

Schriftenreihe

**Europäische Gerichte in Handels- und Schiedssachen**

Band 2

# **Handelsgerichte im Rechtsvergleich (Projekt Best Practice)**

Herausgegeben von  
**Alexander Brunner**

Patronat Europarat



**Stämpfli Verlag AG Bern**



Schriftenreihe

**Europäische Gerichte in Handels- und Schiedssachen**

**Band 2**

## **Handelsgerichte im Rechtsvergleich (Projekt Best Practice)**

Die Europäische Union der Richter in Handelssachen ([www.eujc.eu](http://www.eujc.eu)) hat seit dem Zürcher Kongress 2008, dessen Ergebnisse in Band 1 der vorliegenden Reihe veröffentlicht wurden, in weiteren Tagungen (Brüssel, Frankfurt, Wien) über die Vor- und Nachteile der Handelsgerichtsbarkeit debattiert. Dabei ist ein fortlaufendes *Projekt* entstanden, mittels einer *Rechtsvergleichung der Handelsgerichtsbarkeit in Europa* (Belgien, Deutschland, England, Frankreich, Österreich, Schweiz) eine mögliche «*Best Practice*» zu entwickeln. Aufgrund eines Rasters werden die bestehenden Normen systematisch für jede Rechtsordnung dargestellt und in einem Überblick zusammen gefasst. Dieser Rechtsvergleich kann dazu dienen, nationale Regelungen kritisch zu betrachten. Praktiker in Unternehmen, Anwaltskanzleien, und Gerichten erhalten auf diese Weise ein Werkzeug für vielfältige Problemlagen des Tagesgeschäfts. Die Publikation erscheint zum 90. Jubiläum der österreichischen Vereinigung der Richter in Handelssachen («fachmännische Laienrichter aus dem Handelsstand»).

ISBN 978-3-7272-8819-7



**Stämpfli Verlag AG Bern**

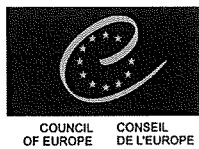
[www.staempfliverlag.com](http://www.staempfliverlag.com)

---

# Handelsgerichte im Rechtsvergleich (Projekt Best Practice)

Herausgegeben von  
**Alexander Brunner**

Sous le patronage de Monsieur Thorbjørn Jagland  
Secrétaire Général du Conseil de l'Europe



Stämpfli Verlag AG Bern

---

**Bibliografische Information der Deutschen Nationalbibliothek**  
Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.d-nb.de> abrufbar.

Alle Rechte vorbehalten, insbesondere das Recht der Vervielfältigung, der Verbreitung und der Übersetzung. Das Werk oder Teile davon dürfen ausser in den gesetzlich vorgesehenen Fällen ohne schriftliche Genehmigung des Verlags weder in irgendeiner Form reproduziert (z.B. fotokopiert) noch elektronisch gespeichert, verarbeitet, vervielfältigt oder verbreitet werden.

© Stämpfli Verlag AG Bern · 2012

Gesamtherstellung:  
Stämpfli Publikationen AG, Bern  
Printed in Switzerland

ISBN 978-3-7272-8819-7

---

## Inhaltsübersicht

Geleitwort .....	19
<i>Erster Teil – Analysen und Synthesen zum Projekt Best Practice</i>	
Europäische Handelsgerichte im Rechtsvergleich .....	23
ALEXANDER BRUNNER	
<i>Zweiter Teil – Systematische Dokumentation zur Handelsgerichtsbarkeit</i>	
A. Belgique – documentation systématique du droit .....	63
LAURA VAN LYSEBETTEN	
B. Deutschland – systematische Rechtsdokumentation.....	101
DIETER KUNZLER	
C. England – systematic documentation of law.....	129
ALEXANDER BRUNNER	
D1. France – documentation systématique du droit général.....	149
JEAN-BERTRAND DRUMMEN / GÉRARD REVERCHON	
D2. France – documentation systématique du droit local .....	161
PIERRE GOETZ	
E. Österreich – systematische Rechtsdokumentation.....	175
RAINER SEDELMAYER / ERNST WEISS	
F. Schweiz – systematische Rechtsdokumentation .....	195
ALEXANDER BRUNNER	
<i>Dritter Teil – Aktuelle Dokumentation zur Handelsgerichtsbarkeit</i>	
A1. Magna Charta der Richter (2010).....	225
CCJE/BEIRAT DER EUROPÄISCHEN RICHTER/EUOPARAT	
A2. Magna Charta des Juges (2010).....	229
CCJE/CONSEIL CONSULTATIF DES Juges EUROPÉENNES/CdE	
A3. Magna Charta of Judges (2010).....	232
CCJE/CONSULTATIVE COUNCIL OF EUROPEAN JUDGES/COE	
B. European Charter of Lay Judges (2012).....	235
EUROPEAN LAY JUDGE FORUM	
C1. Charta der Europäischen Handelsrichter (2005).....	238
UEMC	

