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THE CEE LAW FIRM

LITIGATION IN FRANCE

France is a big player on the international market with goods and services and thus the interaction of French and foreign companies becomes quite common and frequent. It is, therefore, not unusual that a cross border dispute is to be settled by French courts. This article aims to present the process of litigation in France with particular focus on cross-border disputes.

Czech companies may enter into purchase contracts on contracts on works with French business partner. Both the governing law and jurisdiction of courts may be agreed in the contract. If there is no express agreement, the governing law is usually law of the country of party that provides the characteristic performance, that is, the seller or contractor and the competent courts are usually the courts of state where the contract is performed. Moreover, Czech company may be involved in proceedings before French courts even if it has contract with other Czech company, when the contract is governed by Czech law and competent courts are courts of Czech Republic, if, for example, these two Czech companies takes part in chain of supply with one of the parties or end customer being French company.

For example, if Czech company is part of chain supply in logistics delivery, when the final customer and/or insurer is French company, it is probably that once dispute arises out of the contract due to problems with delivery (such as loss of load during the transportation itself and subsequent claim for remedy), the Czech company will be involved in litigation before French courts, just because the French legal system is typical for the redress claims against all parties of the chain (called *appel en garantie*).

In this brief introduction to French litigation, we will focus on situations in which the Czech companies may be involved.

1) Initiation of proceedings before French court and notification to Czech company

Usually, the Czech company learns about its involvement in the French court proceedings once there is petition delivered to this company. The deliverance of documents is governed by Regulation of the European Parliament and of the Council (EC) No. 1393/2007. The petition should be accompanied by translation in Czech language, if the translation is missing and the company involved does not communicate in the foreign language, the company may reject the delivery of the petition.

2) Structure of the French court system regarding private and commercial law disputes

a. First instance

For the purposes of this article, we will limit ourselves on private and commercial law disputes. In the first instance, such disputes shall be settled by civil district courts (*tribunaux d'instance* and *tribunaux de grande instance).* The *tribunaux de grande instance* have general jurisdiction over private disputes when the disputed amount exceeds €10,000 or if the dispute is not expressly conferred to another court. Concerning commercial matters, the commercial Courts (*tribunaux de commerce*) have special jurisdiction over the disputes between traders, credit institutions and commercial companies, and disputes over commercial deeds (e.g. bills of exchange or promissory notes). Judges of the commercial courts with special jurisdiction are not career judges but are elected by members of the commercial community.

b. Appeal and cassation

Any party who disagrees with the judgment rendered by civil or commercial courts has a right to appeal before the competent Court of Appeal (*Cours d'appel*) within one month from the notification of the judgement. The process before the French Court of Appeal is a new trial as the first instance decision can be challenged in respect of factual as well as legal grounds. All the evidence are usually reintroduced before the Court of Appeal. An appeal has in general a suspensive effect, thus the decision does not become enforceable until the termination of the appeal procedure, unless the first instance judgement is provisionally enforceable or concerns summary proceedings ("référé").

The judgement of the Court of Appeal can be further challenged before the French Supreme Court (*Cour de cassation*) within two months from the notification of the judgement of the Court of Appeal, but only on points of law. The recourse before the French Supreme Court does not have a suspensive effect, thus the judgement of the Court of Appeal becomes enforceable as from the date of its notification to the parties.

The above-mentioned time limits to file a recourse before the Court of Appeal and before the French Supreme Court are extended to two months when the notified party has its domicile or head office abroad.

c. Representation in proceedings

Before the commercial courts and the *tribunaux d'instance*, the parties to the proceedings may be represented by any person of their choice or remain unrepresented. Representation by a lawyer is only mandatory before the *tribunaux de grande instance*, Courts of Appeal and French Supreme Court.

In case of a mandatory representation, the lawyer must be registered near the French bar association of the district of the court to which he belongs to. In practice, the party is often represented by a lawyer who instructs another lawyer in the district that has geographical jurisdiction over the case to act as an agent and to be on the formal record for the purposes of administrative tasks associated with the proceedings.

3) Chronological and substantive steps of a French commercial litigation

a. Starting proceedings

Prior initiating judicial proceedings, the claimant shall send to the other party an official letter (*mise en demeure*) demanding the payment of a debt or other measures to avoid litigation. In case a party to proceedings fails to prove having taken steps to try to reach an amicable resolution of the case, the judge can propose the parties to attempt such amicable resolution.

