

CLIENT ALERT

Post-Brexit London Will Remain a Pre-Eminent Arbitration Seat

Jul.25.2016

This alert forms part of a [series of updates](#) designed to help businesses prepare for the post-Brexit world. Here, we consider London's position as one of the world's leading centres for international commercial arbitration, and argue this will be unaffected by Brexit. Put simply, the attributes that make English law and London-seated arbitrations attractive to commercial parties are largely independent of the U.K.'s membership of the EU.

Below we discuss what we consider to be the most important of those characteristics.

Commercial parties will continue to put their faith in English law

It would be wrong to assume the Brexit will make English law unappealing.

Commercial parties choose English law primarily for attributes that have developed independently of EU law, not least English contract law. Brexit will have little impact upon the substantial body of enterprise-friendly English common law contractual principles, which has developed over several centuries. This corpus of case law benefits parties, who have a greater degree of insight into the likely outcome of their dispute than they would in jurisdictions with less developed legal systems.

London will remain a desirable arbitral seat

England is an extremely arbitration-friendly jurisdiction; Brexit will not change that. The English Court has shown itself to be very willing to exercise its powers under the Arbitration Act 1996 to support arbitration proceedings. This approach will continue.

In addition, parties to arbitrations seated in London are fortunate to be able to engage the service of a high-quality roster of independent arbitrators, with deep technical and industry-specific expertise. They will also still be able to call upon the services of world-class expert witnesses, who are so often crucial to the efficient resolution of complex commercial arbitrations.

It is also worth noting that London has a large group of experienced arbitration practitioners. Indeed, it is fair to say that virtually every major international arbitration practice has a presence in London.

One immediate effect of the Brexit referendum was a sharp devaluation of the pound. This means, for the foreseeable future at least, foreign parties can benefit from particularly economical rates for tribunal members, counsel and experts receiving payment in pound sterling.

A key attraction of arbitration is the ease with which awards may be enforced across the globe. English arbitral awards are subject to enforcement under the New York Convention 1958. Although all EU Member States have also contracted to the Convention, the enforcement of English arbitral awards does not depend upon European law or any of the EU's institutions. The enforceability of an English arbitration award – both within the EU and worldwide – will not, therefore, be affected.

London is at the forefront of developing new best practices in international arbitration. For example, in 2015 the Centre for International Arbitration published what it describes as “principles for an effective and efficient seat in international arbitration,” more often referred to as the London Centenary Principles. Brexit will not prevent London from continuing to seek to improve its arbitration offering: in fact it may very well prompt institutions and practitioners alike to expand those efforts.

The English Court may have greater autonomy to issue anti-suit injunctions

In 2008, the European Court of Justice determined in *West Tankers* that anti-suit injunctions within the EU were incompatible with Regulation 44/2001 (the so-called “Brussels Regulation”, which concerns the interaction between domestic courts in the EU). That meant the English Court could no longer issue an injunction to prevent a party to an arbitration agreement from pursuing in the courts of another Member State an action against its counterparty in the arbitration agreement. It is unclear at this stage, what – if anything – will replace the (now “recast”) Brussels Regulation, but it is possible that the English Court will once again be able to issue anti-suit injunctions in respect of proceedings in the courts of Member States.

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In short, although Brexit will doubtless lead to several years of uncertainty, we do not see any reason to suspect that London will cease to thrive as a premier jurisdiction for the conduct of international commercial arbitration.

Visit our [Brexit update page here](#) to read more of our series of alerts on the 2016 Brexit referendum.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

George D. Ruttinger

Partner – Washington, D.C.

Phone: +1 202.624.2670

Email: gruttinger@crowell.com

Gordon McAllister

Counsel – London

Phone: +44.20.7413.1311

Email: gmcallister@crowell.com

Edward Norman

Counsel – London

Phone: +44.20.7413.1323

Email: enorman@crowell.com