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Leave means...business as usual? The Post-Brexit Implications for Dispute Resolution in the Middle East

On 31 January 2020 the UK formally withdrew from the European Union (EU). The decision ended a 47-year legal, political and economic partnership and started a new phase in which the UK will instigate its own trade agreements – with the United Arab Emirates (UAE) lined-up as one of the new jurisdictions for a post-Brexit trade deal. Of course, the UK and the UAE are not strangers to trade arrangements; having longstanding commercial ties.

In the modern era, even within the EU, investment between the two regions has continued. The UK's Department for International Trade has UAE as the UK's largest export market in the Middle East and the thirteenth biggest globally, with around £10 billion of exported goods and services for the most recent figures. Indeed, outside of the EU, the UAE is the UK's fourth largest export market.

The capital flow from the Middle East into the UK is also well-documented, with everything from businesses to real estate to football clubs benefiting from capital injections.

While post-Brexit trade deals may well boost investment and commercial agreements, both into and out of both regions, change may be on the horizon with regard to the resolution of any disputes which may arise out of such commercial agreements.

DISPUTES GENERATION?

Commercial litigation is largely untouched by Brexit. English civil law, and its use in governing contracts, is by and large separate from EU law and Middle East parties that may be operating or planning on entering English law agreements therefore need have no worry about any material changes post-Brexit. Likewise, the suggestion of using Brexit as a basis to claim force majeure is challenging from a legal standpoint, not least because the referendum and ultimate departure from the EU were both foreseen.



One possible issue, depending on any final trade agreement, would be the enforceability of UK judgments (including those obtained by Middle East parties) in the EU. The current position is that all judgments in EU countries are enforceable across the 27-Member States because they are recognised under the Brussels Regulations, through a reciprocal arrangement. Should the Brussels Regulations not be continued (albeit against the current indicated wish of the UK Government), Middle Eastern claimants may need to launch costly and time intensive standalone enforcement proceedings to enforce UK court judgments in each relevant EU country.

ARBITRATION OPTION

Brexit is unlikely to impede the ongoing popularity of international arbitration as a means of dispute resolution worldwide, including in London, as well as in the well-established seats for commercial arbitration in the Middle East. These seats are popular with sophisticated commercial parties and will remain so in the post-Brexit era, because they offer well-tested, impartial and confidential frameworks for extrajudicial dispute resolution, fully independent of EU legislation and institutions.

As a matter of cultural preference, Middle Eastern parties to arbitration agreements also commonly favour selection of a regional seat; in addition to being highly accessible and familiar to the international business community, Abu Dhabi and Dubai enjoy comparative geopolitical stability within the MENA region. From an enforcement standpoint, the UAE is also helpfully a signatory to the New York Convention and the UAE's New Arbitration Law 2018 has streamlined enforcement of awards in the local UAE courts. This creates generally favourable prospects for enforcement against assets, whether located in Abu Dhabi and Dubai or foreign jurisdictions.

COMMERCIAL CONSIDERATIONS

The current withdrawal agreement ends later this year and, whilst uncertainty remains as to the UK's arrangements with the EU – in particular what new trading arrangements will be in place with non-EU countries, including the UAE, going forward - there are some things that remain certain; the reasons for selecting English law to govern commercial agreements, not least fairness and predictability, remain valid. It remains to be seen how the enforcement of judgments across the EU or particular aspects of EU law will change, such that there is a potential need to revisit the use of English court jurisdiction. Whatever happens, post-Brexit London (and Middle East) seated arbitration will remain substantively unchanged, including because enforcement is regulated under the New York Convention.

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