Litigation & Arbitration Group

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Client Alert

English Jurisdiction and Enforcement Post-Brexit: Where Are We Now?

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The legal framework for jurisdiction and enforcement of judgments as between England[1] and EU Member States has changed significantly following the end of the Brexit transition period on 31 December 2020. This is because the EU regime under the Brussels Regulation and Brussels Recast (defined below) ceased to apply to the UK from that point (save in relation to pending cases).

The UK has applied to re-join the Lugano Convention (defined below), which also ceased to apply to the UK at the end of the Brexit transition period. The Lugano Convention, which applies to all EU Member States, Switzerland, Iceland and Norway, would replicate many (but not all) key aspects of the EU regime. However, on 4 May 2021, the European Commission issued a recommendation that the EU should reject the application.[2] Further, by a *note verbale* dated 22 June 2021, the Commission informed the Swiss Federal Council (as Depositary of the Lugano Convention) that the EU "*is not in a position to give its consent to invite the* [UK] *to accede to the Lugano Convention.*"[3] While the Commission's recommendation is non-binding[4] and the precise status of the *note verbale* is unclear, the odds appear to be against the UK acceding to the Lugano Convention, at least for the time being (although it is understood that there is some division among EU Member States on the question). Even if the UK were to re-join the Lugano Convention, it would almost certainly not apply to the UK retrospectively (i.e., for proceedings from 1 January 2021 until the date of the UK's re-accession).

In these circumstances, the question arises whether international commercial parties should remain confident in choosing English governing law and jurisdiction clauses for their agreements. As set out below, there are compelling reasons to remain confident.

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[1] References in this client alert to "England" and "English" law/jurisdiction/courts/judgments/proceedings should be read as references to England and Wales.
[2] https://ec.europa.eu/info/sites/default/files/1_en_act_en.pdf
[3] https://www.eda.admin.ch/dam/eda/fr/documents/aussenpolitik/voelkerrecht/autres-conventions/Lugano2/20210701-LUG-ann-EU.pdf
[4] The Council of Europe will determine the EU's position in relation to UK accession. The UK has previously received statements of support from Switzerland, Iceland and Norway.

In particular, even without the Lugano Convention, there remain important frameworks for UK-EU co-operation on jurisdiction and the enforcement of English judgments in EU Member States (and *vice versa*), in particular the Hague Convention (defined below). Even where those frameworks do not apply: (a) English common law rules mean that (in principle) the jurisdiction of the English courts will be available in a wider set of circumstances than under the EU regime and the English courts will be able (again) to make use of important powers to enforce compliance with English jurisdiction clauses (in particular, anti-suit injunctions) – powers which were very limited under the EU regime; and (b) English judgments will be capable of recognition and enforcement in EU Member States, albeit that the process is likely to be more cumbersome, depending on the domestic laws of the EU Member State in question.

The Pre-Brexit Framework

While the UK remained an EU Member State (and during the Brexit transition period), the following regimes (amongst others), applied to the UK in relation to governing law, jurisdiction and enforcement of judgments:

- Governing law:
  - Regulation (EC) No 593/2008 ("**Rome I**") on the law applicable to contractual obligations.
  - Regulation (EC) No 864/2007 ("**Rome II**") on the law applicable to non-contractual obligations.

- Jurisdiction and enforcement:
  - Regulation (EC) No 44/2001 ("**Brussels Regulation**") (for proceedings commenced before 10 January 2015) and Regulation (EU) No 1215/2012 ("**Brussels Recast**") (for proceedings commenced after 10 January 2015) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
  - The 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "**Lugano Convention**"), which, as referred to above, applies to all EU Member States, Switzerland, Iceland and Norway.
  - The 2005 Hague Convention on choice of court agreements (the "**Hague Convention**"), which applies to all EU Member States, Singapore, Mexico and Montenegro. It has also been signed (but not yet ratified) by the USA and China.

English Governing Law Post-Brexit

First, the benefits of choosing English law as the governing law for parties' commercial agreements are unaffected by Brexit. For the time being (at least), there will be little or no impact in relation to the approach to determining governing law, as the provisions of Rome I and Rome II have largely been incorporated in UK domestic law,[5] and continue to apply in all EU Member States. Parties should, therefore, continue to be confident in choosing English governing law, which remains (together with the law of New York state) dominant in international commercial agreements, and valued for its certainty, respect for parties' freedom of contract and deep well of commercial precedents.

