

MOFO BREXIT BRIEFING

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BREXIT: SERVICE

IMPLICATIONS FOR CONTRACTING PARTIES AND DISPUTES

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The process of Brexit will take many years, and the implications for our clients' business will unfold over time. Our MoFo Brexit Task Force is coordinating Brexit-related legal analysis across all of our offices, and working with clients on key concerns and issues, now and in the coming weeks and months. We will also be providing MoFo Brexit Briefings on a range of key issues. We are here to support you in any and every way that we can.

From a commercial contracting and disputes perspective, Brexit has the potential to impact four key areas: jurisdiction; recognition and enforcement of judgments; service; and governing law. This note focuses on the third of these areas – service. You can find our notes on the other three areas here:

- [Brexit: Jurisdiction](#) (30 June 2016)
- [Brexit: Recognition and Enforcement of Judgments](#) (30 June 2016)
- [Brexit: Governing Law - Implications for Contracting Parties and Disputes](#) (30 June 2016)

As with other areas, it is difficult to predict what the exact impact of Brexit will be on these matters until we know what post-Brexit model the UK will choose to adopt. In the meantime, there will be an inevitable period of uncertainty. That said, there are some practical steps that parties entering into or renegotiating contracts can take now to seek to protect themselves from the impact of Brexit and the intervening uncertainty.

How easy will it be to serve proceedings on EU parties post-Brexit?

Brexit is likely to impact the ease with which parties in EU Member States can be served with proceedings.

The current regime

Under the *Recast Brussels Regulation*, permission to serve English proceedings in another EU Member State is generally not required. In addition, the *EU Service Regulation* provides a clear and predictable process for effecting service in EU Member States.

Post-Brexit options

Post-Brexit, the Recast Brussels Regulation and the EU Service Regulation will cease to apply in the UK. Although it is theoretically possible for the UK and the EU to agree that the Recast Brussels Regulation will continue to apply, this is unlikely.

The more likely scenario under most of the potential post-exit models is that the UK accedes to the *2007 Lugano Convention*. Alternatively, the UK could seek to negotiate an individual treaty incorporating elements of one or more of the existing regimes.

Will permission to serve out of the jurisdiction be required?

A similar exemption to the requirement to obtain permission to serve out of the jurisdiction applies under the *Lugano Convention* as under the *Recast Brussels Regulation*. However, if the UK decides not to adopt the Lugano Convention (or an equivalent international treaty), parties will most likely have to apply to the English court for permission to serve proceedings in EU Member States under English law civil procedure rules (as is presently the case with respect to service in other countries outside the EU). This would create an additional (albeit generally easily surmountable) hurdle to bringing proceedings against parties in EU Member States, with associated substantial time and cost implications.

How will service be effected?

Whatever international treaty (if any) the UK adopts, the process of effecting service in EU Member States is likely to be slower and less predictable post-Brexit (as the *EU Service Regulation* will no longer apply). Service would likely need to be effected under the *Hague Service Convention* (in those EU Member States that are signatories to that convention) or another bi-lateral service treaty or, alternatively, under English civil procedure rules in any EU Member States for which there is no applicable convention or treaty in place.

What you should do now

A common practical work-around to address problems of service abroad (and avoid the need to apply for permission to serve out of the jurisdiction) is to include an agent for service of process clause in contracts, providing an address for service in England. It would

therefore be advisable in the short-medium term to ensure that such a clause is included in all contracts with EU parties.

Please do not hesitate to call with any question or concern that you may have. We're here to help.

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