

# **INTERNATIONAL ASSOCIATION OF JUDGES**

## **SECOND STUDY COMMISSION CIVIL LAW AND PROCEDURE**

### **2009 QUESTIONNAIRE**

#### **TREATMENT OF COMMERCIAL CASES**

##### **I. ORGANIZATION/STRUCTURE**

1. What law applies to commercial activities in your legal system? Are there special statutory provisions?
2. How are your courts structured to hear commercial cases? (For example, are your commercial cases heard in courts where the judge's are generalists, regularly adjudicating on a broad range of topics; do judges with more extensive commercial experience hear your commercial cases; or, do you have "specialist" courts where judges with special expertise adjudicate exclusively commercial cases?)
3. Do you have special arbitration tribunals for commercial disputes? Are there circumstances where a matter must proceed to mediation or arbitration before the parties can access the courts or continue with a case after starting it?
4. What kinds of commercial cases do your courts hear? (e.g. contracts, intellectual property, securities, insolvency/bankruptcy, corporate reorganizations etc.) What kind of commercial cases do your courts hear most frequently?

##### **II. PROCESS/PROCEDURE**

1. Do you have special procedural rules for commercial disputes (for example those dealing with pre-trial document discovery, questionnaires, depositions)? Are these rules judge-made or statute-based? Are the rules sufficient to deal with complex commercial cases?
2. Where the plaintiff's claim in a commercial case is not a particularly large monetary value, are there different procedural rules that apply? Would the matter be heard by a different court?
3.
  - a) Does your system list commercial matters for trial more quickly than other matters? If so, is there also an expedited process for listing appeals?
  - b) Do your courts generally schedule evidentiary hearings from day to day or are hearings scheduled far apart? Is the practice any different for commercial litigation?

4. Do you have any time limits for the release of commercial judgments (informal judicial policy, judge-made, or statutory imposed time limits)?
5. Do your courts have the power to impose time limits on pre-trial proceedings or in the trial itself for commercial cases? (e.g. setting time-frames for when certain pre-trial matters must be complete, or setting time limits for opening argument, examination of witnesses, etc.) What are the consequences of failure to comply with such limits, if any?
6. Do your courts ever assign more than one judge to a commercial case where it is anticipated to be particularly complex?
7.
  - a) Do special rules of evidence apply in commercial litigation (e.g. admissibility, cogency)?
  - b) Do your courts place special weight on "expert opinions" and testimony in commercial litigation?

### **III. INTERNATIONAL/CROSS-BORDER**

1. Do you have special courts to deal with international commercial disputes?
2. Roughly what proportion of your commercial cases have at least one party from another country?
3. Do the parties in your international commercial cases take issue with whether the case would be better tried elsewhere? If so, roughly how often does this become an issue?
4. Are your courts equipped to provide professional interpreters in examination of foreign nationals?
5. Do your courts permit the special appearance of foreign attorneys in international litigation and, if so, what special rules, if any, apply?

### **IV. MISCELLANEOUS**

1.
  - a) Do your courts have the power to award costs and attorneys' fees to discourage the parties from behaving unreasonably? If so, do your courts make use of that power in commercial cases?
  - b) Do your courts generally make use of this power and if so on what basis are costs and attorneys' fees awarded?

2. Does your highest court deal with commercial issues frequently? Are any of your highest court judges specialists in commercial law?
3. To what extent does technology play a role in your commercial cases? For example, do you have any “paperless” trials, or have they been considered? Do you allow parties to appear by satellite video?

### Case Study

Jean, a citizen of France but resident in Switzerland, is the sole shareholder and general manager of B Corporation registered in Germany but which has offices in Italy and Latvia. Working out of his Italian office he placed an order for machinery with X Ltd., a company registered in Spain, that is a distributor of E Ltd., the Swedish manufacturer of the machinery.

At the time of placement of the order, Jean emphasized that timely delivery of the machinery was essential in order for B. Corporation to produce and timely deliver to D. Inc., an American company, a large quantity of a copper wire manufactured by Jean's company. X Ltd. Promised to ship the machinery no later than June 1 by ship from a port in Sweden. The contract stated that Spanish law would apply to the transaction but made no specification as to the venue for hearing any dispute that might arise.

Due to a strike of the general labour union in Sweden, the machinery ordered was not ready for shipment by June 1 and the next available cargo ship was to sail only on August 1, As a result, Jean was in breach of his contract with D. Inc.

D. Inc filed a lawsuit against B Corporation in the federal court for the Southern District of New York.

### Questions

1. B. Corporation wants to file a third party claim against X Ltd. Is such a procedure possible in your court system? If so, could X Ltd. file a fourth party claim against the Swedish manufacturer for failing to deliver the machinery by the date stipulated in the purchase order?
2. If D. Inc. was a company registered in your country rather than in the USA, would your courts require each of the parties wishing to file a lawsuit against a foreign defendant to serve the lawsuit in the language of the defendant?
3. What special rules for service of process to the various parties in the different countries would apply, if any?

4. Would your courts grant additional time for filing and/or responding to the various pleadings, motions etc. because the parties are residents of different countries?
5. Are there special rules and procedures in your countries for honouring judgments issued by foreign courts? What rules apply for honouring foreign arbitration awards?