Jurisdiction of the English Courts Post-Brexit

The Brussels Regulation and Brussels Recast ceased to apply to the UK following the end of the Brexit transition period (although they continue to apply in the case of proceedings commenced on or before 31 December 2020). The Trade and Co-operation Agreement between the UK and EU did not provide for a replacement framework for proceedings commenced in the English courts after this point. The Brussels Regulation and Brussels Recast continue to apply to the courts of EU Member States.

Under Brussels Recast, the fundamental principle is that a defendant in civil and commercial proceedings should be sued in the courts of its domicile (Article 4), subject to certain exceptions. These exceptions

[5] By virtue of The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019.

include where the parties have agreed that the courts of an EU Member State shall have exclusive jurisdiction (Article 25). In those circumstances, any court of another EU Member State is required to: (i) decline jurisdiction (if the court chosen by the parties has established jurisdiction); or (ii) stay related proceedings already underway until such time as the court chosen by the parties declares that is has no jurisdiction.[6]

(i) The Hague Convention

Post-Brexit, there remain strong protections for upholding contracting parties' jurisdiction agreements in favour of the English courts. In particular, the UK continues to be a contracting state to the Hague Convention (although, as noted below, the date of the UK's accession is disputed), together with all EU Member States.

The basic rules under the Hague Convention concerning jurisdiction require contracting states to uphold exclusive jurisdiction clauses, subject to limited exceptions (Articles 5 and 6).[7] Therefore, where there is an exclusive jurisdiction clause in favour of the English courts, the courts of any other contracting state must, in principle, decline to hear the case (unless an exception applies).

Given its anticipated importance (for jurisdiction and, as noted below, enforcement), it is worth considering a number of factors regarding the application of the Hague Convention.

(A) What is an exclusive jurisdiction clause for the purposes of the Hague Convention?

The Hague Convention only applies to exclusive jurisdiction clauses, which are defined in Article 3(a) as those that designate "*the courts of one Contracting State or one or more specific courts of one Contracting State to the exclusion of the jurisdiction of any other courts*." Furthermore, Article 3(b) deems a jurisdiction clause to be exclusive *"unless the parties have expressly provided otherwise*." Therefore, a clause providing that the English courts will have jurisdiction to determine a dispute will be deemed an exclusive jurisdiction clause for the purposes of the Hague Convention (unless there is some other express provision to the effect that such jurisdiction is not exclusive).

An important question is whether 'asymmetric' jurisdiction clauses (i.e., those that give one party the choice of a range of jurisdictions in which to sue whilst limiting the other party's ability to sue to a single jurisdiction) are exclusive jurisdiction clauses for the purposes of the Hague Convention. The Court of Appeal recently considered this question in the case of *Etihad Airways PJSC v Flother* and commented, *obiter*, that the Hague Convention "*should probably be interpreted as not applying to asymmetric jurisdiction clauses*".[8] In doing so, the court was influenced by the explanatory report that accompanies the Hague Convention, which records that it was the intention of the framers to exclude asymmetric jurisdiction clauses from the operation of the convention.[9] Therefore, it would be prudent to assume that the Hague Convention does not apply to asymmetric jurisdiction clauses.

(B) Exceptions to the scope of the application of the Hague Convention

Under Article 2, the Hague Convention does not apply to certain types of civil dispute. These include all of the exceptions under Article 1(2) of Brussels Recast (such as insolvency/bankruptcy proceedings, arbitration, and wills and succession) and some additional ones. For example, the Hague Convention does not apply to, amongst other things: (i) the carriage of passengers and goods; (ii) tort or delict claims for

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[6] Article 31(2) and (3).

[7] Article 5(1) stipulates that "*The court or courts of a Contracting State designated in an exclusive choice of court agreement shall have jurisdiction to decide a dispute to which the agreement applies …*". Article 6(1) stipulates that "*A court of a Contracting State other than that of the chosen court shall suspend or dismiss proceedings to which an exclusive choice of court agreement …*". There are exceptions to the rules in Articles 5(1) and 6(1), for example, if the agreement is null and void under the laws of the state of the chosen court.

[8] [2020] EWCA Civ 1707, at [85].

