BRICK COURT CHAMBERS
BARRISTERS

Brexit: Jurisdiction, Enforcement and Conflict of Laws

A case of "Fog in Channel, Continent cut off?"

Monday 17 October 2016 at The Law Society, 113 Chancery Lane, London WC2A 1PL

The second in Brick Court Chambers' series of panel discussions on the legal implications of Brexit

Julian Makin Global co-head of mining, Freshfields Bruckhaus Deringer
Setting the scene

Sir Richard Aikens
Brexit and the Brussels regulation regime

Oliver Jones
The return of Anti-Suit injunction?

Ben Woolgar
Enforcement after Brexit: reversing or recasting?

Andrew Henshaw QC
Jurisdiction and Judgments: "can we fix it?" (or do we need the government to help?)

Moderated by Helen Davies QC

Visit the Brick Court Brexit Law Blog for all the latest insights from our experts: https://brexit.law/

Please use the hashtag **#brexitlaw** when tweeting about the event.


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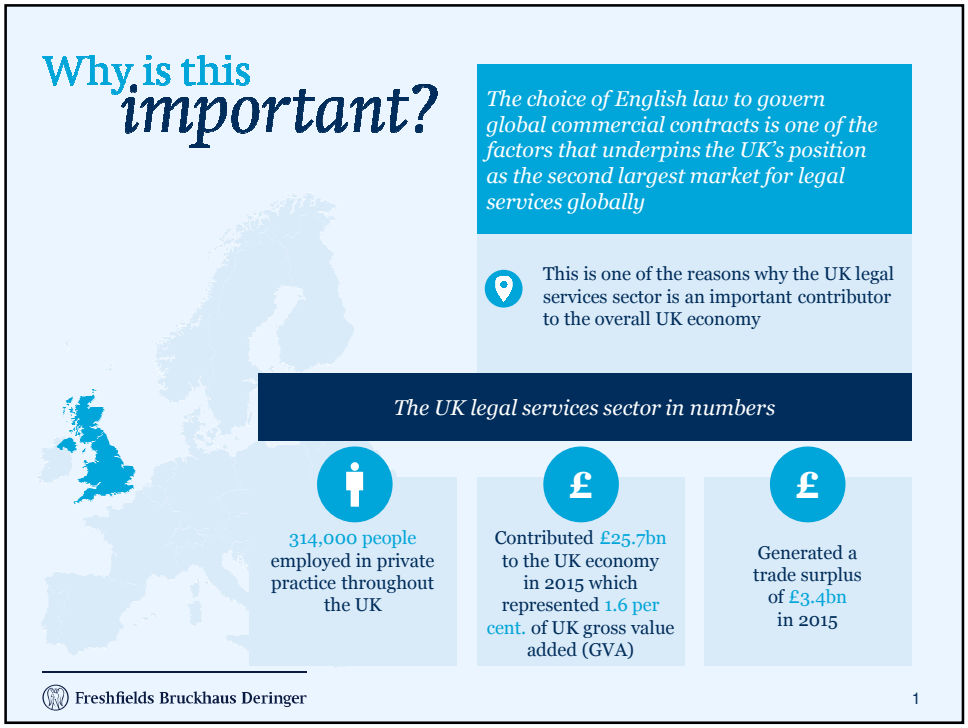
Brexit – Jurisdiction, enforcement and conflict of laws – A case of 'fog in channel, continent cut off?'
Setting the scene
Julian Makin – Partner at Freshfields Bruckhaus Deringer
17 October 2016


Why is this important?
The choice of English law to govern global commercial contracts is one of the factors that underpins the UK's position as the second largest market for legal services globally
This is one of the reasons why the UK legal services sector is an important contributor to the overall UK economy
The UK legal services sector in numbers
314,000 people employed in private practice throughout the UK
Contributed £25.7bn to the UK economy in 2015 which represented 1.6 per cent. of UK gross value added (GVA)
Generated a trade surplus of £3.4bn in 2015
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1

Breaking that down further

- The UK accounts for 10 per cent. of global legal services fee revenue and a fifth of European fee revenue
- Over 200 foreign law firms have offices in the UK – half are from the US
- Four of the ten largest law firms in the world based on gross fee revenue have their main base of operations in the UK
- Two of the largest four law firms in the world based on headcount have their main base of operations in the UK

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How popular is the use of English law?

