France

Quadrige, société d'avocats
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1. PRE-ACTION

1.1 Prior to start of formal proceedings

In respect of commercial cases, there are no specific rules prior to the start of formal proceedings. However, it is becoming more and more frequent for parties to provide in the commercial contract that in the event of dispute, they must follow an amicable dispute settlement procedure before they can go to court. In that case, the parties must comply with this requirement or they risk having their action declared inadmissible.

1.2 Time limits for bringing a claim

The statutory limitation period in commercial matters is five years (L110-4 of the Code de commerce (French Commercial Code)), subject to certain exceptions. For example, in insurance cases, the limitation period is two years.

Between professionals, the limitation period can be shortened or extended by agreement of the parties. It may not, however, be reduced to less than one year or extended by more than 10 years.

2. PROCEDURE

2.1 Plaintiff

Proceedings are commenced by a plaintiff who submits his claim to the court or judge. This procedure is initiated by a summons.

The summons is served by a bailiff on the defendant and constitutes a summons to the court designated by the applicant. The second original is served on the applicant to enable him to submit his case to the court.

The summons must clearly state the facts of the case and set out the legal foundation on which the claim is based. Copies of any supporting documents and evidence that will be relied upon in relation to the claim before the court must be attached to the summons.

The defendant's absence will not prevent the court from making a ruling.

2.2 Defendant's response

Before the Commercial Court, a party may defend itself personally without legal representation. The parties have the right to be assisted or represented by any person of their choice. A representative, if not a lawyer, must be able to show proof of special authority.

The date of the first hearing will be set out in the summons.

Although in principle the proceedings before the Commercial Court are oral, in practice the pre-trial judge will set deadlines for each party to respond in writing to

the other's claims.

Each party must provide its writs (claims and submissions) and evidence (in support of its claim) to its opponent before the expiry of the deadline in order to comply with the adversarial principle *(principe du contradictoire)*.

2.3 Main steps to trial

The four stages of a trial are:

(i) The summons: a writ served by a bailiff under which the party wishing to assert a right, the plaintiff or applicant, calls on its opponent, the defendant, to appear in court either in person or through its legal representative;

(ii) Pre-trial stage: the case, assigned to the competent court, will be prepared for judicial assessment. Preparation for trial is achieved by the exchange of written arguments.

When the parties or the judge considers that there has been sufficient discussion, the judge will declare the closure of the exchange and set a hearing date for the parties' claims to be heard before the court or a judge;

(iii) The hearing: This is the court session during which the judge evokes the case, hears the parties and any witnesses or experts before delivering a decision; and

(iv) Judgment: after a period of consultation (the deliberation), the judges make their decision which they justify with legal argument and fact.

2.4 Timetable for a case to reach trial

It is difficult to give a precise indication of the duration of proceedings before the French commercial courts, which depends above all on the chosen court, and the time taken by the parties in the exchange of submissions and evidence (depending on the complexity of the case).

However, to give a rough idea of the timeframes, a case before the Commercial Court in Paris can take anything from a few months to, more generally, about one year.

2.5 Expediting the timetable

In urgent cases, it is possible to submit an urgent application to the presiding judge of the Commercial Court. The Commercial Court's presiding judge in these circumstances is entitled to take all steps, precautionary measures, or reinstatement measures to prevent imminent damage or stop an imminent disturbance.

The presiding judge will issue an interim order. This is a provisional decision rendered after hearing both parties, at the request of one party.

An interim judge adjudicates based on what is obvious and undeniable. This allows a quick decision to be made. However, the decision does not have the value of a decision on the merits: which means that an interim judgment is susceptible to challenge following substantive proceedings.

In some urgent cases, an applicant may apply to the Commercial Court's presiding judge for the defendant to be tried expediently on the full merits of the case and not simply at an interim level. The presiding judge will set the timeframe for this process (a few days or weeks).

Appeals in respect of interim orders fall within the jurisdiction of the *Cour d'appel* (Court of Appeal).

