

Kluwer Arbitration Blog

London: Europe's Leading Arbitration Hub?

Leigh Crestohl (Zaiwalla & Co) · Monday, March 22nd, 2021

As the transition period following the United Kingdom's withdrawal from the EU approached, there was much speculation about what a "no deal" Brexit might entail. Optimistically, some drew inspiration from Singapore to suggest a possible future for the City of London as an "offshore" European financial services hub.

While the exclusion of financial services from the [UK-EU Agreement](#), which was concluded just before Christmas, might lead to renewed interest in that idea, the Singapore model may have more immediate relevance for European arbitration users and practitioners. Uncertainties about the private international law rules that will apply to UK-EU commercial disputes may lead to a growth in UK arbitration, as London capitalises on its traditional strength as the world's biggest hub for international commercial dispute resolution.

No Reciprocity

Although reciprocal law enforcement and judicial cooperation in relation to criminal matters has been included in the UK-EU Agreement (Part 3), no similar cooperation is contemplated for civil and commercial matters. In other words, on 31 December 2020, the [Brussels Regulation Recast](#) and the [body of rules](#) regarding service, jurisdiction, and reciprocal enforcement and regulation of court judgements ("Brussels Regulation system"), ceased to apply between the UK and EU member states.

This may have been deliberate. Retaining the Brussels Regulation system without acknowledging some role for the European Court of Justice may have been simply unachievable in light of the political narrative around "sovereignty". The result nevertheless is the functional equivalent of a "no deal" scenario for commercial dispute resolution. International conventions that replicate features of the previous Brussels Regulation system are an imperfect substitute (by way of example, see the [Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters](#)). These are characterised by uncertainties, lacunae, and cumbersome procedural requirements, with corresponding increases in delay, transaction costs and risk. A detailed discussion of those issues is beyond the scope of this post, but the reader will find a helpful summary in guidance notes prepared by the Law Society of England and Wales.¹⁾

Uncertainty to Fuel Demand for Arbitration

The uncertainty that commercial parties face as a result of this omission in the UK-EU Agreement brings into sharp focus the important role that arbitration may play. Commercial arbitration offers parties most of the advantages of the previous Brussels Regulation system, without reliance upon national courts, save for those matters outside the scope of the previous system in any event, as the [Brussels Regulation Recast](#), Art. 2(d) expressly excludes its application to arbitration.

It also calls to mind Singapore's experience which, over the last 15 years or so developed itself into a veritable commercial dispute resolution hub in Asia. The post-Brexit landscape now presents a similar opportunity for London to broaden its position as a leading "arbitration friendly" jurisdiction, to also become the leading "hub" for disputes involving European parties.

Gateway to Europe

London has long been a preferred venue for resolving commercial disputes and its credentials in that regard, which will be very familiar to readers of this blog, need no elaboration. However, in this it is not alone. Paris, The Hague, Stockholm, Geneva and Vienna are just a few well regarded arbitration venues in continental Europe. London's position as a seat outside of the EU (and EFTA as regards Switzerland) optically enhances its attractiveness as a neutral venue for international disputes involving overseas parties and parties in the remaining EU 27.

Firstly, there is likely to be an increase in demand arising from commercial relationships which might not otherwise have been subject to arbitration at all. This will result from uncertainties and risks associated with the end of the Brussels Regulation system in the UK. Those risks affect not only UK parties, but also global businesses that have traditionally used London as a "gateway to Europe", and possibly those which relied on English forum selection agreements.

Secondly, as the EU expands its trading relationships, including through trade deals such as the [Comprehensive Economic and Trade Agreement \(CETA\)](#) with Canada or its free-trade agreement with Singapore, the volume of commercial disputes involving either transatlantic or Asian parties can also be expected to increase. A number of the EU's most significant trading partners (e.g. the USA) will have stronger affinities with London by reason of history, legal tradition and language than any other continental arbitration seat. This may also be reflected in the fact that many commercial contracts continue to be drafted in English and subjected to English law.

In addition, London also has a highly developed legal "ecosystem". Having been at the epicentre of the industrial revolution, and more recently the "big bang" revolution in financial services, English lawyers have for centuries been at the forefront of developing legal solutions in step with commercial, scientific and technical development. Equally, despite Brexit, there remains a pool of practitioners trained and experienced in EU law, not to mention a vast array of other legal and technical areas of expertise.

Geography Matters

Geography, of course, is relevant. The transportation links, whether between the UK and continental Europe, or London and the rest of the world, are abundant and well developed. England is only 1 hour behind Central European Time and 5 hours ahead of the main financial centres in the USA and Canada. Moreover, as an island nation separate from the European continent, there may be a perception, optically at least, of neutrality.

In the current environment following Brexit, there can be no doubt that commercial arbitration commends itself as a practical means of navigating the uncertainties in risks. With this increase in the demand, and looking towards the future of even greater global trade involving Europe, London now has an opportunity to position itself not only as a leading global arbitration centre, but also as a hub for arbitrating European commercial disputes.


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References

?1 See the series of individual links under the heading “Civil Judicial Cooperation” in The Law Society [here](#).

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