The frequency of a choice of English law has been analysed in a variety of studies by academics and practitioners

A multinational sample of 100 businesses was recruited from various European countries and asked a series of questions on choice of forum and choice of contract law (2008)

- In response to the question '*When conducting cross-border transactions, what is your preferred choice of governing contract law?*' 21 per cent. of respondents said English law
- In response to the question '*Overall, which contract law do you think is the most used by anyone when conducting cross-border transactions?*' 59 per cent. of respondents said English law
- In response to the question '*When conducting cross-border transactions, is there any contract law the choice of which you try to avoid?*' 21 per cent. of respondents said US law

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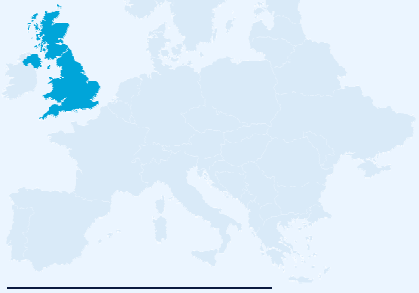
How popular is the use of English law? (continued)



- A study that involved feedback from businesses in various European countries found that the law most often used for cross-border transactions was English law (26 per cent.)
- A study by the University of Luxembourg stated that between 2007 and 2012 on average 11 per cent. of contracts contained an English law governing law clause with the highest yearly average of 15.43 per cent. being reached in 2012
- A survey of 500 commercial law practitioners and in-house counsel conducted by the Singapore Academy of Law found that 48 per cent. of them identified English law as their preferred choice of contractual governing law
- A survey by Practical Law revealed that where Chinese law is not mandatory, 69 per cent. of all contracts involving a Chinese company and a foreign company are governed by a foreign law and of those 18 per cent. are governed by English law

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How popular is the use of English law? (continued)

- More than two thirds of claims issued in the Commercial Court involve at least one party from outside England and Wales
- English law is the governing law in 40 per cent. of all global corporate arbitrations
- Members of the Commercial Bar Association were instructed to appear as advocates or experts in 40 international arbitration centres and courts in 25 jurisdictions globally
- Use of English jurisdiction clauses in industry standard documentation

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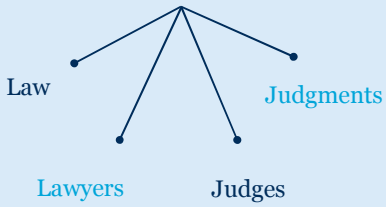
What influences choice of English law/English dispute resolution for global commercial contracts?

Quality



Certainty, predictability and clarity

English is the global language of business

An English law clause combined with an English litigation clause means that English courts will apply their own national law to the dispute

Reputation of English courts and arbitration (1)

Reputation of the English the courts

Reputation of English courts and arbitration (2)

English arbitration

Not linked to membership of EU

Enforcement through the New York Convention

A recent survey showed 47 per cent. of respondents preferred London as their arbitration seat (38 per cent. Paris and 24 per cent. Singapore)

Some examples of where we use English law in our practice

Securities offerings

Public equity offerings by European companies

Public equity offerings by Middle Eastern companies

Public equity offerings and private placements by Sub-Saharan (including South Africa) companies

Private placings GDR issues/debt issues by Russian/CIS/CEE companies

Some examples of where we use English law in our practice (2)

- Major Russian/CIS/CEE corporate deals
- Private M&A transactions where little or no nexus to the UK (including Asia, Middle East and Latin America)
- Private equity transactions
- Oligarch disputes
  - Very public examination in High Court versus confidential arbitration
  - Awards more likely to be recognised in Russia and CIS
  - English law recognises oral contracts
- Other

English law after Brexit?

What will 'English law' mean after Brexit?

The key issue is certainty

Do we have that at the moment?

