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# DISPUTE RESOLUTION JOURNAL®

A Publication of the American Arbitration Association®-  
International Centre for Dispute Resolution®

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May-June 2025

Volume 79, Number 1

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# International Commercial Courts—A Global Disputes Practitioner’s Perspective—Part I

Markus Burianski and Lisa Fleckenstein<sup>1</sup>

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In this multipart article, the authors provide a perspective on international commercial courts. In this first part, the authors set out a brief overview of five prominent international commercial courts with a description of their salient features. In the next part, to be published in an upcoming issue of *Dispute Resolution Journal*, the authors will discuss five characteristics of a high-quality dispute resolution process and make recommendations as to whether its emphasis is better reflected in arbitration or commercial court proceedings. Finally, in the following issue of *Dispute Resolution Journal*, the authors will provide guidance to the choice between the various international commercial courts, based on the substantive and procedural law applicable to them with a focus on the determination method for foreign law issues as well as the legal basis for the cross-border enforcement of commercial court judgments.

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Businesses wishing to litigate their disputes have rarely had so many commercial courts around the world to choose from. For complex and large commercial proceedings, the question now often arises as to whether the legal dispute should be resolved by arbitration or by an international commercial court. But how should potential litigants and dispute practitioners choose between these options?

The answer to this question requires in-depth knowledge and understanding of arbitration law and the rules of procedure of the international commercial courts, as the latter vary considerably in decisive aspects.

This multipart article approaches this subject in three parts.

The first part sets out a brief overview of five prominent international commercial courts with a description of their salient features.

The second part provides guidance to the fundamental choice between arbitration and international commercial courts by discussing five characteristics of a high-quality dispute resolution process. For each feature, recommendations are made as to whether its emphasis is better reflected in arbitration or commercial court proceedings.

The third part provides guidance to the choice between the various international commercial courts, based on the substantive and procedural law applicable to them with a focus on the determination method for foreign law issues as well as the legal basis for the cross-border enforcement of commercial court judgments.

The criteria discussed in this article aim to serve as a guideline for prospective parties and dispute practitioners alike as to which aspects to consider when needing to choose between proceedings before an international commercial court or an arbitration tribunal. Although they cannot facilitate the decision itself, they intend to systematise and thus improve the decision-making process.

## **Selected Commercial Courts and Their Salient Features**

The underlying idea of a commercial court as a special forum for resolving legal disputes between merchants under separate

legal provisions is by no means new and goes back to medieval times.

In medieval Europe, the historical *lex mercatoria*, a customary body of commercial rules, was applied by courts to cross-border legal transactions. In the period from the seventeenth century to the nineteenth century, however, the legal principles of *the lex mercatoria* were largely codified and embedded in national commercial codes, with the result that the *lex mercatoria* lost its original transnational character.<sup>2</sup>

To this day, merchants can assert their claims before domestic commercial chambers, both in common law and civil law jurisdictions. This historically evolved right to participate in the adjudication of legal disputes is a privilege that has not been granted to any other profession and thus positively distinguishes the commercial sector from other industries.

Since the dawn of the globalisation era and the expansion of international trade, an even more comprehensive concept for dispute resolution in commercial law has emerged: the idea of international commercial courts as adequate institutions for legal disputes that transcend national borders. Nowadays, international commercial courts exist on every continent and in many variations, partly because they have been designed in different time periods and partly because they were established for different policy purposes.

The London Commercial Court is not only the pioneer among international commercial courts but remains to be one of the most popular and prestigious ones, especially for international banking and financial disputes. Likewise, there are a number of courts in the United States with significant expertise in commercial matters. The U.S. District Court for the Southern District of New York (SDNY), for example, is often chosen for financial disputes because many parties choose to have their contracts governed by New York law, with forum selection clauses designating New York courts.<sup>3</sup>

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<sup>2</sup> Sundaresh Menon, “SIFoCC Playing Its Part as a Cornerstone of a Transnational System of Commercial Justice,” Keynote at the fourth SIFoCC Meeting, Sydney, 2022, p.5.

<sup>3</sup> Pamela K. Bookman, Transnational Litigation Blog (Apr. 20, 2022), <https://tlblog.org/where-is-the-u-s-international-commercial-court/>.

