to the class action procedure, to ensure better compensation for victims and to reduce the time taken to reach a decision. This law proposal also aims to take into consideration the guidelines of the European Directive (EU) 2020/1828 dated 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing which “sets out rules to ensure that a representative action mechanism for the protection of the collective interests of consumers is available in all Member States, while providing appropriate safeguards to avoid abusive litigation”. Pursuant to Article 24 of the Directive, Member States shall adopt and publish, by December 25, 2022, the laws, regulations and administrative provisions necessary to comply with this Directive, and shall apply those measures as of June 25, 2023. To date, the Directive has not been transposed into French law.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

Intervention of a third party in ongoing proceedings is possible only if such party is connected to the parties' claims by a sufficient link. This may occur in two different ways: (i) a third party decides to join the proceedings to present its own claim or support the claim of one of the parties; (ii) a third party is summoned to join the proceedings by one of the parties who has a claim against it or has an interest in making the judgement common to it. A judge may decide, on its own initiative or at the request of a party, to consolidate two sets of proceedings pending before him if the link between the disputes is such that it would be in the interest of justice to examine or determine them together.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Third party funding is available in France. It is mostly used in arbitration proceedings, which are significantly more expensive than state court proceedings. Third party funding is not subject to formal regulation. However, on 21 February 2017, the Paris Bar Council issued a resolution providing in essence the following recommendations: attorneys remain solely accountable to their client, not to the third-party funder; only the client (and not the attorney) can communicate information about the case to the third-party funder; attorneys should encourage their client to disclose the existence of a third-party funding to arbitrators and should warn their client

about the possible consequences of nondisclosure (namely, a conflict of interest issue that may result in the nullity of the award). There is no specific rule providing that third-party funders can be made liable for the costs incurred by the other side.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

First, courts limited their activities to the most urgent cases during the first lockdown (March to May 2020), amongst which insolvency proceedings and criminal cases. To protect litigants' rights, the Government also issued ordinances extending almost all applicable time limits provided by law that would normally have expired between March 12 and June 23, 2020. The Government also allowed several exceptional measures, such as videoconference hearings. Those measures ended on July 1st, 2021.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

In addition to low costs of litigation, the main advantage of litigating international commercial disputes in France is that both the commercial court of Paris and the court of appeal of Paris have an international chamber specially designed to enhance the attractiveness of the Paris court in connection with disputes arising from international economic and financial relations. These international chambers are composed of English speaking judges. Their jurisdiction includes commercial contracts and the breach of commercial relations, transactions on financial instruments, transportation, unfair competition and claims for compensation following anti-competitive practice. Proceedings before the international chamber of the commercial court or the court of appeal follow a procedure inspired by certain common law mechanisms, which provide for an extensive use of the English language, including for oral arguments and witness testimony. The main disadvantage is that France does not have the most developed rules of evidence. It does not know the rules of disclosure or discovery.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

The ever-growing importance of ESG issues in company strategies, finance and commercial transactions will most likely lead to an increase in ESG-litigation. In this respect, it is worth noting that the European Union have adopted the Corporate Sustainability Reporting (CSR) Directive on 16 December 2022, which became effective on 1 January 2024. This new directive strengthens the rules concerning the social and environmental information that companies operating in the EU have to report. Increasing disclosure requirements will probably lead to more claims against companies, directors and officers based on misstatement, misrepresentation, or omissions in these disclosures.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

The development of artificial intelligence and tools of predictive justice is likely to enhance the analysis of case-law and improve the anticipation of court decisions. In this respect, France has published decree no. 2021-1276 of 30 September 2021, which aims to expand the availability of court decisions to the public. Such access will broaden the dataset for judicial analytics. This evolution will probably increase the influence of case-law in France.

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