- Issues to address
- The Great Repeal Act
- Power to amend/repeal EU law once converted into "English law"
- Status of decisions of The Court of Justice of the European Union

English law after Brexit? (2)

Will Brexit make English law less attractive to business?	What people are saying about the implications of Brexit on English law?
It shouldn't do but... Other countries are already offering to hear English cases	• "*Brexit means the end of English law as an international law of commerce and businesses should now choose the laws of other jurisdictions to govern commercial contracts*" • Other comments and commentary

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BREXIT AND THE BRUSSELS REGULATION REGIME

Richard Aikens

The present position: EU states and EEA states

- Regulation (EU) 1215/2012 ("Brussels 1 recast" or B1R) sets out the rules for jurisdiction of courts in civil and commercial matters as between Member States:
- The same regulation governs the rules for recognition and enforcement of judgments made in accordance with this jurisdiction regime.
- The Lugano Convention 2007 governs the jurisdictional rules as between EU Member States and Switzerland, Norway and Iceland (EFTA states but not Lichtenstein). It was concluded by the European Commission on behalf of all EU Member States. It has "direct effect" in the UK under the European Communities Act 1972 because the Convention was made an EU "Act" by the Council Decision of 15.12.2007: [2007] OJ L339/3.

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Key points about B1R and Lugano 2007 (1)

- Since the UK adopted the Brussels Convention in the Civil Jurisdiction and Judgments Act 1982, well settled rules have been developed for deciding jurisdiction of the English courts in relation to cross-boarder disputes in civil and commercial matters involving EU Member States. We are all used to operating these.
- B1R has much improved Reg 44/2001 and the old Brussels Convention. Main new "good points" under B1R:
  - "arbitration exception" now explained and clarified, although ***West Tankers*** itself remains good law. No "anti-suit" injunctions still.
  - Enforcement of jurisdiction clauses regardless of domicile of parties
  - "Italian torpedo" now effectively disarmed in cases where there are jurisdiction clauses, by new Art 31(2)
  - A measure of "forum conveniens" regarding courts of states outside the EU by new Arts 33 and 34, although circumstances in which it can be used are limited.

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Key points about the regulations (2)

- Lugano 2007 is, effectively, Brussels 1: reg 44/2001.
- Issues of interpretation of B1R ultimately have to be decided by the CJEU. Even for Denmark, which was a late adherent to Brussels 1.
- Lugano 2007 Protocol 2 recognises the danger of "divergent interpretations" of Brussels 1 and Lugano 2007, but the CJEU does not have jurisdiction over the courts of Switzerland, Norway and Iceland on issues of interpretation of Lugano 2007, although it does for all EU Member States.
- Instead Art 1(1) of Protocol 2 requires that any EFTA state court applying an interpretation of Lugano 2007 must pay "due account" to the principles laid down " by any relevant decision concerning the provisions" of the Brussels convention 1968 (as amended) Lugano 1988 and Reg 44/2001

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Effect of "Brexit"(1)

- Assume that Art 50 is "triggered" (one way or another) before March 2017.
- Art 50(2) contemplates the EU and the withdrawing state concluding a "withdrawal agreement" after notification has been given.
- Art 50(3) provides that "….the Treaties shall cease to apply to the state in question from the date of entry into force of the withdrawal agreement, or failing that, two years after the notification….unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period".
- Thus if there is no "withdrawal agreement" and no extension of the 2 year period, Art 50(3) will have effect and the "Treaties" will cease to apply.
- "The Treaties" means the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). It is Art 288 of the latter which states that a "regulation shall have general application. It shall be binding in its entirety and directly applicable to all Member States".
- So no Treaty, no applicable regulation.
- See also s 2(1) of the European Communities Act 1972. This gives effect to "all such rights, powers, liabilities, obligations and restrictions from time to time created or arising under the Treaties". Those include the TEU and TFEU.
- If the Treaties cease to have effect in the UK under Art 50, there is nothing left for s.2(1) to bite on.

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Effect of Brexit (2)

- My view, and I think that of most commentators, is that this will mean that, in the absence of any "withdrawal agreement", after the 2 year period has expired (and assuming no prolongation is agreed), then B1R (and its predecessor reg 44/2001) and Lugano 2007 will cease to have any effect.
- The big question is: what, if anything, will be left?

