Brexit Update:
No deal Brexit? The UK to remain part of the Hague Choice of Court Convention in the event of a no-deal.

On 28 December 2018 the UK submitted its instrument of accession to the Hague Convention on Choice of Court Agreements 2005 to ensure that it will continue to apply in the event of a no-deal Brexit.

When reviewing commercial contracts, including professional services and insurance contracts, it is normal to see a jurisdiction clause stating that the courts of England & Wales have exclusive jurisdiction. This is a common position even if other parties or projects are based abroad, or are sourcing materials and labour from other EU member states. Whilst this may be a matter of convenience if you work with businesses or projects in the UK, the courts of England & Wales are internationally recognised as a pragmatic and technically capable mechanism of dispute resolution. This is especially true in construction disputes, with the Technology and Construction Court providing specialised legal expertise. However, there are concerns on the continuing ability to rely on these agreements and on the ability to enforce UK judgments throughout the EU in the event of a no-deal Brexit. This is particularly relevant in the construction sector due to the expectation that a significant amount of the UK construction supply chain will continue to rely on sources from within the EU.

In an attempt to address these concerns, on 28 December 2018 the UK submitted its instrument of accession to the Hague Convention on Choice of Court Agreements 2005, with the Convention coming into force on 1 April 2019 in the event the UK leaves the EU without a deal. The Convention requires the national courts of EU member states to give effect to exclusive choice of court agreements (i.e. jurisdiction clauses) designating the UK courts, and to enforce any judgments resulting from the same. The UK is currently automatically entitled to rely on the Convention as an EU member state, but after Brexit if there is no withdrawal deal agreed, it will be entitled to rely on the Convention in its own right.

In the event of a no-deal Brexit, there would be a two-day gap between the leave date and the date in which the Convention will apply to the UK in its own right. To address this, the Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018 (SI 2018/1124) will come into force on exit day and will apply to existing exclusive jurisdiction agreements to which the Convention would have applied but for the UK’s withdrawal from the EU, and exclusive jurisdiction agreements entered into between exit day and the date in which the Convention enters into force again for the UK. However, there is some uncertainty to whether the remainder of the EU will treat the Convention as continuing to apply to the UK during this period. Again, this is only relevant to a no-deal situation.

Readers active in the insurance sector will want to pay close attention to the instrument of accession as it contains a declaration that certain types of insurance contracts will be excluded from the scope of the
Convention. However, it is worth noting that the list of exceptions is widely drafted. For example, reinsurance contracts and insurance contracts covering an exhaustive list of “large risks” will have the Convention applied.

**Comment**

It remains to be seen whether the UK will leave the EU with a withdrawal deal or not. However, following the UK parliament’s recent rejection of Theresa May’s withdrawal bill, it is a real possibility. The UK’s decision to sign up to the Convention in its own right at least provides some clarity that EU member states will give effect to jurisdiction clauses designating UK courts and to recognise and enforce the resulting judgments in a no-deal scenario.

For further information please contact:

Anna Braden  
Associate  
+44 (0) 20 7469 0443  
a.braden@beale-law.com

Kevin Henderson  
Paralegal  
+44 (0) 20 7469 0475  
k.henderson@beale-law.com