---

<b>C2. Charte européenne des juges consulaires statuant en matière commerciale (2005).....</b>	<b>242</b>
UEMC	
 <i>Vierter Teil – Historische Dokumentation zur Handelsgerichtsbarkeit</i>	
<b>A. Die Geschichte der Handelsgerichtsbarkeit.....</b>	<b>249</b>
EBERHARD KRAMER	
<b>B. Daten und Fakten vom Mittelalter bis zur Gegenwart.....</b>	<b>255</b>
RAINER SEDELMAYER	
<b>Autoren .....</b>	<b>265</b>

---

## Geleitwort

Die Europäische Union der Richter in Handelssachen (Union Européenne des Juges Consulaires statuant en Matière Commerciale/ *UEMC*; [www.eujc.eu](http://www.eujc.eu)) hat seit dem Zürcher Kongress 2008, dessen Ergebnisse in Band 1 der vorliegenden Reihe veröffentlicht wurden, in weiteren Tagungen (Brüssel, Frankfurt/M, Wien) über die Vor- und Nachteile der Handelsgerichtsbarkeit debattiert. Dabei ist ein fortlaufendes *Projekt* entstanden, mittels einer *Rechtsvergleichung der Handelsgerichtsbarkeit in Europa* (Belgien, Deutschland, Frankreich, England, Österreich, Schweiz) eine mögliche "*Best Practice*" zu entwickeln. Ein solches Projekt könnte ohne den bekannten "Mut zur Lücke" wegen der umfassenden Verästelungen der gesetzlichen Begriffswelt nicht verwirklicht werden. Die bestehenden Normen werden daher im zweiten Teil der Publikation aufgrund einer Rastersystematik, die naturgemäss Lücken aufweisen kann und muss, durch die nationalen Berichterstatter systematisch dargestellt. Ihnen sei ein grosser Dank für ihre Arbeit ausgesprochen.

Gestützt auf die Länderberichte wird im ersten Teil der Publikation ein kurzer *Überblick* vorangestellt. Die für die Handelsgerichtsbarkeit relevanten Regelungen werden analysiert und in einer wertenden Synthese zusammen gefasst. Ein solcher Rechtsvergleich kann dazu dienen, nationale Regelungen kritisch zu betrachten und besser zu verstehen. Praktiker in Unternehmen, Anwaltskanzleien, und Gerichten erhalten auf diese Weise ein Werkzeug für vielfältige Problemlagen des Tagesgeschäfts.

Der vorliegende Rechtsvergleich ist ein Beitrag im Rahmen des umfassenden Projektes des Europarates zur Effizienzsteigerung der Justiz in Europa: European Commission for the Efficiency of Justice, *CEPEJ, European judicial systems, Strasbourg 2010*. Der vorliegende Rechtsvergleich konkretisiert für die Europäische Handelsgerichtsbarkeit das fünfte Kapitel des CEPEJ-Reports (*Courts*), das siebte Kapitel (*Professional and non professional Judges*) und das neunte Kapitel (*Fair trial and court activity in commercial litigious and non-litigious cases*). An dieser Stelle sei dem Generalsekretär des Europarates, Herrn THORBJØRN JAGLAND, für die Übernahme des Patronats der vorliegenden Publikation bestens gedankt.

Der dritte Teil enthält die wichtigen Grundlagen für die Rahmenbedingungen richterlicher Tätigkeit, so die "Magna Charta der Richter" (2010),



---

die "European Charter of Lay Judges" (2012) sowie die "Charta der Europäischen Handelsrichter" (2005). Der vierte Teil zeigt in einem kurzen Abriss der Daten und Fakten, dass die Handelsgerichtsbarkeit in Europa seit Jahrhunderten fest verankert ist.

Die Publikation erscheint zum ehrenvollen 90. *Jubiläum des österreichischen Landesverbandes der Richter in Handelssachen* ("Fachmännische Laienrichter aus dem Handelsstand" / 1922-2012). Dessen Ehrenpräsidenten KommRat Dr. WALTER LAMMEL und dem ehemaligen Präsidenten KommRat HANS LANGENBACH sowie dem amtierenden Präsidenten KommRat Mag RAINER SEDELMAYER (Präsident UEMC) sei an dieser Stelle der verbindliche Dank für ihren unermüdlichen Einsatz für die Handelsgerichtsbarkeit in Österreich und in Europa ausgesprochen. Die vorliegende Publikation konnte denn auch auf die Dokumentation zurückgreifen, die vor 20 Jahren zum 70. Jubiläum veröffentlicht worden ist (Vereinigung der fachmännischen Laienrichter Österreichs (Hrsg.), Dokumentation, Laienrichter in Österreich und Europa, mit Grussbotschaften von Bundeskanzler FRANZ VRANITZKY, Vizekanzler ERHARD BUSEK, Bundesminister NIKOLAUS MICHALEK und Bundesminister WOLFGANG SCHÜSSEL, Wien 1992).