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Default position after Brexit (1)

- Section 2(1) of the CJJA 1982 remains in force.
- That states that "the Brussels Conventions (note the plural) shall have the force of law in the UK and judicial notice shall be given of them".
- The plural is there to encompass Lugano 1988, the 1971 Protocol to Brussels Convention (giving the ECJ jurisdiction to interpret Brussels) and various Accession Conventions.
- When Brussels 1 was agreed in 2000, Art 68 stipulated that it would "supersede the 1968 Brussels Convention".
- But it continued to apply as between Denmark and the other (then) European Community member states.
- The Brussels convention still also applied to various territories that were within its terms but excluded from Brussels 1 by Art 299 of the Maastricht Treaty.
- There are similar provisions in B1R about it "superseding" the Brussels convention. But Denmark is now within B1R.
- Although the current practical significance of the Brussels convention is virtually nil, it still has the force of law in the UK, save insofar B1R has effect: S1(4) of the CJJA 1982.

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Default position after Brexit (2)

- The Brussels Convention also still exists as an international law instrument between all the states that signed it.
- Art 68 of Brussels 1 and B1R stipulate that they supersede the Brussels Convention "as between Member States". Once the UK ceased to be such, then, it is arguable, this means the Brussels convention will come to the fore again.
- Would the Brussels convention apply to EU Member states that did not expressly sign it because they joined the EU after Brussels 1 in 2000?
- I think that it is arguable that it would: see Art 63 of the Brussels Convention, which has the effect of requiring new Member States to adhere to it. That is the only way that the Brussels convention can apply as between them and the territories that are outside the scope of Brussels 1 then B1R.
- If this became relevant and there was any doubt about it, then the issue would, ironically, have to be tested in the CJEU because of the 1971 Protocol which gave the European Court the jurisdiction to interpret the Brussels Convention. That Protocol remains in force.

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Default position after Brexit(3): Lugano

- Lugano 2007 will cease to have effect upon Brexit. See Art. 216(2) of the TFEU and s.2(1) ECA 1972.
- Art 69(6) of Lugano 2007 stipulated that it "shall replace" Lugano 1988. It is doubtful whether, as an international law instrument, the earlier convention still exists.
- All references to Lugano 1988 in the CJJA were removed and replaced by references to the 2007 Convention.
- There would be no legal sense in trying to resuscitate references in the CJJA to the 1988 Convention if it has ceased to be an international law instrument: it would not bind anyone.
- This will mean that, as between the UK and Switzerland, Norway and Iceland, there would be no existing jurisdiction/enforcement regime at all – or none we could be sure about!

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What needs to be done – URGENTLY!

- The EU and EEA countries will remain important trading partners of the UK, whatever type of trade deal is struck.
- Cross-border civil and commercial litigation between individuals and companies domiciled in the UK and other EU/EEA states will continue to be an important element in civil and commercial litigation in the UK and those states.
- It will continue to be important for all states to be able to enforce judgments in other states.
- Thus it will be important to have common rules on jurisdiction and enforcement across as wide a group of states as possible.
- The only questions are: what is the best regime for the UK and how is it to be achieved?

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The best solution: the easy bit?

- B1R made significant improvements to Brussels 1: see above. The UK had pressed for these in negotiations.
- It would be of considerable benefit to the UK to be able to continue to participate in the B1R regime.
- The way to achieve this is by a bilateral treaty between the UK and the remaining EU Member States, along the lines of the EU-Denmark treaty of 2005, which brought Denmark into Brussels 1.
- The B1R terms would be given the force of law in the UK by an amendment to the CJJA 1982.
- I suspect that there would be very little political objection by either the UK or the remaining EU Member States to such a treaty in principle.

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The best solution: the difficult bits?