3. DOCUMENTARY EVIDENCE

3.1 Parties' obligations to search for/retain/exchange evidence

The judge is responsible for ensuring that the parties exchange all evidence relating to the case. He can rely in his judgment only upon items, submissions and documents cited by the parties that have been subject to examination.

A full and mutual exchange of facts, evidence and legal arguments must be made voluntarily in good time and in writing, in order to permit a fair trial that upholds the rights of defence.

Failure to comply with this requirement is severely punished in that the judge will disregard any evidence, argument or document not disclosed to the opposing party.

If a party suspects that another party is withholding evidence, it can request that the court compel the other party to produce the evidence in question. The judge must ensure compliance with the adversarial principle. The judge may, by injunction or order subject to penalty, require the disclosure of a piece of evidence, and, in addition, can exclude from the proceedings any piece of evidence that is not provided in a timely manner.

3.2 Exchange of electronic documents

In France, Law No. 2000-230 of 13 March 2000 which adapts the law of evidence to information technology and in relation to electronic signatures, recognises the legal value of electronic documents and signatures.

Written evidence 'is evidence originating from a series of letters, characters, numbers or any other signs or symbols with an intelligible meaning, whatever the medium and mode of transmission'.

Electronic documents are admissible as evidence in the same way as paper documents, provided that the author can be properly identified and provided that they be prepared and stored in such a way as to protect their integrity.

The law and decrees specify the practical conditions that electronic documents and electronic signatures must meet to be enforceable against third parties. Depending on the technical security level of the electronic process used and its recognition by the authorised departments of the state, electronic documentation can constitute evidence giving rise to rebuttable or non-rebuttable presumptions.

3.3 Withholding documents

A lawyer must, in his dealings with his client, whether verbal or written, maintain confidentiality in respect of what has been discussed. A lawyer's duty of professional confidentiality is of a general, absolute and public order nature.

Verbal communications or written correspondence between lawyers is by nature confidential, so no disclosure by the recipient can be made and no correspondence between lawyers can be used, including in court.

The rules of confidentiality relating to exchanges between lawyers have the advantage of facilitating inter-party talks, which can lead to settlements. The parties may not assert the existence of such discussions before the court.

It is however possible to 'de-confidentialise' these exchanges in certain very strict and exceptional circumstances (essentially, correspondence between lawyers sent with the label 'official ').

3.4 Public hearings, document inspection

Commercial proceedings have three main features. They are public proceedings, and most importantly, are oral and adversarial.

The proceedings are public to the extent that anyone who wants to can attend the hearings. However, the parties have the right to request that the case be heard in court chambers, that is to say, in private. In that case, the decision will be rendered in open court.

The proceedings are adversarial because the court, in its decision, can take into account only submissions and documents that the opposite party has had the opportunity to discuss.

In theory, the entire procedure before the Commercial Court is oral. The claims of the parties are noted in the court file or recorded in minutes. Once judgment is pronounced, the court does not retain the case evidence.

4. WITNESS EVIDENCE

4.1 Exchange of witness evidence pre-trial

The parties are required to exchange any testimonial evidence or witness statements on which they intend to rely in support of their claims. This communication to the court and the other parties must be completed before the oral hearing in order to enable each party to best defend its interests, in full knowledge of the opposing arguments.

This is the adversarial principal.

4.2 Witnesses evidence at trial

Evidence relating to a matter involving a sum greater than EUR 1,500 is in principle to be made in writing (article 1341 of the French Civil Code). Notwithstanding this provision, article 110-3 of the French Commercial Code states: 'with regard to merchants, commercial instruments can be evidenced by any means unless the law provides otherwise', except for certain types of contract (partnership agreements - article 1835 of the French Civil Code; sale and pledge of a business - article L 141-5 of the French Commercial Code;). Invoices are obligatory.

Procedural law provides that the parties may submit written statements to the judge. To ensure fidelity, the statement must come from persons who have been the direct witness to what is being attested to, be accompanied by an identity document, specify that it has been prepared in contemplation of its production in court, be handwritten and signed, state the address and marital status of the signatory and his relationship with the concerned parties, relate the facts to which its author has been a witness or has personally observed. It should be stated that the witness must understand that he is testifying in court and that perjury is a criminal offence.