Despite their practical relevance and prominent reputation, neither the London Commercial Court nor the SDNY will be further examined in this article, as these courts do not count among the group of recently established international commercial courts. For all their differences, the more recent international commercial courts have in common that they are courts or chambers that were *specifically* designed for international commercial disputes, which is not the case with the London Commercial Court or the SDNY.

### Singapore International Commercial Court

The Singapore International Commercial Court (SICC) was inaugurated in 2015 and is highly regarded internationally. The bench of the SICC consist of both national and international judges. The SICC was also the first of the international commercial courts to allow international lawyers to practice before the court upon prior registration. Parties may be represented by foreign lawyers in cases that have no substantial connection to Singapore (offshore cases according to Order 110 rule 1 of the SICC Rules), as well as in cases where the issues in dispute give rise to questions of foreign law.

The SICC has jurisdiction to hear and try an action if the claim is of an international and commercial nature or the parties to the action have submitted to the SICC's jurisdiction under a written jurisdiction agreement (Order 2 rule 1 of the Singapore International Commercial Court Rules 2021). The SICC may also hear cases that are transferred from the Singapore High Court.

The SICC is based on common law principles and has its own set of procedural rules, which supersede the domestic procedural rules in their regulatory scope. The SICC rules grant the parties a significant degree of autonomy to arrange the proceedings as they deem. For example, parties may apply internationally recognised standards to matters of evidence instead of the Singaporean rules of evidence, and the procedure for document production is streamlined to focus primarily on documents that the parties rely on—which can improve the efficiency of the litigation process. Unless otherwise agreed by the parties, Singapore law, which is

based on common law principles, will apply on both the merits and the procedure. Judges at the SICC refer to English case law where the issues relate to a traditional common law area or to Singaporean laws as well as to relevant Singaporean case precedents.

Court fees at the SICC depend on so-called milestone events: The claimant has to pay USD 3,740 (for a tribunal consisting of one judge) or USD 5,390 (for a tribunal of three judges) on filing the claimant's statement. The defendant has to pay the same amount for filing their statement.<sup>4</sup> For each hearing that takes place, a hearing fee of USD 4,500 (one judge tribunal) is charged. If the total number of hearing days exceeds four days, from the fifth day onward the hearing fee in total is reduced to USD 9,000, paid by the claimant. Costs of any application or proceeding in the SICC must be borne by the unsuccessful party unless the court orders otherwise.<sup>5</sup>

## Dubai International Financial Centre Courts and the Astana International Financial Centre Court in Kazakhstan

In the 2000s, the Middle East and Central Asia saw the emergence of what are often referred to as the second-generation international commercial courts.<sup>6</sup> These include (among others) the Dubai International Financial Centre Courts (DIFC Courts) and the Astana International Financial Centre Court in Kazakhstan (AIFC Court), which both operate entirely in English.

In terms of legal policy, it is interesting to note that both the DIFC Courts and the AIFC Court are located within special economic zones where different and more favorable economic

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<sup>4</sup> SICC Court Rules, version 1 February 2024, p. 216, first published on 2 December 2015.

<sup>5</sup> Order 110, Rule 46 Singapore Rules of Court, see SICC Practice Directions, Nr. 152, p. 65, [https://www.judiciary.gov.sg/docs/default-source/amendments-docs/2022/sicc-practice-direction-2022\\_v1.pdf?sfvrsn=bof09d61\\_2](https://www.judiciary.gov.sg/docs/default-source/amendments-docs/2022/sicc-practice-direction-2022_v1.pdf?sfvrsn=bof09d61_2).

<sup>6</sup> Weixia Gu & Jacky Tam, "The Global Rise of International Commercial Courts Typology and Power Dynamics," *Chicago Journal of International Law* (2022), Vol. 22, No. 2, p. 453.

regulations compared to other regions in the same country apply to registered companies.<sup>7</sup> This means that they are located in a common law jurisdiction within a non-common law host state.<sup>8</sup> For this reason, the panel of judges in both courts is largely made up of renowned international judges with a common law background.<sup>9</sup> Similar to the SICCC, international lawyers admitted to a foreign bar can practice at the DIFC Courts upon registration. The DIFC Courts apply DIFC law<sup>10</sup> unless otherwise agreed by the parties and subject to the relevance of any other applicable law.