- It would be in the interests of all that if there were amendments to B1R, then the UK should be involved rather than simply having to adhere to them as Denmark had to do for Brussels 1 (see Art 3(1) EU-Denmark agreement). Possible?
- The UK would wish to preserve its rights to decide on whether to enter independently into other international agreements, eg the Hague Convention on Choice of Law Agreements, currently in force for all EU Member States save Denmark and Mexico. The Hague Convention takes effect in the UK through TFEU Art 216, but it will not have effect after Brexit, unless provision is made for it separately. There is also a 2016 preliminary draft convention on recognition and enforcement of judgments which is part of the Hague Conference on PIL.
- The parties would have to resolve the issue of the jurisdiction of the CJEU on issues concerning the interpretation of the terms of any new EU-UK Treaty. That is a political "hot potato"!

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How is the CJEU issue to be resolved? The possible options

- Under Art 6(1) of the EU-Denmark treaty, the courts of Denmark have to refer issues of interpretation (now of B1R) to the CJEU, as would the courts of any other Member State. Politically difficult for the UK?
- Would Arts 1 and 2 of Protocol 2 of the Lugano Convention 2007 be a compromise? That is the UK courts would have to pay "due account" to the principles laid down in any decisions regarding Brussels/Lugano regime instruments by the CJEU/ECJ. Politically difficult for the EU? But it has accepted that for EFTA states, whereas Member States have to send Lugano 2007 issues to the CJEU, so perhaps possible.

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A second best solution: adherence to Lugano 2007?

- If an EU-UK treaty based on B1R were not possible, the UK could enter into a treaty with the EU and the EFTA states to adhere to Lugano 2007: Arts 70(1)(c) and 72 of Lugano 2007.
- This does need the consent of all existing contracting parties, but I imagine the existing EFTA state parties would not object and it seems difficult to see why the Commission, on behalf of the 27, should do so.

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Further reading

- See: Prof Andrew Dickinson: *Back to the Future: The UK's EU Exit and the Conflict of Laws 12 Journal of Private International Law 195 (2016).*
- Sara Masters QC and Belinda McRea: *What does Brexit mean for the Brussels Regime?":* 33 Journal of International Arbitration Special Issue, pp 483-500 (2016).
- Richard Aikens and Andrew Dinsmore: *Jurisdiction, enforcement and the Conflict of Laws in cross –border commercial disputes: what are the legal consequences of Brexit?":* forthcoming in a special edition of the European Business Law Review.

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THE RETURN OF THE ANTI-SUIT INJUNCTION?

Oliver Jones, Brick Court Chambers

The current position

- At common law, the anti-suit injunction was available where a party to a contract with an exclusive English jurisdiction clause sued, or threatened to sue, elsewhere, in breach of the jurisdiction clause. It was also available where the conduct of the person was considered vexatious or oppressive in some way in the eyes of English law.

- This was said to be on the basis that to impose an injunction in this context was not an interference with the jurisdiction of the foreign court (and was not binding upon the foreign court), but was simply with a personal restriction on a person over whom the English court had *in personam* jurisdiction.

- The ECJ was not satisfied with this reasoning. In **Case C-159/02 *Turner v Grovit* [2004] ECR I-3565**, decided in the context of the Brussels Convention, it held that anti-suit injunctions were incompatible with the principle of mutual trust that underpinned the European regime on jurisdiction, recognition and enforcement. In **Case C-185/07 *Allianz SpA v West Tankers Inc* [2009] ECR 1-663**, this reasoning was extended to anti-suit injunctions targeted at proceedings brought in another Member State in breach of an arbitration agreement, despite the fact that Article 1(1)(d) of the first Brussels Regulation stated that "the Regulation shall not apply to arbitration".

- The Recast Regulation changed the law in two relevant respects. First, the Court chosen by the parties in an exclusive jurisdiction clause was given greater priority (reversing **Case C-116/02, *Erich Gasser***). Secondly, an additional recital – recital (12) – was inserted addressing the arbitration exception. The impact that this has had on anti-suit injunctions in the arbitration context has given rise to some debate (see AG Wathelet's decision in ***Re Gazprom* [2015] 1 Lloyd's Rep 610** and the ECJ's subsequent judgment). The position appears to be that an arbitral tribunal can grant an anti-suit injunction (which can be enforced by Member State courts), but a Member State court cannot.

