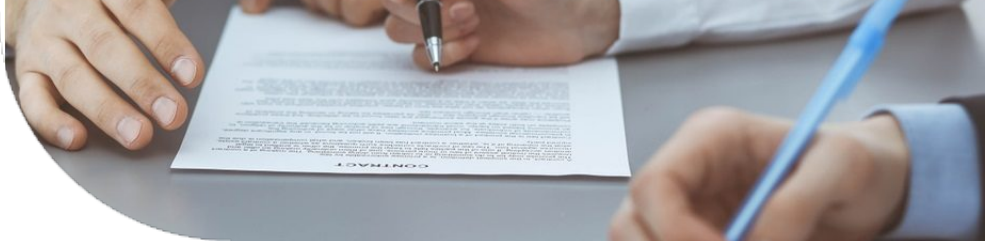

Post-Brexit: The Freedom to Choose English Contract Law

As a member of the MSI Global Alliance, we often act for international clients.

In any contract, the parties can negotiate 'boilerplate' terms. These 'boilerplate' terms are often in a standard form and can seem trivial until a dispute arises. Boilerplate clauses include those specifying the contract's governing law (i.e. the laws that apply to the contract) and jurisdiction (i.e. the court system that will deal with any disputes). Unsurprisingly, the governing law and jurisdiction clauses are particularly important in cross-border contracts.

English Law and Jurisdiction are longstanding favourites for international contracts. English law provides well-developed case law, some degree of certainty, equitable principles allowing for flexibility and contractual autonomy. English Jurisdiction provides an experienced and efficient judicial system in which to resolve disputes independently.

However, in the aftermath of Brexit, some contracting parties have been debating their use of English Contract Law due to increased uncertainty, particularly surrounding the relationship with the EU and enforceability.

Choice of Governing Law

Prior to Brexit, Courts in the EU Member States followed the guiding principle of the *EU Rome I Regulation*; Courts should give effect to Governing Law clauses in contracts. The UK has now incorporated the *EU Rome I Regulation* into UK law via *The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019*. Consequently, the ability to choose the contract's Governing Law is largely unchanged post-Brexit.

Post-Brexit, Courts in both Member States and the UK will continue to respect an English Governing Law clause. This means parties have the freedom to choose English Contract Law.

Choice of Jurisdiction

EU Member States use the *EU Recast Brussels Regulation* which generally adheres to Jurisdiction clauses, however, the position is not as simple as with the choice of Governing Law. The UK has not incorporated these

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regulations into UK law but will surely aim to keep the process as similar as possible. In the past, when conflicts of Jurisdiction have arisen and national law has been chosen, Jurisdiction clauses have been respected even if proceedings are not as straightforward.

Post-Brexit, Courts in both Member States and the UK will continue to respect an English Jurisdiction clause, even if the process is slightly less straightforward, allowing the parties the freedom to choose the English judicial system.

Overall, the choice of English Governing Law and Jurisdiction in 'boilerplate' terms will be upheld by both UK and EU Courts and therefore Brexit should not alter your choice of English Contract Law in your contract negotiations.

If you would like any advice or assistance with 'boilerplate' terms as well as general contract drafting, please feel free to contact our expert Corporate team by emailing online.enquiries@la-law.com or calling 01202 786183.

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