Making sense of jurisdiction post-Brexit:

How will the courts approach jurisdiction following a no-deal?

Where do you wish to issue proceedings?

UK or Non-EU/EFTA country

In EU

In EFTA countries

Does the contract contain an exclusive jurisdiction clause?

YES

Has UK acceded to Lugano in its own right?

YES

Clause recognised under Lugano Convention

NO

Non-exclusive jurisdiction clause

NO

Is the jurisdiction clause asymmetrical?

Will domestic law in country of issue enforce clause?

YES

NO

No jurisdiction clause

YES

NO

Was contract entered into after Exit Day?

YES

NO

Was contract entered into before 1 October 2015?

Have proceedings already been issued in an EU Defendant's country of domicile?

NO

Will domestic law in country of issue enforce clause?

YES

NO

YES

Has opponent successfully challenged application of Hague 2005?

NO

YES

Is the Defendant domiciled in the country in which proceedings issued?

NO

NO

YES

YES

Clause upheld (domestic law) – EU court to stay proceedings

Issue protective proceedings in UK urgently

NO

Have proceedings already been issued in an EU Defendant's country of domicile?

YES

NO

Will domestic law in country of issue enforce clause?

Clause upheld (Hague 2005)

No change

Court first seised has/will determine jurisdiction

Proceedings commence in country named in clause

YES

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