

ENFORCING JUDGMENTS POST-BREXIT

The future of cross-border dispute resolution

English has been the language of international commerce; granting jurisdiction to the English courts in respect of cross-border contracts is attractive as a consequence of the English judiciary's reputation for its impartiality, predictability, respect for freedom of contract and pro-business approach.

English judgments are currently enforceable in all EU member states (and vice versa), but will the uncertainty surrounding the implications of enforcing judgments following the UK's departure from the EU make the UK courts a less attractive option?

What is the current position?

English court judgments are currently enforceable in EU member states under the **Recast Brussels Regulation (1215/2012)**. This is a straightforward procedure for reciprocal enforcement between EU member states, which means a judgment given in one member state is registered and can be enforced in another member state, as if it were a judgment of that member state. In relation to jurisdiction, the general rule is that the defendant should be sued in the state in which it is domiciled, but the parties can agree that the courts of a particular country are to have jurisdiction.

For example, a UK contractor experiences delays in the delivery of key materials from a supplier based in Germany, which impacts the completion of the project within the contractual completion date. The parties have specified, in the contract, that the UK courts have jurisdiction in respect of disputes. Currently, the courts in Germany will be obliged to recognise the UK courts as the choice of court, and recognise and enforce the judgment obtained by the contractor in the UK as if it were a judgment obtained in the German courts.

What happens post-Brexit?

Once the UK leaves the EU (two years after notice of intention to leave is triggered under Article 50), the UK will no longer be afforded the rights given to member states under the Recast Brussels Regulation (**Regulation**), i.e. UK judgments will no longer be automatically enforceable in the EU.

Taking the scenario above, because the Regulation only recognises choice of jurisdiction and judgments given by a court of a member state, the UK contractor will no longer have any rights as to the choice of jurisdiction in the UK courts, and the German courts will not be obliged to recognise and enforce a UK judgment in Germany.

Since the Regulation is founded on legal reciprocity, it cannot simply be transposed into English law by way of a Repeal Act, therefore what assurance can the UK government give to parties contracting cross-border that UK judgments will continue to be enforceable in the EU, for the UK courts and English law to remain attractive?

What are the alternatives?

The enforcement of English judgments in the EU will depend on the terms of exit negotiated between the UK and the EU member states. The ideal would be for the UK to negotiate a bespoke multilateral treaty to maintain reciprocal enforcement rights, however, given there are other issues (higher on the political agenda) to be negotiated, this is unlikely. Alternatively, the UK could opt to:

- ▶ join the **Lugano Convention 2007** – this governs jurisdiction and enforcement between EU member states and European Free Trade Association countries, on similar (but less straightforward) terms to the Brussels Regulation;
- ▶ ratify the **Hague Convention on Choice of Court Agreements** – applicable in circumstances where the parties have entered into a jurisdiction agreement and provides rules for the recognition and enforcement of judgments given by a court of a contracting state, designated under that Choice of Court Agreement.

What about Arbitration?

Whilst the position on enforcement described above remains uncertain, enforcement of English arbitration awards are unaffected by Brexit and, as a result, may become a more attractive option for resolving disputes. There is no piece of European legislation that specifically governs arbitration (it is excluded from the Brussels Regulation). English arbitration

awards can be enforced under the **New York Convention 1958**, to which all EU member states are signatories. The Convention requires reciprocal recognition and enforcement of awards between contracting states.

Regardless of the strategy the UK adopts, we think that the English court's reputation for the stability, independence and commercial expertise of its judiciary, advocates, experts and arbitrators is not one to be underestimated, and the certainty English law offers, may well outweigh uncertainty posed by Brexit.

Who to contact

The team at Addleshaw Goddard LLP will be happy to discuss the above with you. Please contact Joe Wilkinson or Heather Ibbotson.

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