[9] Explanatory Report on the Hague Convention, Hartley and Dogauchi, see paragraphs 105 and 106.

damage to tangible property that do not arise from a contractual relationship; (iii) rights *in rem* in immovable property and tenancies of immovable property; and (iv) the validity of intellectual property rights other than copyright and related rights.

(C) When did the Hague Convention enter into force in the UK?

Under Article 16(1), the Hague Convention only applies to exclusive jurisdiction clauses "*concluded after its entry into force for the State of the chosen court.*" There has been some disagreement between the UK and the EU as to when the Hague Convention entered into force in the UK. The UK's view is that the Hague Convention will continue to apply to the "*UK (without interruption) from its original entry into force date of 1 October 2015*" (i.e., the date on which the UK acceded to the Hague Convention in its capacity as an EU Member State), such that the Hague Convention would apply to exclusive jurisdiction clauses in favour of the English courts concluded from 1 October 2015 onwards.[10] The EU's view is that the Hague Convention entered into force between the EU and UK when the UK became a contracting state in its own right on 1 January 2021, such that the convention would only apply to exclusive jurisdiction clauses in favour of the English courts concluded from 1 January 2021 onwards.[11] The question has yet to be tested in the courts of any contracting state.

(ii) Treatment of English exclusive jurisdiction clauses in EU Member States if the Hague Convention does not apply

Where the Hague Convention does not apply, an EU Member State court will have a discretion to stay its proceedings in favour of identical or related proceedings in a non-EU state (e.g., the UK) where the courts of the non-EU state were first seised (Articles 33 and 34 of Brussels Recast).[12] The EU Member State may exercise this discretion to stay its proceedings if: (i) the court in the non-EU state will give a judgment that is capable of recognition and/or enforcement in the EU Member State; and (ii) the court of the EU Member State is satisfied that a stay is necessary for the proper administration of justice.[13] This discretion may only be exercised in limited circumstances by EU Member State courts.[14] In particular, it is not available where the EU Member State court is first seised, or where its jurisdiction is based on, for example, a jurisdiction clause falling within Article 25.[15]

However, even outside the Hague Convention and Brussels Recast, there are powerful tools available to the English courts to enforce compliance with English jurisdiction clauses (as described below).

(iii) Jurisdiction of the English courts post-Brexit: the common law rules

Where the Hague Convention does not determine which courts have jurisdiction, the English common law rules will apply. In essence, these rules mean that the English courts will have jurisdiction if: (i) proceedings can be served on the defendant (either within or outside England); or (ii) the defendant submits to the

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[10] As contained in Ministry of Justice guidance dated 31 December 2020: https://www.gov.uk/government/publications/cross-border-civil-and-commercial-legal-cases-guidance-for-legal-professionals/cross-border-civil-and-commercial-legal-cases-guidance-for-legal-professionals

[11] As contained in a Commission notice to stakeholders dated 27 August 2020: https://ec.europa.eu/info/sites/default/files/brexit_files/info_site/civil_justice_en.pdf

[12] Had this set of circumstances occurred before the end of the Brexit transition period, Article 25 of Brussels Recast would have obliged the court of the EU Member State to stay its proceedings, even if the English court was seised second.

[13] Where the pre-existing proceedings in the non-EU state are "*related*" to the proceedings in the EU Member State (but do not involve the same cause of action and parties), the EU Member State court may stay the proceedings if (in addition to (i) and (ii) above) "*it is expedient to hear and determine the related actions together to avoid the risk of irreconcilable judgments resulting from separate proceedings*" (Article 34(1)(a)).

[14] Articles 33 and 34 apply where jurisdiction in the EU Member State court proceeds on certain specific bases (e.g., the defendant's domicile under Article 4).

[15] Articles 29, 30 and 31. *Perform Content Services Ltd v Ness Global Services Ltd* [2021] EWCA Civ 981.

jurisdiction of the English courts. Significantly, the common law position on service outside England means that, in principle, there is a broader range of bases on which parties domiciled in EU Member States may be sued in the English courts than there was under Brussels Recast. These rules are, however, tempered by the flexibility which the English courts have to stay proceedings under the principle of *forum non conveniens* (see below), which was generally not available under the EU regime.[16]

(A) Service within the jurisdiction

First, if a defendant is physically present in England, even temporarily, and is validly served with process, the English courts will have jurisdiction. A foreign company operating in England is considered to be present in the jurisdiction for the purposes of service of process.