ALEXANDER BRUNNER  
*Vizepräsident UEMC*  
[www.eujc.eu](http://www.eujc.eu)



---

## **C. England – systematic documentation of law**

ALEXANDER BRUNNER

## Contents

I.	In general (standards and law, organization, history).....	132
1.	Function of the commercial courts besides the civil courts .....	133
1.1.	Commercial court as special court (knowledge of law and of facts) .....	133
2.	Composition of the commercial courts .....	133
2.1.	Professional and expert judges.....	133
2.2.	Single judge or senate (standard or to be requested).....	133
3.	Value limits in disputes.....	133
3.1.	Competence of local or regional court.....	133
3.2.	Admissibility of appeals .....	134
4.	Separate commercial court or chamber in civil court.....	134
5.	Competence of court.....	135
5.1.	Area of application of law.....	135
5.2.	Responsibility for commercial register .....	135
5.3.	Responsibility on bankruptcy law.....	135
5.4.	Responsibility for international litigations.....	135
II.	Organization of commercial courts .....	136
1.	Election (parliament) or appointment institution (minister of justice, queen) .....	136
2.	Mode of election of the expert judges.....	136
2.1.	Mechanism of the election .....	136
2.2.	Period of office .....	136
2.3.	Composition of the commission of election.....	136
3.	Eligibility of expert judges (conditions to be elected, special knowledge) .....	137
4.	Notion and function (judge? expert? magistrate?) .....	137
5.	Independence of judges (granted by which rules?) .....	137
6.	Reasons for incapacity to act as expert judge (conflict of interest, even due to sector knowledge) .....	138
7.	Payment of expert judges.....	138
8.	Qualification, approval, Education and learning, retirement.....	138
III.	Civil procedure for commercial courts.....	138
1.	Introduction of actions .....	138
1.1.	Pending of the dispute, litigants.....	138
1.2.	Assignment of expert judges (i.e. in accordance with professional qualification) .....	138
1.3.	How the action is submitted including the electronic mode.....	139
1.4.	Deadlines for submission/answering/giving later .....	140
1.5.	Possibility to study the file for the expert judges .....	141
1.6.	Language of trial.....	141
1.7.	Public or non-public trials.....	141
1.8.	Limitation period .....	141
1.9.	Transmission of documents: Languages .....	141
1.10.	Model case proceedings, class and syndicate action .....	141

---

2.	Principal procedure (First instance – contribution of expert judges during the proceeding) .....	142
3.	Court's duties and rights .....	142
3.1.	Duty to inquire and to guide (possibility for the expert judge?)....	142
3.2.	Disposition principle.....	144
3.3.	Principles .....	144
3.4.	Study of the file .....	144
4.	Conciliation and Mediation (contribution of the expert judge).....	144
5.	Taking of evidence (contribution of the expert judge).....	145
6.	Deliberation between the judges (judgment or expertise of the expert judge).....	146
7.	Dissenting opinion in the judgment .....	146
8.	Procedure of appeal (second instance und last instance).....	146
IV.	The injunction (interim measures) .....	146
V.	Specific rules in national law .....	146
1.	The electronic act.....	146
2.	Other applications of expert judges?.....	146
3.	Vestment (gown) .....	146
4.	Title (Name) .....	147
5.	Charges, Remuneration of the lawyer.....	147

---

## I. In general (standards and law, organization, history)

*Rules:* **CPR** – Civil Procedure Rules (1998) for England and Wales, Version April 2010, Commercial Court: Part 58.

*History:* English judges have been resolving mercantile disputes for as long as merchants have been selling goods. In the middle ages, traders needed quick decisions before moving on to the next town<sup>1</sup>. Although the law of merchants did not become part of the common law until the 18th century, English law was firmly established by the late 19th century as the predominant law of commerce for international business transactions. *A Commercial List was established in 1895 to ensure that business disputes were resolved by judges who understood commercial practices and had extensive experience in resolving commercial disputes.* This developed into the modern *Commercial Court*, established under that name in 1970.

*Organization:* Four cases out of every five heard by the Commercial Court involve at least one party from outside the United Kingdom. In approximately half the cases heard by the Court, all of the parties are from outside the United Kingdom<sup>2</sup>. *The Commercial Court is part of the High Court Queen's Bench Division.* The Admiralty Court, which deals with certain specialised marine disputes, is also linked to the Commercial Court. There are currently 16 High Court judges attached to the Commercial and Admiralty Court. The Commercial Court<sup>3</sup> is a specialist court dealing with a wide variety of high-value commercial cases. These range from disputes arising out of transactions in world financial and commodity markets, international trade or energy and oil concessions to those involving insurance, reinsurance, shipping, the international transportation of goods or corporate acquisitions.