As for the required amount in dispute, the DIFC Courts have jurisdiction over claims that exceed a value of AED 500,000 (about USD 136,000). Where the amount or value of the claim falls below this, the claim can be heard by the Small Claims Tribunal if it otherwise is in the jurisdiction of the DIFC. The AIFC Court, as well, has a Small Claims Court for claims under USD 150,000. Both courts publicly advertise that cases in the Small Claims Tribunal are resolved in an expeditious and cost-efficient manner.

The courts' provisions<sup>11</sup> grant the DIFC Courts exclusive jurisdiction over any civil or commercial dispute to which the DIFC is a party or which is related to the DIFC. The DIFC Courts may also hear civil claims where there is an agreement between the parties on the jurisdiction of the courts unless the matter is governed by Dubai onshore law.

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<sup>7</sup> Georgios Dimitropoulos, "International Commercial Courts in the 'Modern Law of Nature': Adjudicatory Unilateralism in Special Economic Zones," *Journal of International Economic Law* (2021), 24(2), p. 362.

<sup>8</sup> Lucas Clover Alcolea, "The Rise of the International Commercial Courts: A Threat to the Rule of Law?," *Journal of Dispute Settlement* (2022), 13(3), p. 422.

<sup>9</sup> Out of the fourteen DIFC Courts judges only five are from the United Arab Emirates. List of DIFC Court judges, [www.difccourts.ae/about/court-structure/judges](http://www.difccourts.ae/about/court-structure/judges).

<sup>10</sup> Database of the DIFC Laws, [www.difc.ae/business/laws-and-regulations/legal-database](http://www.difc.ae/business/laws-and-regulations/legal-database).

<sup>11</sup> Article 5 of Law No. 16 of 2011 amendment of Law No. 12 of 2004 Concerning DIFC Courts.

The fee for filing a small claim amounts to five percent of the value of the claim with a minimum fee of USD 100.<sup>12</sup> For claims of USD 500,000 the court fee amounts to USD 25,000 plus one percent for claims ranging from USD 500,000 to USD 1 million. The costs increase with a higher amount in dispute, but not proportionally.<sup>13</sup> The successful party may recover the court fees and legal costs, including lawyers' fees, at the discretion of the court.

Located in Kazakhstan, the largest economy in Central Asia and on the Belt and Road Initiative between China and the West, the AIFC Court targets parties from the Eurasian region.

With respect to jurisdiction, the AIFC Court accepts disputes that involve AIFC participants and by parties' agreement on the choice of court.

Parties may also agree on the applicable substantive law as long as such law does not contradict Kazakhstan public policy.<sup>14</sup> Without such agreement, the AIFC Court applies its own legislation<sup>15</sup> on contracts, employment, insolvency, and property matters. The laws and rules of the AIFC Court, both substantive and procedural are based in part, but not entirely, on "the principles and precedents of English and Welsh law, as well as the standards of the world's leading financial centres . . .," according to Article 4 no. 1 and Article 13 no. 5 of the Constitutional Statute of the Republic of Kazakhstan on the Astana International Financial Centre.<sup>16</sup>

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<sup>12</sup> Table of Fees Small Claim Tribunal, <https://www.difccourts.ae/difc-courts/services/small-claims-tribunal>.

<sup>13</sup> Table of Fees, [www.difccourts.ae/difc-courts/services/court-of-first-instance](http://www.difccourts.ae/difc-courts/services/court-of-first-instance).

<sup>14</sup> Weixia Gu & Jacky Tam, "The Global Rise of International Commercial Courts Typology and Power Dynamics," *Chicago Journal of International Law* (2022), Vol. 22, No. 2, p. 466.

<sup>15</sup> Database of the AIFC Laws, <https://aifc.kz/legal-framework/>.

<sup>16</sup> AIFC Court website, [www.aifc.kz/en/legislation-aifc](http://www.aifc.kz/en/legislation-aifc).

## International Chamber at the Paris Commercial Court

Between 2018 and 2020 the European commercial courts, or “Brexit courts,”<sup>17</sup> as some commentators called them, were launched. One of them is the International Chamber at the Paris Commercial Court (ICPC), which was not created as an autonomous court but was instead incorporated into the existing court structure at the Paris Court d’Appel in 2018.