(B) Service outside the jurisdiction

Defendants outside England can be served without the permission of the English courts in certain circumstances (e.g., where a contract contains an English jurisdiction clause, or where the English courts have the power to determine the claim under the Hague Convention).[17]

In addition, the English courts may grant permission to serve process on a defendant without any presence in England on the basis of a wide range of jurisdictional gateways.[18] The relevant jurisdictional gateways include the following:

- Contract claims in respect of contracts made in England, governed by English law or where the breach took place in England. The equivalent contract claim gateway under Brussels Recast (Article 7(1)) is (potentially) narrower: it allowed a defendant domiciled in another EU Member State to be sued in England if performance of the contractual obligation[19] in question took place in England (and provided parallel proceedings were not already pending in the courts of another EU Member State).[20]

- Tort claims where damage was sustained in England, or resulting from an act committed in England. So long as some damage was sustained in England, even indirectly, the claimant may (in principle) sue in England for all of the damage it has sustained (including damage sustained outside England). Again, the equivalent tort claim gateway under Brussels Recast (Article 7(2)) is (potentially) narrower: it allowed a defendant domiciled in another EU Member State to be sued in England if the tortious act resulted in direct damage in England.

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[16] *Owusu v Jackson and Others* Case C-281/02.

[17] CPR 6.33 (2B) (which was added to the CPRs in April 2021).

[18] CPR 6.36 and PD 6B paragraph 3.1. Permission may be granted if the court is satisfied that (i) there is a serious issue to be tried on the merits, (ii) there is a good arguable case that at least one of the jurisdictional gateways is engaged, and (iii) in all of the circumstances, England is the appropriate forum and the court's discretion should be exercised to permit service outside the UK (*AK Investments v Kyrgiz Mobil* [2011] UKSC 7).

[19] Pursuant to Article 7(1)(b) Brussels Recast, the place of performance of the contractual obligation is the place in which the goods were/should have been delivered (in the case of a contract for the sale of goods) or the place in which the services were/should have been provided (in the case of a contract for the provision of services).

[20] However, the gateway under Article 7(1) Brussels Recast will not be narrower in all cases. For example, where Party A breaches its contractual obligation to make a payment into a bank account located outside England belonging to Party B in exchange for services provided by Party B to Party A in England, the English courts would have jurisdiction under Article 7(1) Brussels Recast as the place of performance of the contractual obligation (i.e., the services) was England but would not necessarily have jurisdiction under this English common law jurisdictional gateway (unless the contract was made in England or governed by English law) as the breach of contract (i.e., non-payment) was not committed in England.

- Joinder situations where one party is being sued in England and the claimant wishes to serve the claim on another party outside the jurisdiction (provided that the court is satisfied that the latter is a necessary or proper party to the claim).

- Claims relating to property (such as shares or cash) in England.

However, as noted above, the wider set of bases on which the English courts may have jurisdiction under the English common law rules is subject to the court's discretion to stay proceedings, or to decline permission to serve process outside England, where it is not satisfied that England is the proper place for the proceedings. In particular, under the principle of *forum non conveniens*, the court will consider the question of whether England is clearly more appropriate than any other available forum and, even if not, whether justice requires that the proceedings should be conducted in England.[21] In doing so, the court may take into account factors such as the location of the parties, the availability of witnesses and evidence, the applicable law for any relevant transaction, and broad issues of expense and convenience.

This discretion is an important common law protection for potential defendants in English proceedings, and one that is not available under Brussels Recast where there is limited scope to exercise a discretion in favour of a more appropriate forum, particularly where a defendant is being sued in the EU Member State in which it is domiciled.[22]

(iv) Common law remedies available for a breach of an English exclusive jurisdiction clause

Whether or not an English jurisdiction clause falls within the scope of the Hague Convention, powerful common law remedies are available to litigants to enforce compliance with that clause, including remedies which were not available under the EU regime.