A witness statement may also result from a report prepared by a bailiff (the bailiff requires a person to answer questions and the answers are recorded in the report).

4.3 Forcing a witness to attend court

The court may require that the author of a statement give evidence in person (article 203 of the French Civil Procedure Code). However, it is quite unusual before a Commercial Court. Only persons who can demonstrate a legitimate reason will be relieved from having to testify (article 206 of the French Civil Procedure Code):

professional confidentiality, parents or relatives, etc. Apart from these cases, the witness will be compelled to participate in the investigation. Defaulting witnesses may be summoned at their expense if their attendance is deemed necessary. Defaulting witnesses and those who, without good reason, refuse to give evidence or to take the oath may be subject to a civil fine of up to EUR 3000.

4.4 Expert opinions

A party to a dispute may, either before or during the litigation proceedings, appoint an expert whom they will remunerate. This expert investigation is qualified as unilateral. When the parties concerned appoint one or more experts whether as a result of a contract clause or an agreement reached within the framework of the dispute, it is referred to as an amicable investigation.

A court-ordered expert investigation is ordered by the judge and is governed by the specific provisions of the French Civil Procedure Code. The judge may appoint any person of his choosing to inform him by way of report, consultation or an investigation of a question of fact which requires the skills of an expert.

4.5 Exchange of expert evidence prior to trial

During the expert appraisal, the expert must remain impartial and independent vis-à-vis the parties, and must invite all parties and their counsels to every expert meeting.

In most cases, the expert will submit an expert's 'pre-report' indicating in advance to the parties the findings he is about to communicate. The parties may, throughout the expert's appraisal, provide explanatory notes and/or comments on the pre-report, or simply any relevant information and/or documents to the expert.

Any communication addressed to or by the expert must be communicated without delay to all parties in order to comply with the adversarial principle.

4.6 Experts evidence at trial

The involvement of an expert commissioned by a written order of the judge will always give rise to a written report which is communicated to all parties and the judge.

However, the judge is not bound by the findings of this report. The parties may also challenge the contents of the expert's report.

4.7 Paying experts

If an expert appraisal is provided for in the contract, the rules as to how it will be conducted and how it will be paid for must also be specified in the contract.

In the case of court-ordered expert appraisals, it is the judge who appoints the expert. The expert has no accountability except to the judge who appointed him. Therefore, the determination of the cost of an expert appraisal is not dependent upon a fee agreement with the parties. The expert himself will set the amount. However this fee setting discretion is closely monitored by the judge, according to the rules of the French Civil Procedure Code.

The judge will order a provision to be made in order to cover the expert's initial expenses, regardless of how the parties subsequently conduct themselves during the investigation. Generally, this provision is paid by the party who requested the expert. In the absence of a mandatory instruction from the court, the expert will start his investigation only once the court registry has confirmed that the provision has been

deposited.

The expert's fee is normally borne by the losing party (if the judge does not specify otherwise).

5. ENDING A CLAIM/ALTERNATIVE DISPUTE RESOLUTIONS (ADR)

5.1 Main ways to end litigation

The *désistement d'instance* (withdrawal of proceedings) is the renunciation of initiated proceedings, which does not prohibit a subsequent re-commencement of the proceedings (except where blocked by statute of limitations or by reason of delayed action).

The withdrawal may be partial and relate only to certain of the claims which have been referred to the court. In this instance the judge must still rule on the other claims.

The *désistement d'action* is the abandonment of the action, ie, of the right forming the basis of the proceedings, which must be accompanied by a withdrawal of proceedings, ie, withdrawal of the remedy sought.

In the case of an abandonment of action, the applicant's withdrawal is final and any further claim against the same person summonsed in the same capacity for the same purpose and based on the same facts will be inadmissible.

If an abandonment of proceedings and/or action is declared unilaterally by the applicant, the latter is exposed to the risk that the other party might claim compensation for the costs it incurred as a result of the proceedings.