During proceedings at the ICPC, hearings and exhibits (including party witnesses, expert witnesses and document production) can be conducted in English if the parties have agreed to do so. Nonetheless, litigators and parties should be aware that French remains the mandatory language for procedural documents (e.g., the writ of summons, notice of appeal, the parties’ written submissions, record of the hearing, judgment and orders, etc.).<sup>18</sup> Another unique feature of the ICPC is that the judges—as any judge of a French commercial court—are not legally qualified judges. Instead, they are usually former executives of international companies but have prior experience in adjudicating international commercial disputes.<sup>19</sup>

A case may be assigned to the ICPC if it is a commercial dispute of international scope. According to the ICPC Court Rules, a dispute involves the interests of international commerce when the economic operation that gave rise to the dispute is not intended to be resolved economically in a single state and involves the movement of goods, services, or capital across borders. As the ICPC is not an autonomous court, only the Paris Commercial Court or the Court d’Appel can be found to have jurisdiction to rule on a dispute.<sup>20</sup> The general rules for subject matter jurisdiction are set out in Articles 33 to 41 of the Code of Civil Procedure.

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<sup>17</sup> Frederico Singarajah, “Do International Commercial Courts Compete with International Arbitration?,” *Lexology* (8 August 2023), p. 1.

<sup>18</sup> Practical Guide to Proceedings before the ICPC and the Paris Court of Appeal, p. 115, <https://www.tribunal-de-commerce-de-paris.fr/en/chambre-internationale>.

<sup>19</sup> See current list of judges at <https://www.tribunal-de-commerce-de-paris.fr/en/les-juges-de-la-chambre-internationale>.

<sup>20</sup> Practical Guide to Proceedings before the ICPC and the Paris Court of Appeal, p. 109.

Costs in the French jurisdiction are moderate compared with arbitration fees or other international commercial courts as they are the same as before ordinary courts and will depend on the amount of litigation at stake.

According to the ICPC Practical Guide and Article 696 of the French Code of Civil Procedure, legal costs (court fees) are payable by the losing party.<sup>21</sup> However, the court may in a reasoned judgment order the other party to pay some or all of those costs. Sources for legal costs are listed exhaustively in Article 695 of the Code of Civil Procedure and include, for example, clerk's office fee, fees for legal experts and bailiffs. Fees that are not included in the legal costs, such as lawyer fees and travel expenses, are charged to the losing party or the party liable to pay the legal costs (Article 700 of the Code of Civil Procedure) unless the judge decides otherwise. Their amount shall be determined by the judge on a lump-sum basis requested by the parties, the judge taking into account equity or financial situation of the losing party.<sup>22</sup>

## Netherlands Commercial Court

The Netherlands Commercial Court (NCC) was launched in 2019 as a specialised chamber of the Amsterdam District Court and is probably the most innovative commercial court in continental Europe. Unlike the ICPC, the NCC operates entirely in English and conducts hearings, all communication, submission of documents, exhibits, hearings, and judgments, in English.

According to Article 1.3 of the NCC Rules, a matter falls into the NCC's jurisdiction if it concerns an international dispute and the parties have chosen the Amsterdam District Court or Amsterdam Court of Appeal as the designated court and have expressly agreed in writing that proceedings will be conducted in English before the NCC. The NCC does not handle cases without an international dimension.

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<sup>21</sup> Practical Guide to Proceedings before the ICPC and the Paris Court of Appeal, p. 169.

<sup>22</sup> Practical Guide to Proceedings before the ICPC and the Paris Court of Appeal, p. 169.



The NCC's governing law is Dutch law, especially the Dutch Civil Code, which serves as the principal legislation for civil matters. In international cases with ties to several jurisdictions the applicable substantive law is determined by reference to the rules of Dutch private international law.

Proceedings fully apply the general provisions on Dutch civil procedure although parties can form an evidentiary agreement to vary some standard rules regarding the value of certain categories of evidence, for instance the value given to a party's witness statement (Article 8.3 NCC Rules). They may also agree on how costs should be dealt with (Article 8.5.5 and Article 10.2 of the NCC Rules).

The court fees at the NCC consist of a €18,287 flat fee for normal proceedings and around €8,000 for summary proceedings.<sup>23</sup> These fees are not related to the subject matter of the case or the value of the claim. According to a non-binding Annex III to the NCC Rules, lawyers' fees are usually set at €2,000 for simple motions, €4,000 for average and €8,000 for complex motions.<sup>24</sup> The unsuccessful party will usually be ordered to reimburse the opposite party's court fees if an agreement on costs is absent. In addition to this, a fixed amount will be awarded as reimbursement for legal fees. This amount depends on the number of procedural acts involved and is usually only a fraction of the actual legal fees (amounts between €500 for straightforward proceedings up to €15,000).