(A) Anti-suit injunctions

An anti-suit injunction is a restraint on proceedings brought in breach of an exclusive jurisdiction clause or arbitration clause.[23] Anti-suit injunctions are deemed incompatible with the Brussels Regulation and Brussels Recast.[24] However, now that the EU regime has ceased to apply to the UK, English courts are able to grant anti-suit injunctions in support of English proceedings if there has been a breach of an exclusive jurisdiction clause, at least in claims brought under the common law rules (and in relation to arbitration). If so, and if the respondent to the anti-suit injunction fails to comply, it could be fined, subject to asset seizures, and/or imprisoned for contempt of court.

Further, anti-suit injunctions may also be permitted under the Hague Convention, which is not subject to CJEU jurisprudence,[25] and contains an express provision that "[i]*nterim measures of protection*" fall outside of its scope (Article 7).[26]

(B) Damages for breach of contract

Under English law, damages are available as a remedy where a party breaches a jurisdiction clause by commencing proceedings other than in accordance with its terms, including in cases governed by the

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[21] *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460.

[22] *Vedanta Resources Plc and another v Lungowe and others* [2019] UKSC 20.

[23] The comments above also apply to anti-enforcement injunctions, which operate to restrain parties from enforcing a judgment given in a non-UK court.

[24] *West Tankers Inc v Allianz SpA* [2009] 1 AC 1138 (Brussels Regulation) and *Nori Holding and others v Public Joint-Stock Company Bank Otkritie Financial Corporation* [2018] EWHC 1343 (Comm) (Brussels Recast).

[25] *Etihad Airways PJSC v Flother* [2020] EWCA Civ 1707.

[26] Article 7 reads "*Interim measures of protection are not governed by this Convention. This Convention neither requires nor precludes the grant, refusal or termination of interim measures of protection by a court of a Contracting State and does not affect whether or not a party may request or a court should grant, refuse or terminate such measures*".

Brussels Regulation and Brussels Recast.[27] In principle, such damages could extend to the costs and other losses suffered by the wronged party as a result of the breach of the relevant jurisdiction clause.

Enforcement of English Judgments in EU Member States Post-Brexit

For proceedings initiated after 31 December 2020, the enforcement of English judgments in EU Member States (and *vice versa*) may be more complicated than it was pre-Brexit. This is because the provisions of Brussels Recast for the (relatively straightforward) mutual recognition and enforcement of judgments issued by EU Member States' courts have ceased to apply.[28]

However, the following reciprocal enforcement regimes are, or may be, available (and, even where they do not apply, there is no basis for concluding that EU Member States' courts will simply decline to enforce English judgments (or, for that matter, *vice versa*), particularly given the clear mutual benefits of reciprocal enforcement):

- First, any judgment given in relation to a dispute before the English courts as a result of an exclusive jurisdiction clause falling within the Hague Convention must be enforced in other contracting states (Article 8), subject to limited exceptions (Article 9). As noted above, the Hague Convention does not apply to "[i]*nterim measures of protection*". Therefore, the enforcement in an EU Member State of an interim injunction granted by the English courts would not fall within the Hague Convention, but would be a matter of the domestic law of the jurisdiction in question. It is important to note, however, that much of the power for such injunction lies in the threat of contempt of court proceedings in England (potentially resulting in a fine and/or imprisonment) if a respondent fails to comply with the injunction.

- Secondly, there are a number of bilateral treaties for the reciprocal recognition and enforcement of money judgments in civil matters between the UK and various European countries that pre-date the UK joining the EU (e.g., between the UK and France (1934), Germany (1961), Austria (1962), Italy (1964) and the Netherlands (1969)). However, the current impact of these treaties is unclear and the argument that they remain in force (despite being superseded by EU law), has yet to be tested in the courts of the UK or any counter signatory to a bilateral treaty.

- Thirdly, if the UK and EU accede to it, it may be possible to rely on the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgment in Civil or Commercial Matters in order to enforce English judgments in EU Member States (and *vice versa*). This convention is designed to provide a single global framework for cross-border recognition and enforcement of judgments. As at July 2021, only Israel, Ukraine and Uruguay have signed the convention (although none of them have ratified it). On 16 July 2021, the Commission adopted a proposal for the EU's accession to the convention.[29] However, even assuming that the UK and the EU do accede, this convention is unlikely to assist in the short term, given that it only applies to proceedings commenced after the date when the convention enters into force in both the state where judgment is given and the state where enforcement is sought (Article 16).

