



## Countdown to Brexit

### 10 things you need to know about managing disputes in a no-deal Brexit

#### 1 No-deal means no agreement

No-deal means there will be no agreement between the EU and the UK on the framework for ongoing and future civil judicial cooperation.

EU law will cease to have automatic effect in the UK on Exit Day. Any reciprocal arrangements between the EU and the UK will also automatically cease.

#### 5 Rules on jurisdiction

The current position as to which EU Court has jurisdiction is governed by the recast *Brussels Regulation*. This will cease to have effect in the UK on Brexit day. To counter the effects of this, the UK has ratified the Hague Convention on Choice of Court Agreements 2005 ("Hague 2005") in its own right (ie independent of the EU). This will provide some assurance that contracting states will uphold agreed exclusive jurisdiction clauses, in certain circumstances.

#### 2 UK law and EU law

The UK has legislated to deal with the loss of EU law by passing the European Union (Withdrawal) Act 2018. This Act will adopt into UK law the acquired body of EU law as at the date of exit.

#### 6 Hague 2005 – its limitations

Hague 2005 only applies in international cases and where the parties have agreed an exclusive jurisdiction clause. It is unclear whether it will apply to contracts entered into pre-Brexit.

Where the matter falls outside Hague 2005, parties will be obliged to rely on domestic common law and the statutory laws of the UK and the relevant EU Member State to determine jurisdiction.

#### 3 Is this a complete solution?

No. Many EU Regulations rely on reciprocal arrangements between EU Member States. So while the UK may adopt EU law after exit, the remaining EU Member States are under no obligation to do the same in respect of UK law.

#### 7 Enforcement of judgments likely to be more expensive

Hague 2005 can also be used to enforce EU judgments in applicable cases (where there is an agreed exclusive jurisdiction clause [in favour of the courts of the country in which judgment was given]). Unless Hague 2005 is held to apply, enforcement of UK judgments in the EU and vice versa, will be subject to domestic laws of the UK and the relevant EU Member State.

#### 4 Rules for choice of law

*Rome I* and *Rome II* Regulations govern choice of law and do not rely on reciprocity to operate. This means parties will generally be able to rely on current rules for choice of law in cross-border disputes.

The UK will also lose the benefit of the Lugano Convention post-Brexit, unless it accedes to it in its own right, meaning that there will be no statutory basis for enforcement of judgments of EFTA countries in the UK and vice versa.

8

### A temporary solution for enforcement of EU judgments in the UK

The UK has passed the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019, confirming its intention to recognise and enforce EU judgments provided that proceedings were commenced in an EU Member State court before Exit Day. For proceedings issued after Exit Day, in the absence of any other statutory basis for recognition, the common law will apply.

The European Commission, in a Notice issued in January 2019, confirmed that EU courts will only automatically recognise UK judgments post Brexit where the judgment has been exequatored (a court procedure to obtain a declaration of enforceability) in a Member State court before Exit Day.

9

### A new Hague Convention

The 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters has been finalised. It is broader than Hague 2005 and is not limited in scope to exclusive jurisdiction agreements. However, the EU and the UK have yet to ratify it.

10

### Arbitration is not affected

Deal or no-deal, arbitration will be largely unaffected by Brexit. The New York Convention which governs enforcement of arbitral awards cross broader, sits outside the EU Treaties. It has been adopted by many countries worldwide including Ireland and the UK.

### Further information

For more information on what a no-deal Brexit means for cross border dispute resolution, see [here](#).

You can also contact:



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EVE.DUB.2370 09/19