---

1 For the *historical introduction*, see: Information Paper 'Unlocking Disputes'; The Rolls Building in central London opened on 3 October 2011 for the Admiralty, Commercial, Mercantile, Technology and Construction Courts, [www.unlockingdisputes.com](http://www.unlockingdisputes.com). For the *English legal system in general* see: JOHN N. ADAMS/ ROGER BROWNSWORD, *Understanding Law*, 4<sup>th</sup> Edition, London 2006, Section 3: Legal Institutions and the Rule of Law (p. 50-85) and Section 7: The Civil Justice System (p. 153-191); FIONA COWNIE/ ANTHONY BRADNEY/ MANDY BURTON, *English Legal System in Context*, 4<sup>th</sup> Edition, Oxford 2007.

2 See note above.

3 ADMIRALTY & COMMERCIAL COURTS GUIDE, London (January) 2007; JUDICIARY OF ENGLAND AND WALES (Ed.), *Report and Recommendations of the Commercial Court Long Trials Working Party*, London (December) 2007; JOHN O'HARE / KEVIN BROWNE, *Civil Litigation*, London 2009; HOOLEY RICHARD, *The Commercial Court in England*, in: Council of Europe / UEMC (Ed.), *Commercial justice*, Strasbourg 1996, 33 ff.



---

## 1. Function of the commercial courts besides the civil courts

### 1.1. Commercial court as special court (knowledge of law and of facts)

The Commercial Court deals with complex cases arising out of business disputes, both national and international. There is particular emphasis on: international trade, banking, commodity, arbitration disputes. The work of the Commercial Court is governed by Part 58 of the Civil Procedure Rules<sup>4</sup>.

### 1.2. Conformity with article 6 ECHR

The Commercial Court as a specialised court with professional judges works according to the ECHR.

## 2. Composition of the commercial courts

### 2.1. Professional and expert judges

There are but professional judges at the Commercial Court. There are no so called expert judges within the court.

### 2.2. Single judge or senate (standard or to be requested)

The Commercial Court works in several senates with three judges.

## 3. Value limits in disputes

### 3.1. Competence of local or regional court

#### **CPR 58.9 Admissions**

(1) Rule 14.5 does not apply to claims in the commercial list.

(2) If the defendant admits part of a claim for a specified amount of money, the claimant may apply under rule 14.3 for judgment on the admission.

(3) Rule 14.14(1) applies with the modification that paragraph (a) shall be read as if it referred to the claim form instead of the particulars of claim.

---

<sup>4</sup> See: [www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/menus/rules](http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/menus/rules).

---

**CPR 14.5** Admission of part of a claim for a specified amount of money

- (1) This rule applies where –
  - (a) the only remedy which the claimant is seeking is the payment of a specified amount of money; and
  - (b) the defendant admits part of the claim.
- (2) The defendant may admit part of the claim by filing an admission in the relevant practice form.
- (3) On receipt of the admission, the court will serve a notice on the claimant requiring him to return the notice stating that –
  - (a) he accepts the amount admitted in satisfaction of the claim;
  - (b) he does not accept the amount admitted by the defendant and wishes the proceedings to continue; or
  - (c) if the defendant has requested time to pay, he accepts the amount admitted in satisfaction of the claim, but not the defendant's proposals as to payment.
- (4) The claimant must –
  - (a) file the notice; and
  - (b) serve a copy on the defendant, within 14 days after it is served on him. (...).

**CPR 14.3** Admission by notice in writing – application for judgment

- (1) Where a party makes an admission under rule 14.1(2) (admission by notice in writing), any other party may apply for judgment on the admission.
- (2) Judgment shall be such judgment as it appears to the court that the applicant is entitled to on the admission.

**CPR 14.14** Interest

- (1) Judgment under rule 14.4 (admission of whole of claim for specified amount of money) shall include the amount of interest claimed to the date of judgment if –
  - (a) the particulars of claim include the details required by rule 16.4;
  - (b) where interest is claimed under section 35A of the Supreme Court Act 1981 or section 69 of the County Courts Act 1984, the rate is no higher than the rate of interest payable on judgment debts at the date when the claim form was issued; and
  - (c) the claimant's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the claim form to the date of the request for judgment.

### 3.2. Admissibility of appeals

Against Judgements of the Commercial Court there is the possibility to appeal to the Civil Division of the Court of Appeal. *Procedure for appeal*: Sections 54 to 59 of the Access to Justice Act 1999 and Part 52 of the CPR 1998 came into force on 2 May 2000, and created one universal appeals system.