What is the default position on Brexit?

- One possibility is that we default to the common law by default: if this happens, then the anti-suit injunction will return as a remedial weapon in its full force.

- This, however, appears unlikely. If the Brussels Convention applies, then the principle in ***Turner v Grovit*** will continue to apply. There would be every reason to expect that the ECJ would apply ***West Tankers*** in that context as well. Anti-suit injunctions would remain a pariah in the European context.

- So, in that scenario, the result of Brexit would be that the UK would remain bound into the European jurisdictional regime, without any of the benefits negotiated in the Recast Regulation.

What would a good deal look like?

- As regards anti-suit injunctions, negotiating an exit from the Brussels Convention and a return to the flexibility of the common law may seem very attractive. For anyone who casts their gaze a little wider, however, it plainly is not. The anti-suit injunction may have to be sacrificed, therefore, on the altar of a wider and more certain system of mutual recognition and enforcement.

- The best outcome in relation to anti-suit injunction would appear to be the UK re-signing up to the Recast Regulation. This would likely still rule out anti-suits, but would address some of the concerns that the anti-suit was designed to ameliorate.

- Another outcome that has been mooted is the Hague Convention on Choice of Court Agreements. However the Convention may well be said to be based on the same principles of mutual trust that the ECJ felt were inconsistent with the anti-suit injunction in ***Turner***.

What should we do in the meantime?

- The primary focus in any commercial contract being entered into now must be for a clear and exclusive English jurisdiction or arbitration clause. If we default back into the Brussels Convention regime, then this will form a firm basis for jurisdiction. If we re-sign up to the Recast Regulation, it will give the English court power to carry on with proceedings despite a possible Italian torpedo. And if we end up back at the common law, this will give the English court power to block proceedings brought in breach of such a clause.

ENFORCEMENT AFTER BREXIT: REVERSING OR RECASTING?

Ben Woolgar, Brick Court Chambers

1. **What is the current system?**

    a. Step 1: Obtain your original judgment.

    b. Step 2: Obtain a certificate under Art.53.

    c. Step 3: Take it to the enforcement authorities in MS addressed.

    d. Step 4: Deal with any objections under Art.45 in court (if they arise).

2. **Why do we like it so much?**

    a. The system is procedurally simple – under Recast, no *exequatur* under Arts.36 & 39.

    b. The defences available are narrow – Art. 45:

        a) Contrary to public policy
        b) Judgment in default without proper service
        c) Irreconcilable with a judgment in MS addressed
        d) Irreconcilable with earlier judgment in another MS or third state
        e) Conflict with rules on jurisdiction in consumer, insurance or employment contracts.

    c. The enforceable judgments within the meaning of Art.2(a) are wide, including:
        a) Injunctions – (Case 143/78 *De Cavel (No.1)*)
        b) Interim orders – (C-39/02 *Maersk Olie & Gas*)
        c) Decisions on jurisdiction (C-456/11 *Gothaer v Samskip*)
        d) Interim payments – (Case 120/79 *De Cavel (No.2))*

    d. The system is fast and relatively certain

3. **What might replace it?**

    a. Watchword is reciprocity – English law can maintain status quo, but that is little use if other countries don't do the same.

    b. <u>Retain Brussels I</u>
        a) Is this option politically viable?
        b) Would we get reciprocity?

    c. <u>Enter Lugano</u>
        a) More viable – precedent for non-MSs.
        b) Exequatur still required.
        c) But narrower grounds for refusal.

d. Default back to the Brussels Convention
    a) Aside from the oddity of the situation, much the same as Lugano

e. Hague Choice of Courts Convention
    a) Currently only Mexico and Singapore participate along with the EU Member States.
    b) Only applies to exclusive jurisdiction clauses.
    c) Art.9 has a much greater range of reasons for refusal, including fraud, capacity or nullity of the agreement.

f. Bilateral arrangements under the AJA 1920 and the FJA 1933
    a) 6 existing Member States have these deals.

g. The common law position
    a) Much more time-consuming and uncertain: *Adams v Cape Industries plc* [1990] Ch 433.
    b) Greater degree of finality required: *Joint Stock Company 'Aeroflot-Russian Airlines' v Berezovsky and Glushkov* [2012] EWHC 317 (Ch).