The proceedings start by delivering a writ of summons (*assignation*) to the defendant. The writ of summons shall set out the grounds of the claim and be served by a bailiff (*huissier*) at the defendant's domicile or head office. The official copy of the served writ is then filed with the court.

b. Proceedings before the court

The filed writ of summons is referred to the supervising judge (*juge de la mise en état* before the district courts, a *conseiller de la mise en état* before the courts of appeal or a *juge rapporteur* before the commercial courts), who supervises the exchange of submissions and supporting documents (*conclusions* and *pièces*). There are no limits regarding the number of exchanged submissions or period for such exchanges but there are often agreements signed between bars and courts to supervise the length of the procedure and the numbers of submissions exchanged in order to avoid long proceedings. In case of proceedings in which the representation is compulsory, the supervising judge schedules a closing date after which no additional fillings are authorized when the judge believes that all the relevant arguments were exchanged. The determination of the closing day is at the sole discretion of the supervising judge and can be therefore postponed upon request.

c. Expert's opinions

Experts are appointed by the court upon the request of a party (*demande d'expertise*) or on the initiative of the judge. Only experts listed in official list of experts approved by court may be designated. The expert's investigations begin after the payment of a provision of his fees usually done by the claimant. The expert then convokes the parties to a first meeting in order for the parties to present their repective position and for the expert to proceed to its investigations as provided for in the mission granted by the Court. Further meetings may then be held if the expert so decides. The expert invites the parties to submit relevant documents and convokes the parties to attend his investigation's mission. The expert issues a draft report (*pré-rapport*) for the parties who may submit their comments and statements within a certain time-period granted by the expert. Subsequently, the expert submits the final report to the judge and to the parties.

If the expert is appointed upon the claimant's request, the claimant has to pay in advance the experts fees upon the expert's appointment. The decision which shall bear the expert's final fees shall be made together with ruling on the merits in the final judgement.

When nominating the expert, the Court grants a time-period for the expert to submit its report. In case the file is a complicated matter, the expert may request the Court to grant a time-period extension. Obtaining expert's opinion may take several years, and is usually time consuming and costly.

d. Rendering the decision

Once the proceedings are closed, the supervising judge sets the date of the audience hearing. The final decision is then rendered in writing, usually within 1-3 month. The judgement must be officially notified to the losing party by a bailiff. As of the day of such official notification, the judgement becomes enforceable, in case the provisional enforcement has been ordered (for the first instance proceeedings) and as so in case of an appeal. The period to file an appeal before the Court of Appeal and the French Supreme Court begins to run as from the notification.

4) Particular actions under French law

French law foresees particular action to be brought before the court to settle the disputes between a client, suppliers and subcontractors.

a. Direct action of the subcontractor against the main final client

A subcontractor can benefit from the possibility of a direct action (*action directe*) in the event of non-payment of the invoice by the main contractor. On the basis of French Law relating to subcontracting, the subcontractor may in fact bring a direct action for payment against the final client and may thus obtain the payment of his claim in the event of a default by the main contractor. In order for this direct action to be set up, the final client must have agreed on the subcontractor and approved his payment terms. According to French case law, the acceptance of the subcontractor and the approval of the payment terms can be implicit, however the demonstration of unambiguous acts of the final client involving his willingness to accept the subcontractor is required.

Prior to the exercise of a direct action, the subcontractor must send a letter of formal notice (always by registered mail with acknowledgment of receipt) to the main contractor inviting him to pay the sums due to him under subcontracting contract. A copy of this formal notice shall be sent to the final client. The subcontractor may then bring the direct action against the final client only upon the end of a one-month period from the delivery of the formal notice.

b. Call upon to join as a third party (*appel en garantie*)

In case a party summoned before the court considers that a third party should guarantee him, the summoned party may then call this third party in the proceedings. To have such third party in the proceedings as a guarantor, this latter should receive notification of a writ by the summoned party in order to be part of the said proceedings.

In this case, the guarantor is called in the main proceedings. But he can also see his guarantee implemented in a separate and subsequent trial, which is called action for recovery (“action récursoire”).

The party calling the guarantor upon to join as a third party, may also request the court to dismiss the claim against him (the calling party) and therefore to condemn the guarantor.

The party calling the guarantor remains subject to enforcement of the judgment against the guarantor, under the condition that the judgement has been notified to this latter.

c. Action for recovery (*action recursoire*)

The action for recovery is the legal action taken by the person who had to perform an obligation of which another person was held in whole or in part against the real debtor or against a co-debtor to obtain the payment of the share incumbent on him. In this case, the person who summons the guarantor initiates a new procedure. The subject matter of this new proceeding is limited to the relationship between the initiator and the guarantor (real debtor or co-debtor).

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