However, if the defendant has filed counter claims against the plaintiff, the plaintiff may not withdraw without the consent of the defendant.

Generally the withdrawal takes place in the context of a settlement which can be reached at any time to bring an end to the proceedings. There is no requirement for the settlement to be approved by the court before it can take effect, and its terms may even be confidential vis-à-vis the latter.

5.2 ADR procedures

The parties are free to agree to use ADR either under contract or otherwise in the event of a dispute. The parties choose the person or organisation that will oversee the procedures, and decide whether they wish to have representation or not. They help the parties to decide whether to initiate legal proceedings. Confidentiality obligations bind the parties and the third-party intermediary. It should be noted that the use of ADR does not suspend the statute of limitations. In the event that ADR is unsuccessful, the parties risk losing their right of action or having the limitation period reduced.

The refusal to employ an ADR procedure which has been provided for under contract may be sanctioned as a breach of contract and of the obligation of good faith. In addition, the judge may declare the claim inadmissible.

ADR can take several forms:

5.2.1 Conciliation

Parties may undertake in a contract or after the dispute has arisen to negotiate a settlement or a compromise, before referring the dispute to the court. Such an undertaking is equivalent to an obligation to negotiate, but the parties have no obligation to reach an agreement. However, if the conciliation fails and the dispute persists, the parties may refer it to a court for resolution.

Conciliation can be initiated by a judge or by the parties themselves. The latter may at any time ask a judge to acknowledge their conciliation. The judge may at any time delegate his conciliatory mission by appointing a conciliator. The conciliator may hear third parties. The mission may be terminated at any time by a decision of the judge, one of the parties or the conciliator. The agreement is recorded in a document signed by the parties and the judge or in a statement signed by the parties and the conciliator. The conciliator's findings and any testimony he collects may not be produced in the subsequent proceedings without the agreement of the parties.

5.2.2 Mediation

The judge may order the appointment of a mediator with the agreement of the parties. The mediator will be responsible for comparing the views of the parties in order resolve the dispute within a maximum period of three months, renewable once. This process does not remove the jurisdiction of the judge. The mediator has no powers of investigation but can hear third parties. The process may be terminated at any time by a decision of the judge, one of the parties or the mediator. The court approves the agreement that the parties present to him. The mediator's findings and any testimony he collects may not be produced in the subsequent proceedings without the agreement of the parties.

Mediation is in this sense a midway procedure between conciliation and arbitration, as it involves the decision of a third person who does not however, have judicial power, ie, he cannot settle a dispute.

5.2.3 Arbitration

Parties may agree an arbitration clause (before the occurrence of the dispute) or conclude an agreement (once a dispute has arisen between them) to appoint an independent arbitrator (a natural or legal person, such as an arbitration centre or a trade association, which will be responsible for organising the mission without being able to arbitrate itself).

An arbitration clause will not prevent the parties from seeking a precautionary measure from an interim judge. The arbitration agreement must be in writing, specify the object of the dispute, the name of the arbitrator, and his mission. The duration of the arbitration is specified in the arbitration agreement. Otherwise, the default duration will be six months.

Unlike mediators and conciliators, arbitrators may take any investigative measures they deem appropriate. An arbitration award has res judicata authority upon pronouncement. However, it is not enforceable (in order to enforce an arbitration award, an enforcement order must be issued by the T*ribunal de Grande Instance*. Unless otherwise agreed, the parties can appeal to have an arbitration award amended or cancelled.

5.2.4 ADR summary

In short, the Commercial Court cannot compel the parties to employ ADR unless the parties have previously adopted such a contractual commitment. Thus, if a party decides, despite the existence of such a contractual commitment, to submit its case for ADR, the court may, if the co-contractor so requests, instruct the parties to attempt an amicable settlement before going to court. However, if the parties fail to reach an agreement, they will still be able to submit their dispute to the Commercial Judge for

settlement.

5.3 Public hearings

In principle, the proceedings are public except where the law requires that they take place in private, that is to say, behind closed doors. A public hearing may be conducted in closed session in three cases:

- if a public hearing would result in an invasion of privacy;
- if all parties so request; and
- if there is disorder that disrupts the serenity of the proceedings.