4. **Are arbitration clauses the answer?**

a. Arbitral enforcement has always been outside the Brussels Regime, and *West Tankers* etc hasn't affected that.

b. The New York Convention is powerful, and generally widely observed.

c. Narrow grounds for refusal of recognition under Article V.

d. But if you didn't want arbitration before…

BREXIT – JURISDICTION AND JUDGMENTS
"CAN WE FIX IT?" (OR DO WE NEED THE GOVERNMENT TO HELP?)

Andrew Henshaw QC, Brick Court Chambers

Scenario: English client company (C) in dispute with Italian seller of machine (D1), supplied to England, and tort claim against manufacturer (D2)

	The problem	**Can we fix?**	**Government solution needed?**
1.	We need to serve a claim form in Italy	**Pre dispute precaution (vs D1)** Agent for service clause **Post dispute** (1) 1965 Hague Convention on Service (not Austria or Malta); or (2) by another method permitted under foreign law (CPR 6.40(3)(c)), e.g. bailiff or post	Service likely to be faster if UK negotiates continuation of the Service Regulation regime
2.	Will the English court have jurisdiction?	**Pre dispute precautions (vs D1)** (1) exclusive jurisdiction clause, + (2) agent for service in E&W; or (3) arbitration clause **Post dispute** (1) (Probably) Brussels Convention Art 5(1) & (3) (2) Failing which, English jurisdiction over D1 under 6BPD § 3.1(6) or 7, and over D2 under § 3.1(3) or (9). Permission to serve out. Forum non conveniens.	First choice: replicate Recast Brussels I. Failing that, sign and ratify Hague Convention on Choice of Court Agreements 2005 which covers *exclusive* jurisdiction clauses (EU already a party except Denmark)
3.	D1/D2 is threatening to sue us in Italy	**Pre dispute precautions (vs D1)** (1) exclusive jurisdiction clause, + (2) agent for service in E&W; or (3) arbitration clause **Post dispute** Pre-emptive English proceedings if: (a) no exclusive jurisdiction clause, (b) competing jurisdiction may not respect jurisdiction agreements, or (c) no contract e.g. D2 threatens pre-emptive action	As for box 2 above

4.	Which law will apply?	**Pre-dispute precautions (vs D1)?** Express choice of law clause. **Post dispute** (1) D1: Contracts (Applicable Law) Act 1990 Sch 1 Art 3 (chosen law) or Art 4 (may point to Italian law). Cp Rome I Arts 3 and 4.1(a) (2) D2: Private International Law Miscellaneous Provisions Act 1995 s11(1) and 11(2)(b) cf Rome II Art 4.1/5 (English law as place of damage) Cf e.g. competition cases (Rome II §6)	Preservation of the Rome II rules in particular would reduce uncertainly/arbitrariness re tort claims
5.	The contract no longer clear or sensible (e.g. licence in territory of the EU)	**Pre dispute precautions (vs D1)** Amend or confer a right to terminate. **Post dispute** Consider material adverse change, force majeure	
6.	We need evidence from a witness in Italy	Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. But: 1) Not all Member States party 2) Probably slower 3) Weaker party participation rights	Preferable to negotiate continuation of Evidence Regulation regime
7.	How do we enforce the judgment?	**Pre dispute precautions (vs D1)** 1) Exclusive jurisdiction clause? 2) Non-exclusive or asymmetric jurisdiction clause (‘wait and see’) 3) Arbitration **Post dispute** (1) enforce existing judgments asap (2) Brussels Convention (3) If not, six EU Member States party to 1933 Act conventions: Austria, Belgium, France, Germany, Italy, Netherlands (4) local advice	Preferable to continue Recast Brussels I, failing which Hague Convention on Choice of Court Agreements plus more bilaterals

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Speaker profiles

Brexit: Jurisdiction, Enforcement and Conflict of Laws

17th October 2016

Julian Makin
Julian Makin is a London-based corporate partner and global co-head of the mining and metals team at Freshfields Bruckhaus Deringer. His practice focuses on equity and debt capital markets (recently, he has advised on the IPOs of Vallares, Perform Group and Essar Energy), mergers and acquisitions in the energy and natural resources sector and general corporate law advice.