The NCC is also known to work time efficiently, partly due to the popularity of summary proceedings: From its beginning in 2019 to 2022, the maximum length of proceedings was 15 months, but the majority of the cases were resolved within only eight weeks.<sup>25</sup>

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<sup>23</sup> Table of court fees, <https://www.rechtspraak.nl/English/NCC/Pages/costs.aspx>.

<sup>24</sup> Annex III to the NCC Rules, <https://www.rechtspraak.nl/SiteCollectionDocuments/NCC-Rules3-Annex3.pdf>. Please note that this table is non-binding and each case will be reviewed on its merits.

<sup>25</sup> The NCC in Numbers, <https://www.rechtspraak.nl/SiteCollectionDocuments/NCC-in-numbers.pdf>.

## The New German Commercial Court Concept

In accordance with the recently passed legislation (Justizstandort-Stärkungsgesetz) coming into force on 1 April 2025,<sup>26</sup> Germany's federal states are authorised to set up commercial courts at their Higher Regional Courts for disputes between commercial parties, such as companies,<sup>27</sup> for disputes arising out of a company acquisition as well as between a company and members of the management or supervisory board. Jurisdiction of the international commercial courts is established by the parties' express or tacit agreement and if the amount in dispute exceeds EUR 500,000 (see newly worded Section 119b Court Organisation Act, GVG).

Moreover, this new legislation permits federal state governments to establish so-called Commercial Chambers at their Regional Courts for claims within the jurisdiction of the Commercial Courts that do not fulfill the required amount in dispute of EUR 500,000.

In the past, there were already initiatives to establish specialised commercial courts at the Regional Court level; for example, in Duesseldorf, Frankfurt, and Stuttgart for commercial disputes over EUR 2 million. These predecessor courts will now be replaced by the new commercial courts at the Higher Regional courts.

The key innovation of the new legislation is the option to conduct proceedings before the Commercial Courts and Commercial Chambers entirely in English (see newly worded Section 184a para. 1 Court Organisation Act, GVG). This will allow for oral hearings, briefs, written statements, evidence, and notices of appeal to be submitted in English. Third parties that have been joined to the proceedings without their prior consent may request the provision of a German translation of a notice of dispute and the services of an interpreter.

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<sup>26</sup> BGBl. 2024 I Nr. 302, 10 October 2024; Draft Legislation Document number BT-Drs. 20/8649.

<sup>27</sup> Except for claims relating to intellectual property, copyright and the Law against unfair Competition and Advertising (UWG).

Legal costs of the Commercial Court and Commercial Chambers are based on the general Courts Costs Act (GKG) and thus depend on the amount in dispute. This can be disadvantageous for high-value disputes, as the threshold amount set by the GKG is relatively high, at EUR 30 million, although legal costs do not increase linearly with higher amounts in dispute, but degressively.

Parties can save significant costs compared to the current legislation because they can submit their claim directly to the Commercial Court and bypass the first instance of the Regional Courts. They avoid paying court fees and, in case of high amounts in dispute, legal fees in the five-figure range.

The new legislation extends protective measures under the Act on the Protection of Trade Secrets (Geschäftsgeheimnisschutzgesetz GeschGehG) to all civil proceedings, including commercial courts and chambers. Previously, the provisions of the GeschGehG were limited to specific proceedings on trade secrets.

However, the differences to regular commercial chambers at German courts appear to be less far-reaching than they are with the ICPC and NCC as the general German Code of Civil Procedure mainly governs the commercial courts' proceedings with a few exceptions regarding English as the procedural language, case management tools and confidentiality provisions. In addition, the parties can agree to a real-time and verbatim record of the oral hearings.

It remains to be seen how the individual federal states will organise the court regulations in detail. However, as the legislator has refrained from reforming the business-unfriendly German contract law with regard to terms and conditions, it can be assumed that the introduction of English as the procedural language alone will not give the German commercial courts a competitive advantage over their European neighbors.

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*Editor's note:* This article will continue in the next issue of the *Dispute Resolution Journal*.