The organisation of the trial is overseen by the presiding judge during the public hearing. It is forbidden for those attending to speak without being asked to, to give signs of approval or disapproval, or disrupt the proceedings in any way. The president has the power to expel any person who fails to comply with his orders.

5.4 Judgments

The judges before whom the case was argued then have to deliberate upon it. These deliberations are held in secret and the decision is made by a majority vote.

After deliberation, judgement may be pronounced directly. Otherwise, its delivery may be postponed to a later date so that the judges can deliberate further. The president must then notify the parties, stating the reasons for the extension and the new date on which the decision will be rendered. The president may also choose to make the disposition of cases available to the court registry. In that case, he must inform the parties and indicate a date.

It is difficult to estimate the average length of deliberation for court sentences: everything depends on the court in question, the complexity of the case. It can be immediate as well as it can take from few days to few months.

When the decision is pronounced in open court, it is delivered by one of the judges who participated in the deliberation in the absence of the others and of the public prosecutor. The judge may limit himself to the operative part, that is to say, the most important part of the decision which contains the solution of the dispute and which has res judicata authority, without having to give reasons.

6. INTERIM REMEDIES

6.1 Interim measures

A creditor may implement either 'precautionary' or 'interim' measures.

(i) A precautionary measure is one whereby, pending a final decision, a judge petitioned by the creditor decides to place a debtor's property under judicial control in order to ensure the effectiveness of the enforcement measures that will be taken once the time limit for appeal or redress has expired.

These measures are of very varied and include sequestration, the depositing of money, the appointment of an administrator, conservatory seizure, and the seizure of money or movable property held by a third party, for example, by a bank or a tenant.

If the creditor has a title instrument, even if a ruling has been challenged by third parties or appealed, he can put a precautionary measure into effect without having to seek an order of the president of the Commercial Court if the claim is of a commercial nature.

If this is not the case, the prior authorisation of the judge is required; the procedure need not be adversarial; the judge merely verifies that the claim appears to be 'founded in principle'. There is no express condition of urgency. The creditor must demonstrate that there are 'circumstances that may jeopardise the recovery' of the claim (eg, bad faith of the debtor who conceals his assets, the great number of creditors). The judge does not implement the measure, he authorises it. The measure is implemented by the bailiff, at the request of the beneficiary of the authorisation.

The precautionary measure must be taken within three months of the judge's order authorising it. Otherwise, the authorisation lapses. If the creditor has not already initiated a procedure to have his claim recognised, he must do so within one month of the implementation of the measure. Otherwise the measure is invalid.

The debtor must be notified of the precautionary measure within eight days. The appeal does not suspend the effect of the precautionary measure, which produces its effect as long as the judge has not lifted the measure or declared it invalid.

(ii) The interim judge may be petitioned by writ for interim measures which must be ordered promptly: payment of a provision, expulsion, prohibition under penalty from doing something, preservation of a form of evidence. The procedure is adversarial.

There is no comprehensive inventory of interim measures: by way of summary proceedings, one may obtain all interim measures which are not subject to any serious challenge, or which are justified by the existence of a dispute. In addition, the interim judge may order all urgent measures necessary either to prevent imminent harm or to stop manifestly unlawful disturbances.

6.2 Final remedies

The Commercial Court may pronounce a number of very different orders, such as an order to pay damages for harm caused, to pay the price of an object sold, to publish an extract from the decision in newspapers, to confirm the validity of a sale, compel a party to perform its contractual obligations.

7. ENFORCEMENT

7.1 Enforcing a court judgment

A court decision becomes enforceable if it cannot be appealed or if the defeated party fails to act within the prescribed deadlines. In that case, the law presumes that the losing party acquiesced. The successful person may initiate proceedings to obtain the benefits that his opponent owes him.

Enforcement measures include the seizure and sale of tangible movable property, seizure-allocation of debts, seizure of intangible rights, seizure of remuneration, seizure-attachment, seizure of real property, and measures of expulsion.