## 4. Separate commercial court or chamber in civil court

The Commercial Court is a separate division within the Queen's Bench Division.

---

## 5. Competence of court

### 5.1. Area of application of law

#### **CPR 58.1** Scope of this Part and interpretation

(1) This Part applies to claims in the Commercial Court of the Queen's Bench Division.

(2) In this Part and Practice Direction 58, 'commercial claim' means any claim arising out of the transaction of trade and commerce and includes any claim relating to –

- (a) a business document or contract;
- (b) the export or import of goods;
- (c) the carriage of goods by land, sea, air or pipeline;
- (d) the exploitation of oil and gas reserves or other natural resources;
- (e) insurance and re-insurance;
- (f) banking and financial services;
- (g) the operation of markets and exchanges;
- (h) the purchase and sale of commodities;
- (i) the construction of ships;
- (j) business agency; and
- (k) arbitration.

#### **CPR 58.2** Specialist list

(1) The commercial list is a specialist list for claims proceeding in the Commercial Court.

(2) One of the judges of the Commercial Court shall be in charge of the commercial list.

### 5.2. Responsibility for commercial register

*No responsibility. Competence of the administration for the commercial register.*

### 5.3. Responsibility on bankruptcy law

*No responsibility on bankruptcy cases.*

### 5.4. Responsibility for international litigations

In approximately half the cases heard by the Commercial Court, all of the parties are from outside the United Kingdom. The seat of the Commercial Court is at the Rolls Building, described by the British

---

Government as “*the biggest dedicated business court in the world*”. It will enhance London’s role as the pre-eminent destination for the resolution of commercial legal disputes.

## **II. Organization of commercial courts**

1. Election (parliament) or appointment institution (minister of justice, queen)

The decision to become a judge is made at the same time and in the same way that decisions to become other types of lawyers are made. To become a judge at the Commercial Court, applicable is the following provision:

### **Courts and Legal Services Act 1990, CHAPTER 41:**

**71.—(1)** In section 10(3) of the Supreme Court Act 1981—

(b) in paragraph (c) (qualification for appointment as puisne judge of the High Court) for the words “*unless he is a barrister of at least ten years’ standing*” there shall be substituted— “unless—

(i) he has a *10 year High Court qualification*, within the meaning of section 71 of the Courts and Legal Services Act 1990; (...);

2. Mode of election of the expert judges

See II.1.

- 2.1. Mechanism of the election

See II.1.

- 2.2. Period of office

Without limitation (no repeated appointment).

- 2.3. Composition of the commission of election

### **Courts and Legal Services Act 1990, CHAPTER 41:**

**19.—(1)** There shall be a body corporate to be known as the Lord Chancellor’s Advisory Committee on Legal Education and Conduct (in this Act referred to as “*the Advisory Committee*”).



---

(2) The Advisory Committee shall consist of a Chairman, and 16 other members, appointed by the Lord Chancellor. (...).

**20.**—(1) The Advisory Committee shall have the general duty of assisting in the maintenance and development of standards in the education, training and conduct of those offering legal services.

(2) The Advisory Committee shall carry out that general duty by performing the functions conferred on it by Schedule 2.

(3) In discharging its functions the Advisory Committee shall—

(a) where it considers it appropriate, have regard to the practices and procedures of other member States in relation to the provision of legal services;

*(b) have regard to the desirability of equality of opportunity between persons seeking to practise any profession, pursue any career or take up any employment, in connection with the provision of legal services.*

3. Eligibility of expert judges (conditions to be elected, special knowledge)

The law of England and Wales does not know "expert judges" at the Commercial Court. But judges to be appointed to the Commercial Court have to have specialized knowledge. See also section II.2.

4. Notion and function (judge? expert? magistrate?)

See section II.3.

5. Independence of judges (granted by which rules?)

**Courts and Legal Services Act 1990, CHAPTER 41:**

**75.** No person holding as a *full-time appointment* any of the offices listed in Schedule 11 shall—

(a) provide any advocacy or litigation services (in any jurisdiction); practice.

(b) provide any conveyancing or probate services;

(c) practise as a barrister, solicitor, public notary or licensed conveyancer, or be indirectly concerned in any such practice;

(d) practise as an advocate or solicitor in Scotland, or be indirectly concerned in any such practice; or

(e) act for any remuneration to himself as an arbitrator or umpire.

- 
6. Reasons for incapacity to act as expert judge (conflict of interest, even due to sector knowledge)  
See section II.5.
  7. Payment of expert judges  
There are no expert judges.
  8. Qualification, approval, Education and learning, retirement  
See section II.2.-5.