Helen Davies QC
Helen Davies is the joint Head of Brick Court Chambers. She has extensive experience in all aspects of Commercial Litigation, EU and Competition Law, having appeared as an advocate in numerous cases in the Commercial Court and Chancery Division of the High Court, as well the Court of Appeal, Supreme Court and the CJEU. She has also acted in many international and domestic arbitrations, and sits as an arbitrator. Helen has been identified as one of the leading practitioners in Legal 500 and Chambers and Partners for many years, and was featured in *The Lawyer* Hot 100 in 2014.

Sir Richard Aikens
Sir Richard practised from Brick Court Chambers in commercial law, specialising in shipping, insurance and re-insurance, banking, international trade and arbitration. He then became a High Court judge in the Commercial and Admiralty Courts from 1999-2008 (in charge of the Commercial Court in 2005-6) and a judge in the Court of Appeal from 2008-15. In the commercial sphere he gave judgments in all areas, including Republic of Ecuador v Occidental Exploration and Production Company, which was the first case in the English courts concerning Bilateral Investment Treaties and whether awards made under them were justiciable in court. He also gave judgments in many aspects of civil law, EU/competition law and public law (especially extradition). He conducted criminal trials and appeals in a wide variety of cases from murder to official secrets and fraud. He began teaching commercial law this year at King's College, London.

Andrew Henshaw QC
Andrew Henshaw has extensive experience of commercial, European and public law cases. His recent commercial experience includes acting for the defendant in *Berezovsky v Abramovich*; appearing for the claimant in a multi-billion dollar arbitration about a Russian commodity

company; and leading an LCIA arbitration claim involving allegations of economic duress. He has also appeared in a range of banking and financial matters, jurisdictional disputes and injunction applications. Andrew's EU experience includes recently leading one of the few successful claims for *Francovich* damages, defending a significant judicial review claim relating to medicines regulation, appearing for the UK in its challenge to the short selling regulation, and appearing in the CJEU challenge to the latest tobacco packaging directive. His public law experience includes the successful defence of the challenge by Leyton Orient to decisions about the post-Games Olympic Stadium and of judicial review applications against the Department of Health relating to food supplements and medical foods. He was formerly a partner of Linklaters, where he specialised in commercial litigation and qualified as a Solicitor-Advocate.

Oliver Jones

Oliver Jones is a leading junior with a broad litigation practice, encompassing commercial, public and international law. He regularly appears in heavyweight commercial litigation and is currently acting for the former CFO of Autonomy in his US$5 billion dispute with HP over alleged accounting fraud in the lead up to HP's acquisition of Autonomy, for insurers in a £650 million claim by SBM for loss of an offshore platform in the North Sea and for the trustee of US$3 billion of Eurobonds issued by the State of Ukraine in a claim arising out of Ukraine's non-payment as a result of alleged duress by the Russian Federation. The directories have said that "his ability far outstrips his call and he is a major star of the future". Oliver is a member of the bar of the British Virgin Islands where he has appeared in a series of asset freezing and jurisdiction disputes.

Ben Woolgar

Ben Woolgar has a broad practice focused on commercial litigation and arbitration. He is frequently instructed in High Court proceedings (in the Commercial Court, Chancery Division and Financial List), and has appeared in the Supreme Court. He has acted in two of The Lawyer's Top 20 Cases of 2016: *Pinchuk v Bogolyubov & Kolomoisky:* a multi-billion dollar dispute between Ukrainian oligarchs concerning ownership of an iron ore mine; and *Property Alliance Group v RBS:* a complex banking dispute concerning swaps misselling, LIBOR manipulation and RBS's controversial Global Restructuring Group. He is presently instructed in a range of international arbitrations and disputes outside the UK, including Brazil, South Korea, Hong Kong and Singapore.

For further information please contact us at clerks@brickcourt.co.uk or +44 (0)20 7379 3550.