The enforcement judge has jurisdiction to resolve the difficulties in enforcing a court decision or a writ of execution. At the request of the creditor, the enforcement judge may impose fines on those who fail to perform their obligation. More often, at the request of the debtor, the enforcement judge may grant terms of payment.

8. APPEALS

8.1 Appealing a decision

The appeal is a remedy under ordinary law aimed at having a judgment reversed or cancelled by a Court of Appeal. Any decision may be appealed subject to a certain threshold: The Commercial Court rules in the first and last resort when the amount of the dispute does not exceed EUR 4,000.

To lodge an appeal, two conditions must be met: capacity (having been a party to the first-instance proceedings) and interest (if the first-instance judges did not give satisfaction in relation to all points of the application). In addition, the parties must not have waived the right to appeal (for example, in the case of a contractual waiver).

If an appeal is not possible (the case concerns an amount less than EUR 4,000), only an appeal in cassation is permitted. If an appeal is possible (case amount exceeds EUR 4,000), the Commercial Chamber of the Court of Appeal will then re-examine the entire case a second time.

If one party appeals, the other party may also request that the original ruling be reviewed if it does not give full satisfaction.

The appeal period is usually one month. The decision becomes final once the appeal period has expired. As long as the deadline has not expired, the judgment cannot, in principle, be executed.

8.2 Basic procedure for appeals

The appeal is made by a unilateral declaration lodged at the registry of the Court of Appeal. The latter will give each respondent *(intimé)* a copy of the declaration. Each respondent will appoint (usually via his attorney) a legal representative (avoué), who is currently the only judicial officer who is authorised to submit procedural documents before the Court of Appeal (although the drafting of arguments and the pleadings can and are normally done by the attorney); it should be noted that from 1st January 2012, the *avoué* profession will disappear and attorneys will then be fully authorised to perform all procedural acts before the Court of Appeal.

The appellant must file his arguments with the registry and transmit them to the other *avoués* (along with supporting documents) within four months, under penalty of the appeal being struck off. An urgent procedure (à jour fixe or 'fixed day') may be implemented when the parties' rights are in jeopardy. The appeal can also be filed jointly by the parties.

The appeal has two effects:

- the execution of the judgment is suspended; and
- the appellate court rules on matters of fact and law, which means that the case is re-examined in full. However, the parties may not submit new requests to the court.

The decision of the Court of Appeal can only be the object of an appeal in cassation that is non-suspensive of execution. The Court of Cassation only has jurisdiction in matters of law and does not assess the facts. If the court quashes or reverses a decision, it refers the matter to a new appellate court which re-examines the case in its entirety, taking into account the points of law addressed by the Court of Cassation.

9. COSTS/FUNDING

9.1 Fees

Fees for consulting, assistance, advice, drafting of private agreements and pleadings are agreed with the client in advance.

Failing an agreement between lawyer and client, the fee is set according to custom, depending on the client's financial situation, the difficulty of the case, the expenses incurred by the lawyer, his reputation and the services necessary.

The French market has aligned itself in recent years with the UK/US-inspired practice of billing on the basis of time spent with attorneys' hourly rates varying depending on their experience and specialty. That said, for simple and/or recurring litigation, estimated budget or special lump-sum fees can also be implemented.

Depending on the file, a portion of the fees may also be based on the outcome of the case.

9.2 Fee restrictions

The setting of fees on the sole basis of the judicial outcome is prohibited. It is possible however to enter into an agreement which, in addition to the compensation for services rendered, provides for an additional fee based on the result obtained or the service rendered.

Fees may be freely determined in an agreement between the parties. A fee agreement is not however formally required by law. Lawyers must advise their clients when first consulted, and regularly thereafter, of the method for determining fees and how they are likely to evolve. Where appropriate, this information is contained in the fee agreement.

9.3 Insurance

A legal expenses policy is an agreement, governed by the Insurance Code, which a natural person or legal entity enters into with an insurance company whereby the latter undertakes to bear the costs of the insured's defence, including assistance in the amicable settlement of the dispute.