### **III. Civil procedure for commercial courts**

1. Introduction of actions
- 1.1. Pending of the dispute, litigants

#### **CPR 58.3 Application of the Civil Procedure Rules**

These Rules and their practice directions apply to claims in the commercial list unless this Part or a practice direction provides otherwise.

#### **CPR 58.4 Proceedings in the commercial list**

(1) A commercial claim may be started in the commercial list.

(2) Rule 30.5 applies to claims in the commercial list, except that a Commercial Court judge may order a claim to be transferred to any other specialist list.

(Rule 30.5(3) provides that an application for the transfer of proceedings to or from a specialist list must be made to a judge dealing with claims in that list.)

*See also: CPR 58.5 Claim form and particulars of claim (below 1.3).*

- 1.2. Assignment of expert judges (i.e. in accordance with professional qualification)

#### **CPR 58.4 (2) Proceedings in the commercial list**

(Rule 30.5(3) provides that an application for the transfer of proceedings to or from a specialist list must be made to a judge dealing with claims in that list.)

---

See **CPR 30.5** Transfer between Divisions and to and from a specialist list

(1) The High Court may order proceedings in any Division of the High Court to be transferred to another Division.

(2) A judge dealing with claims in a specialist list may order proceedings to be transferred to or from that list.

(3) An application for the transfer of proceedings to or from a specialist list must be made to a judge dealing with claims in that list.

### 1.3. How the action is submitted including the electronic mode

#### **CPR 58.5** Claim form and particulars of claim

(1) If, in a Part 7 claim, particulars of claim are not contained in or served with the claim form –

(a) the claim form must state that, if an acknowledgment of service is filed which indicates an intention to defend the claim, particulars of claim will follow;

(b) when the claim form is served, it must be accompanied by the documents specified in rule 7.8(1);

(c) the claimant must serve particulars of claim within 28 days of the filing of an acknowledgment of service which indicates an intention to defend; and

(d) rule 7.4(2) does not apply.

(2) A statement of value is not required to be included in the claim form.

(3) If the claimant is claiming interest, he must –

(a) include a statement to that effect; and

(b) give the details set out in rule 16.4(2), in both the claim form and the particulars of claim.

#### *See CPR Part 7- HOW TO START PROCEEDINGS – THE CLAIM FORM*

Contents of this Part

Rule 7.1 Where to start proceedings

Rule 7.2 How to start proceedings (Rule 7.2A)

Rule 7.3 Right to use one claim form to start two or more claims

Rule 7.4 Particulars of claim

Rule 7.5 Service of a claim form

Rule 7.6 Extension of time for serving a claim form

Rule 7.7 Application by defendant for service of claim form

Rule 7.8 Form for defence etc. must be served with particulars of claim

Rule 7.9 Fixed date and other claims

Rule 7.10 Production Centre for claims

Rule 7.11 Human Rights

Rule 7.12 Electronic issue of claims

---

*See also the following PRACTICE DIRECTION 58 – COMMERCIAL COURT:  
APPLICATIONS BEFORE PROCEEDINGS ARE ISSUED*

3.1 A party who intends to bring a claim in the commercial list must make any application before the claim form is issued to a Commercial Court judge.

3.2 The written evidence in support of such an application must state that the claimant intends to bring proceedings in the commercial list.

3.3 If the Commercial Court judge hearing the application considers that the proceedings should not be brought in the commercial list, he may adjourn the application to be heard by a master or by a judge who is not a Commercial Court judge.

*TRANSFERRING PROCEEDINGS TO OR FROM THE COMMERCIAL COURT*

4.1 If an application is made to a court other than the Commercial Court to transfer proceedings to the commercial list, the other court may –

- (1) adjourn the application to be heard by a Commercial Court judge; or
- (2) dismiss the application.

4.2 If the Commercial Court orders proceedings to be transferred to the commercial list

- (1) it will order them to be transferred to the Royal Courts of Justice; and
- (2) it may give case management directions.

4.3 An application by a defendant, including a Part 20 defendant, for an order transferring proceedings from the commercial list should be made promptly and normally not later than the first case management conference.

4.4 A party applying to the Commercial Court to transfer a claim to the commercial list must give notice of the application to the court in which the claim is proceeding, and the Commercial Court will not make an order for transfer until it is satisfied that such notice has been given.

#### 1.4. Deadlines for submission/answering/giving later

*PRACTICE DIRECTION 58 – COMMERCIAL COURT:  
STARTING PROCEEDINGS IN THE COMMERCIAL COURT*

2.1 Claims in the Commercial Court must be issued in the Admiralty and Commercial Registry.

2.2 When the Registry is closed, a request to issue a claim form may be made by fax, using the procedure set out in Appendix A to this practice direction. If a request is made which complies with that procedure, the claim form is issued when the fax is received by the Registry.

