

The New York Convention 60 Years On: BREXIT and other issues moving closer – an Irish perspective

7th DIS Baltic Arbitration Days
Riga, Latvia
15 June 2018

Prof. G Brian Hutchinson
Associate Professor, UCD Sutherland School of Law
Dublin, IRELAND
Principal, GBH Dispute Resolution Consultancy



How will BREXIT affect arbitration in England and Wales and Northern Ireland?



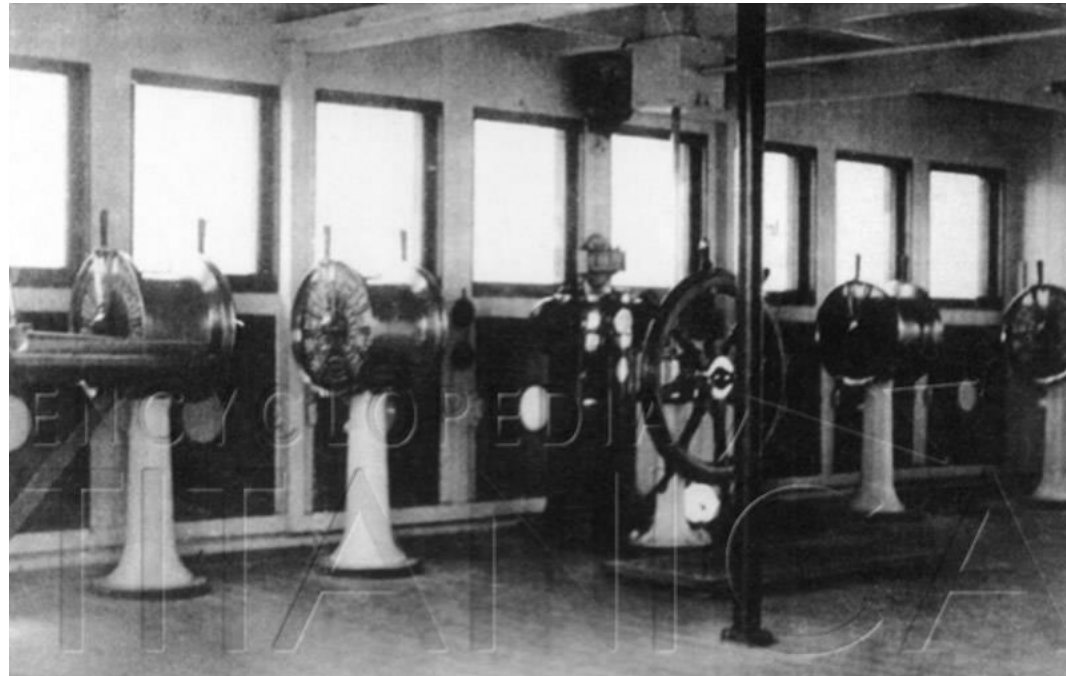
1. English Arbitration Law will remain largely the same.
2. English Contract Law will remain largely unaffected – subject to retention/removal of mandatory elements of EU Law.
3. English Arbitral Awards should remain enforceable under the New York Convention – subject to possible public policy concerns where mandatory requirements of EU Law are at issue.
4. BREXIT may allow the English courts to issue EU-wide anti-suit injunctions once again.
5. No point in wasting a good crisis! Commercial disputes arising out of BREXIT may spark a rise in the use of arbitration in England.
6. Loss of the Brussels Regulation post-BREXIT would/will increase the attractiveness of arbitration as means of securing enforceable decisions across borders.
7. Whether London diminishes as a global business hub – with knock on effect - remains to be seen.

How will BREXIT affect arbitration in the Republic of Ireland?



- No regulatory change to arbitration:
 - New York Convention adopted 1980
 - Arbitration Act 2010 adopted UNCITRAL Model Law – domestic and international arbitration
 - Precedential value of English cases persuasive, not binding, since 1922;
 - own jurisprudence emerging over last 30 years, supportive judiciary, good infrastructure
- Changes to business contracts:
 - Already a perceptible move to arbitration clauses to ensure enforceability in UK post BREXIT.
 - Some migration of UK companies (and professionals) to Dublin
 - Possibility of a bilateral UK-Ireland Brussels Recast style judgments convention?
- Increased attractiveness of Ireland as a seat?
 - English speaking common law jurisdiction geographically close to London remaining a member of the EU without the *West Tankers* effect – arguably not a *forum inconueniens* for the arbitration of issues having an EU mandatory law element...
- Investment Treaties – little effect
 - Ireland has no BITs and will remain party to the 68 EU/EC TIPs
 - Ireland has not been the respondent in an Investment Treaty case and has only one case where it is the home state of an investor (*The PV Investors v. Spain* PCA 2012-14)

Conclusions & Comment



Thank You



Prof. G Brian Hutchinson BCL LLM DAL FCIArb Barrister-at-Law
Chartered Arbitrator and Accredited Mediator
Associate Professor Sutherland School of Law, University College Dublin
Programme Director, Diploma in Arbitration, UCD

UCD, Belfield, Dublin 4, Ireland

Tel: +353 1 716 4143

E-mail: Brian.Hutchinson@ucd.ie

GBH Dispute Resolution Consultancy, Dublin, Ireland

gBh

Tel: +353 1 443 4360

E-mail: brian@gbh.ie