

# **Brexit and Beyond: Will London Still Wear its Arbitration Crown?**

## **Kluwer Arbitration Blog**

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*The results of the 2018 Queen Mary/White & Case International Arbitration Survey were launched on 9 May 2018. The survey explores "The Evolution of International Arbitration": how international arbitration has evolved, the key areas for development in the future, and who and what will shape the future evolution of the field. This is the 4<sup>th</sup> survey conducted by the School of International Arbitration, Queen Mary University of London, in partnership with White & Case, and is the most comprehensive yet. Record participation from stakeholders around the world reflects the uniquely global nature of international arbitration.*

The subject of Brexit, with its attendant uncertainties and spectrum of potential ramifications, is one of the hottest topics of the day in all arenas of discourse: political, social and, of course, commercial. The position London enjoys as one of the premier commercial centres of the world means that the impact of Brexit will be felt far beyond British shores. We therefore sought to explore what the impact of Brexit might be in relation to international arbitration. In particular, we asked whether Brexit may potentially have an impact upon the use of London as a seat of international arbitration and, if so, to what extent?

London has long been held in high regard as a seat for international arbitration. In both our 2010 and 2015 International Arbitration surveys, for example, London was the seat most favoured by respondents. Our 2018 survey now reveals that not only has London cemented its position as the top seat worldwide, but its popularity amongst users of international arbitration has increased even further in recent years: 47% of respondents cited London as a preferred seat in our 2015 survey, rising to 64% in our 2018 survey. In addition, London was the most frequently chosen seat by respondents practising or operating in each of the global regions represented in the 2018 survey - i.e. across all continents. London's appeal as a seat, then, is a truly international phenomenon. This could, in a sense, be considered to parallel London's general position as a preeminent commercial centre whose reach and impact is global rather than merely local or even regional.

The spectre of Brexit, however, casts a shadow for many commentators over London's future position as a global centre of commerce. To what extent might this also prove to be the case in terms of London's position as an international arbitral seat? We tested this by asking respondents what impact they think Brexit will have on the use of London as a seat. Respondents were asked to indicate their view of the likely impact using a scale from 1 (negative) to 5 (positive). The number 3 represented an outcome of no expected impact at all.

The most popular view, espoused by just over half of the respondents (55%), was that Brexit is

unlikely to bring about any change as far as the use of London as a seat is concerned. Indeed, almost 1 in 10 respondents (9%) even expect Brexit to have a positive impact on the use of London as a seat. The remaining 37% of respondents were more sceptical, anticipating that the use of London as a seat will suffer, to a higher or lesser degree, due to Brexit.

Given the general air of uncertainty and pessimism that tends to pervade discussions concerning Brexit and its potential impact, these results may – on their surface – come as a surprise to some, who may have expected a more negative view would prevail. We sought to explore the reasons underlying the opinions expressed by respondents. These further findings explain why the post-Brexit outlook in relation to London’s position for international arbitration appears rosier than some may have expected.

We asked respondents to indicate up to three reasons for their views on the likely impact of Brexit on the use of London as a seat. The three most selected factors were: (1) “The English legal system will continue to be perceived as neutral and impartial”; (2) “The legislative framework applicable to arbitration and the English courts will continue to be supportive of arbitration”; and (3) “The UK will continue to be a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards”. All of these factors, which reflect the majority viewpoint that Brexit is unlikely to have any impact on the use of London as a seat, are aspects of the UK’s formal legal infrastructure which are not expected to be affected by Brexit. They also overlap with another set of relevant findings from the 2018 survey: when asked to explain the reasons underlying their preferences for a given seat, the most important factor identified by respondents is the “general reputation and recognition” of the seat (14%), closely followed by the “neutrality and impartiality of the local legal system” (13%), “national arbitration law” (12%), and “track record in enforcing agreements to arbitrate and arbitral awards” (11%).

This suggests that the essential reason why approximately 64% of respondents do not anticipate Brexit will have a negative impact on the use of London as a seat is that the features that historically and currently make London a popular seat will continue to be in place post-Brexit. As far as being a seat of international arbitration goes, then, it should be business as usual for London in the future.

At the same time, the concerns expressed by the not inconsiderable minority of respondents should not be ignored. Those who feel London will be negatively impacted are concerned by the uncertainties over the impact that Brexit will have on English law and the English legal system; they also feel that London’s commercial reputation and its appeal as a situs of arbitration may decline to the benefit of other seats.

Mindful of this last possibility, we also asked those respondents who expected Brexit to have a negative impact about which seats they thought might benefit the most from any future decline in London’s popularity. The clear winner here was Paris, chosen by 70% of respondents. Singapore and Geneva came in a distant joint second, each selected by 22% of respondents, with Hong Kong securing the nod from 15% of those who answered, followed by Stockholm (13%), New York (12%) and Zurich (6%).

Of course, as with so many aspects of Brexit, it is still too early to predict with any real certainty what the eventual impact may be. This is exacerbated by the lack of reliable empirical data allowing precise tracking of the frequency with which London is or has been used as seat. Furthermore, many of the disputes we will see over the next few years will have arisen from contracts entered into pre-Brexit, under arbitration clauses specifying London as the seat. Indeed, we have seen businesses continue to opt for arbitration in London in contracts concluded even after Brexit was formally triggered in May 2017. Based on the findings of our 2018 survey, though, the prognosis for London at present appears stable.

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