2.3 The claim form must be marked in the top right hand corner 'Queen's Bench Division, Commercial Court'.

2.4 A claimant starting proceedings in the commercial list, other than an arbitration claim, must use practice form N1(CC) for Part 7 claims or practice form N208(CC) for Part 8 claims.

**CPR 58.6 Acknowledgment of service**

(1) A defendant must file an acknowledgment of service in every case.

(2) Unless paragraph (3) applies, the period for filing an acknowledgment of service is 14 days after service of the claim form.



---

(3) Where the claim form is served out of the jurisdiction, or on the agent of a defendant who is overseas, the time periods provided by rules 6.12(3), 6.35 and 6.37(5) apply after service of the claim form.

1.5. Possibility to study the file for the expert judges

There are no "expert judges" at the Commercial Court. But judges at the Commercial Court are specialised according to the proceedings in the commercial list.

1.6. Language of trial

Proceedings: English only.

1.7. Public or non-public trials

Public.

1.8. Limitation period

*See: 1.4.*

1.9. Transmission of documents: Languages

English.

1.10. Model case proceedings, class and syndicate action

*Ministry of Justice, The Government's Response to the Civil Justice Council's Report: 'Improving Access to Justice through Collective Actions, London 2009:* Currently the general law does not provide for a collective action to be brought by any party which does not have a right of action itself in respect of the claim. It is the Government's view that any right to bring this type of action would have to be created in primary legislation. This has already been done in one case by s.47B of the Competition Act 1998 (introduced by s.19 of the Enterprise Act 2002). Amendments to the Civil Procedure Rules could not be used to create such a right, because a right of action is a matter of substantive law, not simply an issue of practice or procedure.

---

2. Principal procedure (First instance – contribution of expert judges during the proceeding)

There are no "expert judges" during the proceeding. Applicable for the principal procedure is rule 58.10.

**CPR 58.10 Defence and Reply**

(1) Part 15 (defence and reply) applies to claims in the commercial list with the modification to rule 15.8 that the claimant must –

- (a) file any reply to a defence; and
- (b) serve it on all other parties, within 21 days after service of the defence.

(2) Rule 6.35 (in relation to the period for filing a defence where the claim form is served out of the jurisdiction) applies to claims in the commercial list, except that if the particulars of claim are served after the defendant has filed an acknowledgment of service the period for filing a defence is 28 days from service of the particulars of claim.

3. Court's duties and rights

3.1. Duty to inquire and to guide (possibility for the expert judge?)

**CPR 58.13 Case management**

(1) All proceedings in the commercial list are treated as being allocated to the multi-track and Part 26 does not apply.

(2) The following parts only of Part 29 apply –

- (a) rule 29.3(2) (legal representative to attend case management conferences and pre-trial reviews);
- (b) rule 29.5 (variation of case management timetable) with the exception of rule 29.5(1)(c).

(3) As soon as practicable the court will hold a case management conference which must be fixed in accordance with Practice Direction 58.

**Practice Direction 58:**

**CASE MANAGEMENT at the Commercial Court:**

10.1 The following parts only of Practice Direction 29 apply –

- (1) paragraph 5 (case management conferences), excluding paragraph 5.9 and modified so far as is made necessary by other specific provisions of this practice direction; and
- (2) paragraph 7 (failure to comply with case management directions).

10.2 If the proceedings are started in the commercial list, the claimant must apply for a case management conference –

---

(a) for a Part 7 claim, within 14 days of the date when all defendants who intend to file and serve a defence have done so; and

(b) for a Part 8 claim, within 14 days of the date when all defendants who intend to serve evidence have done so.

10.3 If the proceedings are transferred to the commercial list, the claimant must apply for a case management conference within 14 days of the date of the order transferring them, unless the judge held, or gave directions for, a case management conference when he made the order transferring the proceedings.

10.4 Any party may, at a time earlier than that provided in paragraphs 10.2 or 10.3, apply in writing to the court to fix a case management conference.

10.5 If the claimant does not make an application in accordance with paragraphs 10.2 or 10.3, any other party may apply for a case management conference.

10.6 The court may fix a case management conference at any time on its own initiative. If it does so, the court will give at least 7 days notice to the parties, unless there are compelling reasons for a shorter period of notice.

10.7 Not less than 7 days before a case management conference, each party must file and serve –

(1) a completed case management information sheet; and

(2) an application notice for any order which that party intends to seek at the case management conference, other than directions referred to in the case management information sheet.

