Brexit: Court Cases and Arbitration

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The UK is currently working through its notice period, having told the European Union “EU” that it wishes to take a different direction.

That notice period (known as the Brexit ‘transition period’) will come to an end on 31 December 2020. Up until that deadline, on paper at least, the EU will continue to treat the UK as if it were a member state but the UK is no longer allowed to take part in any of the EU institutions and government structures, which includes the European Court of Justice. All 78 UK members of the European Parliament and a single Judge on the ECJ panel of 11 Judges have now packed their bags.

Meanwhile, behind the glare of the media headlines over the future relationship, life continues as usual.

Court cases in the UK and the European Union:-

- The European Court of Justice will continue to deal with any cases brought against the UK up to 31 December 2020, whereupon it will cease to have any right to deal with such cases except for a small number of exceptions e.g. dealing with treaty issues before the UK gave notice to leave.
- Judicial co-operation between the two blocs will continue on any contract concluded before the end of the Brexit transition period – which gives a right to claim damages
- The Brussels Regulations, dealing with the choice of law or the choice of jurisdiction, will also apply up to December 2020.
- On enforcement and recognition – the Brussels Regulations will also apply to any proceedings taken before the end of the Brexit transition period.
- The service of documents and the regulations on taking evidence will also continue under December 2020.

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Arbitration proceedings

- Remain completely unaffected by the UK and the countries making up the EU.
- The recognition and enforcement of arbitrations is governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which became effective in 1959 (agreed in 1958)and now has 161 countries signed up to it. This enables a party with an arbitration award in its favour to turn an arbitration award into a judgement in the country where the losing party has its assets.
- European countries have entered into the Convention of their own volition, not as a European bloc.

What relationship will the UK and the EU have in relation to the enforcement of legal proceedings beyond December 2020?

- There are some interesting developments going on behind the scenes in advance of the December 2020 deadline.
- It should be possible for the UK bloc and the European bloc to come to some form of agreement on reciprocity in relation to issues like service of documents across national borders.
- In relation to enforcement, however, matters are likely to be overshadowed by other developments on the international stage. The Hague conference members (which currently encompass 82 individual states worldwide) approved the convention of 2 July 2019 on the recognition and enforcement of foreign judgements in civil or commercial matters, also known as the Hague Judgement Convention. This Convention seeks to bring Court Proceedings to the same level as arbitration award when enforcing foreign judgements everywhere in the world, i.e. countries to the Convention will recognise each other's Judgements and allow them to be enforced using a simple procedure, if assets are ground in their jurisdiction. This is a welcome development in terms of cross-border trade. Enforcing the decisions of courts in different jurisdiction, whether they are in the EC or not, is currently fraught with difficulty, where there is no mutual reciprocity agreements. In practical terms, enforcing an arbitration award is a much simpler process than trying to enforce a Judgement of a particular court.
- The European Union bloc are currently in the process of evaluating whether the Convention should be adopted by its member states. All the signs are that will encourage their member states to sign up. A public consultation is due to start in March/April 2020.

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- For the UK Bloc, taking up the 2019 Hague Judgement Convention would appear to be a no brainer as it effectively circumnavigates the need to come to separate agreements with the EU and other nations stares across the world in relation to the enforcement of legal proceedings in different jurisdictions.

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