If a party seeking to enforce an English judgment in an EU Member State cannot rely on either the Hague Convention or a bilateral treaty, it will need to proceed under the domestic laws of the jurisdiction where it is seeking to enforce the English judgment. Recognition and enforcement under the domestic laws of the relevant state is likely to be more burdensome, time consuming and expensive (depending on the jurisdiction), and additional local law advice is likely to be required. However, English judgments will continue to be enforced in EU jurisdictions in these circumstances: to add some perspective, this is

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[27] E.g., *Starlight Shipping Co v Allianz Marine & Aviation Versicherungs AG ("the Alexandros T")* [2013] UKSC 70.

[28] Although English judgments made in relation to proceedings commenced on or before 31 December 2020 will continue to be subject to these passporting rules.

[29] https://ec.europa.eu/commission/presscorner/detail/en/mex_21_3743.

effectively the position which has long applied (and continues to apply) to the enforcement of English judgments in the USA (and *vice versa*).

Finally, it is important to bear in mind two important, practical factors which may partly ameliorate the increased difficulty, post-Brexit, in enforcing an English judgment in an EU Member State.

- First, an English judgment can be enforced over assets in the jurisdiction, potentially including (for example) assets held through banks with a presence in England.
- Secondly, prior to the end of the Brexit transition period, under Article 24(5) of Brussels Recast, the enforcement of an English judgment in another EU Member State fell within the exclusive jurisdiction of that other EU Member State. As a result, if a judgment creditor was seeking to enforce an English judgment in an EU Member State, the English courts had a limited role. The English courts (probably) did not have jurisdiction to make certain orders that might assist the judgment creditor in enforcing the English judgment, such as orders requiring investigation into, and disclosure of, the judgment debtor's assets in the EU Member State. Now that Brussels Recast has ceased to apply to the UK, this restriction on the English courts has been lifted and a judgment creditor will be able to seek such orders from the English courts. If these orders reveal judgment debtor assets in any EU Member States, this could assist with the enforcement of the English judgment in those EU Member States.[30]

Conclusions

Overall, there are compelling reasons why international commercial parties should remain confident in choosing English governing law and jurisdiction, notwithstanding the changes outlined above. Jurisdiction clauses in favour of the English courts will continue to be respected, particularly where the Hague Convention applies and, even where it does not, the parties will have available powerful tools to police non-compliance with the terms of the parties' agreement on jurisdiction. Further, English judgments will continue to be enforced in EU Member States (and *vice versa*) under the Hague Convention (or another applicable treaty) or, if none applies, under the domestic rules of the jurisdiction where enforcement is sought. While proceeding under the domestic rules is likely to be less straightforward than under the EU regime, there are important mitigating factors in terms of the tools at the disposal of the English courts to facilitate enforcement.

Nevertheless, given that it currently appears unlikely that the UK will accede to the Lugano Convention (and even if it did, this would almost certainly have no retroactive effect), prudent contracting parties should ensure their dispute resolution clauses in favour of the English courts provide (where possible) for exclusive jurisdiction and are not asymmetric, in order to take advantage of the greater certainty afforded by the Hague Convention on matters of jurisdiction and enforcement. In any event, dispute resolution clauses should be subject to detailed consideration in light of the changes described above, including to take into account any factors affecting the jurisdictions where, for example, assets are located which may be enforced against in the event of a dispute being adjudicated.

As a final point, from a jurisdictional and enforcement perspective, what is the impact of Brexit on arbitration? The short answer is that arbitration is not affected by Brexit. The UK and the EU Member States remain contracting states to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Under the convention, the courts of the contracting states are required to treat arbitration agreements as valid and to recognise and enforce arbitration awards from any other contracting state (subject to and in accordance with the terms of the convention and each country's ratification of the convention). In fact, arbitration agreements with a London seat are more secure following the end of the

[30] This argument was articulated by Professor Adrian Briggs QC in his Combar lecture dated 24 January 2017 (see page 17) - https://www.combar.com/wp-content/uploads/2020/02/Prof-Adrian-Briggs-QC-Brexit-lecture-24.1.17.pdf.

Brexit transition period as the English courts can now grant anti-suit injunctions to restrain breaches of an arbitration agreement, even where the party in breach is pursuing proceedings in an EU Member State. As noted above, previously the English courts were prevented from issuing anti-suit injunctions by the operation of the Brussels Regulation and Brussels Recast.

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