The insurer alone may not defend his client against a lawyer. The text therefore provides that the insured must be represented or assisted if he so requests, if his opponent is defended by a lawyer. The insurer cannot impose the choice of counsel. The lawyer's fees are negotiated directly between the lawyer and his client and may not be agreed with the insurer.

9.4 Costs orders

Article 700 of the Code of Civil Procedure allows the judge, at the request of the opposing party, to order the losing party to pay a lump sum intended to cover all expenses not included in the 'costs' *(dépens)*, such as legal fees, travel expenses, correspondence costs, etc. The burden of article 700 falls on the person ordered to pay costs or the losing party if it is not ordered to pay costs. The judge must take equity and the economic situation of the parties into consideration. Thus, a party may be ordered to pay costs without being held liable under article 700.

Costs are the expenses relating to proceedings, writs and enforcement proceedings. They are the sums that it was necessary to incur in order to obtain a court decision, with the exception of counsels' fees, which are excluded.

The judge, by any decision terminating the proceeding, must rule on the burden of costs, ie, specify who has to pay them. The burden of costs falls in principle on the party who loses the case. The judge may nevertheless decide otherwise by a reasoned decision.

Article 700 of the Code of Civil Procedure allows the judge to order the losing party to pay to the other a sum of money intended to cover all expenses not included in the costs. This indemnity has a legal basis and purpose distinct from those pertaining to costs.

Thus, for example, the legal fees, and travel and correspondence expenses incurred by the party may be included in an application under article 700.

The judge ruling on such an application has the sovereign discretion to assess the condition of equity provided for by the text. He may grant the request in whole or in part or reject it if he considers that equity does not require that the application be granted. If he holds the other party liable for a sum under article 700 of the Code of Civil Procedure, the judge specifies a lump sum in the decision, without giving details or reasons.

In practice, the sums awarded by French judges are modest and often substantially less than the amounts actually spent. In rare cases, eg, if a procedure is considered improper and if the bills of costs (including attorneys' bills) are produced, the judges may sometimes award amounts close to those actually paid.

10. COLLECTIVE ACTIONS

10.1 Collective actions against alleged wrongdoer

There is still no procedure in France similar to class actions in common-law countries. A first bill was filed in 2008 before the National Assembly to introduce this type of procedure into French law, but it was quickly withdrawn. In May 2009 the European Commission proposed a directive in which member states will be required to establish a 'group action'. On 21 October 2009, the Law Commission of the French Senate decided to set up a working group to examine the suitability and conditions of introducing a group action procedure into French law.

At the present time in France, there are however two procedures under consumer law that allow for collective actions, but only through the intermediary of a consumer association:

- the action *en représentation conjointe* (joint representation action), which allows a consumer association to act on behalf of several consumers who have suffered damage from the same origin, and for which it has been specifically authorised and
- the action *collective en cessation d'agissements illicites (*collective action seeking the cessation of unlawful conduct), which allows authorised consumer-defence associations to seek legal remedies for any direct or indirect harm to consumers' collective interests.

In practice, such actions are rare in France and French consumers generally have to file lawsuits individually.

10.2 Procedure for collective action

The actions that consumer associations may initiate in the interests of consumers remain, however, from the legal standpoint, personal actions: although the law allows

these associations to sue in consumers' collective interest, the damages they receive are awarded to them personally and they may not distribute them to consumers. They may not file the individual actions of the injured consumers, but the latter may join the association's lawsuit by means of a third-party application and claim compensation for their injury.

11. SPECIAL FEATURES

In France, unlike many other jurisdictions, a lawyer (avocat) cannot practise within a company (in-house lawyer).

The proposed merger of the professions of *avocat* (lawyer) and *juriste d'entreprise* (corporate lawyer) has been regularly discussed for several years but failed once again in 2010.

This means, in particular, that the confidentiality of exchanges between the parties (for example, when negotiating a possible amicable settlement) can only be guaranteed today through communications between the lawyers of both parties, which are legally covered by professional secrecy, and not between the corporate lawyers of the parties.