10.8 Unless the court orders otherwise, the claimant, in consultation with the other parties, must prepare –

(1) a case memorandum, containing a short and uncontroversial summary of what the case is about and of its material case history;

(2) a list of issues, with a section listing important matters which are not in dispute; and

(3) a case management bundle containing –

(a) the claim form;

(b) all statements of case (excluding schedules), except that, if a summary of a statement of case has been filed, the bundle should contain the summary, and not the full statement of case;

(c) the case memorandum;

(d) the list of issues;

(e) the case management information sheets and, if a pre-trial timetable has been agreed or ordered, that timetable;

(f) the principal orders of the court; and

(g) any agreement in writing made by the parties as to disclosure,

and provide copies of the case management bundle for the court and the other parties at least 7 days before the first case management conference or any earlier hearing at which the court may give case management directions.

10.9 The claimant, in consultation with the other parties, must revise and update the documents referred to in paragraph 10.8 appropriately as the case proceeds. This must

---

include making all necessary revisions and additions at least 7 days before any subsequent hearing at which the court may give case management directions.

### 3.2. Disposition principle

The Commercial Court will not adjudicate to a party more or other than it requested, or less than the defending party has acknowledged as being due (disposition principle).

### 3.3. Principles

Application of the general rules.

### 3.4. Study of the file

*See case management above 3.1.*

## 4. Conciliation and Mediation (contribution of the expert judge)

*A settlement of the dispute by the parties is possible also at the Commercial Court. See CPR 58.15 (2).*

### **CPR 58.15** Judgments and orders

(1) Except for orders made by the court on its own initiative and unless the court orders otherwise, every judgment or order will be drawn up by the parties, and rule 40.3 is modified accordingly.

(2) An application for a consent order must include a draft of the proposed order signed on behalf of all the parties to whom it relates.

(3) Rule 40.6 (consent judgments and orders) does not apply.

### Practice Direction 58:

#### JUDGMENTS AND ORDERS

14.1 An application for a consent order must include a draft of the proposed order signed on behalf of all parties to whom it relates (see paragraph 10.4 of Practice Direction 23A).

14.2 Judgments and orders are generally drawn up by the parties (see rule 58.15). The parties are not therefore required to supply draft orders on disk (see paragraph 12.1 of Practice Direction 23A).

### Practice Direction 23A

#### Consent Orders



---

10.1 Rule 40.6 sets out the circumstances where an agreed judgment or order may be entered and sealed.

10.2 Where all parties affected by an order have written to the court consenting to the making of the order a draft of which has been filed with the court, the court will treat the draft as having been signed in accordance with rule 40.6(7).

10.3 Where a consent order must be made by a judge (i.e. rule 40.6(2) does not apply) the order must be drawn so that the judge's name and judicial title can be inserted.

*10.4 The parties to an application for a consent order must ensure that they provide the court with any material it needs to be satisfied that it is appropriate to make the order. Subject to any rule or practice direction a letter will generally be acceptable for this purpose.*

10.5 Where a judgment or order has been agreed in respect of an application or claim where a hearing date has been fixed, the parties must inform the court immediately. (Note that parties are reminded that under rules 28.4 and 29.5 the case management timetable cannot be varied by written agreement of the parties.)

*Concerning mediation:* Applicable is the EU-Directive 2008/52/EC of the Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. The Directive, which only *applies to European cross-border disputes* rather than to disputes within any one Member State, covers five broad areas: (1) encouragement by Member States of mediator training and the development and adherence to a voluntary code of conduct; (2) judicial powers to invite parties to mediate; (3) obligations on Member States to ensure mediation settlement agreements are enforceable as if they are court judgments (should all parties consent); (4) confidentiality of mediations such that submissions made during a mediation cannot be used in subsequent judicial proceedings if the mediation fails; and (5) the suspension of limitation periods whilst parties mediate.

According to these guidelines of the mentioned EU-Directive the judges of the Commercial Court do not mediate the disputes between the parties. But see: Practice Direction 78 (European procedures).

## 5. Taking of evidence (contribution of the expert judge)

No "expert judges". Applicable are the general civil procedure rules of evidence.

- 
6. Deliberation between the judges (judgment or expertise of the expert judge)

No "expert judges".

7. Dissenting opinion in the judgment

The common law countries have a long tradition concerning dissenting opinion. In England judges express their opinion in all court cases individually and openly in front of the public (see above section III.1.7.).

8. Procedure of appeal (second instance und last instance)

*See above section I.3.2.*

#### **IV. The injunction (interim measures)**

Applicable is the Practice Direction 25A (Interim Injunctions).

#### **V. Specific rules in national law**

1. The electronic act

*See above section III.1.3.*

2. Other applications of expert judges?

No.

3. Vestment (gown)

In July 2007 the Lord Chief Justice announced reforms to simplify judicial court working dress in England and Wales. The changes, which included the introduction of a new civil gown, took effect on 1 October 2008.

---

4. Title (Name)

Judge, Justice, QC (Queen's Counsel).

5. Charges, Remuneration of the lawyer

No "expert judges"; therefore no rules.