

Paris and Amsterdam dispute London legal supremacy after Brexit

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May 9 2019, 12:01am, The Times



Paris wants to become the home of commercial dispute resolution after Brexit
ALAMY

Senior judges tend to head for the muggy heat of Dubai, Doha and Singapore when they hang up their wigs and retire from the London bench, but a market closer to home is emerging.

Britain's protracted yet still imminent departure from the EU has prompted the launch of English language common law commercial courts in Paris and Amsterdam. British judges who are forced to retire at a sprightly 70 could be just a Eurostar away from fresh careers in commercial dispute resolution.

However, lawyers in the City of London should not panic — the pillars of commercial law in the Square Mile are far from crumbling, say those attending the inaugural London international disputes week.

“Former English judges might well be tempted to sit in those courts in Paris and the Netherlands,” acknowledges Jonathan

and a few high-profile judicial appointments. Teams of common law litigation lawyers are unlikely to decamp quickly to Paris and Amsterdam, and forcing them to travel to the Continent will only increase costs in an already expensive process.

“Business people want as much predictability as possible when litigating,” says Wood. “While we can’t be complacent about London’s position as a litigation centre, Paris and Amsterdam are not immediate threats.”

Loukas Mistelis, a Greek lawyer and professor of transnational commercial law and arbitration at Queen Mary University of London, is harsher in his assessment of the new courts. “It is posturing by the French and Dutch governments,” he says, adding that suggestions that contract dispute resolution will haemorrhage to those courts are “Brexit scaremongering”.

To support his point, Mistelis points out that over the past year there were nearly 20 Dutch claims issued in London, despite the English language commercial court opening in Amsterdam in January.

More widely, the spectre of Brexit has had little impact on the numbers at the London commercial court. It had a record year in 2018-19, with 1,012 litigants from 78 countries issuing proceedings, according to figures from a report published this week.

There was a 54 per cent year-on-year increase in the number of litigants using the courts, suggesting that fears over enforcing judgments in the EU after Brexit are potentially misplaced. Cases from Europe dominated the London court list. Indeed, since the UK voted to leave the EU, the number of cases involving litigants from Europe has more than doubled.

“London has continued to expand as a hub for complex dispute resolution and the demand from clients for support both in and

annual survey of English commercial courts.

Eleni Polycarpou, co-head of arbitration at the London firm Withers, says that it is “inevitable” that the Paris and Amsterdam courts “will want to take the position currently unquestionably held by the English commercial court”.

However, she adds that “the decades-long experience and the quality of international cases currently still coming here will take a long time to match. The English court cannot be complacent, but as long as it continues to trailblaze developments in litigation — for example, by introducing artificial intelligence into disclosure — it should continue to be a leader in handling international disputes.”

Keeping pace with technology developments is a constant task, adds Richard Bamforth, the head of arbitration at the law firm CMS. He says that other jurisdictions in the Gulf states, Hong Kong and Singapore have made significant progress.

The biggest problem remains reforming disclosure rules that are straining under the weight of digital evidence. “We need to work out how to deal with the vast amount of material being generated in commercial claims,” says Bamforth. Updated rules came into force at the beginning of the year. It is too early to assess whether they are making an impact, but he says “they are a step in the right direction”.

The other perennial issue hanging over international dispute resolution in London is cost. The subject makes Square Mile lawyers squirm and not without reason. Members of the general public will struggle to understand how anyone is worth up to £1,000 an hour. If lawyers do comment on costs, they mumble about clients having to pay top dollar to get the best service — and in any event, have you seen how much they bill on Wall Street?

especially view the high fees they have to pay as an exhibition of their own wealth,” he says. “They and those from several other jurisdictions adopt the view that they litigate in London because they can afford to litigate in London.”

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