



Diminishing returns

English law will see some erosion of its popularity for cross-border contracts.

A significant minority of in-house counsel are already citing challenges to the use of English law in the face of Britain's exit from the EU – most notably when contracting with European counterparties. In the longer-term, the rising clout of Asian economies is also going to see more calls from companies to adopt local law – albeit often using common law systems closely modelled on England – while other jurisdictions are likewise positioning themselves as credible alternatives. HFW Dubai partner Nick Braganza, for example, notes the rise of the Dubai International Finance Centre Courts in recent years and the adoption of its common law code. “Globally, English law is still popular,” he says, “but here, the DIFC has largely taken up that role.”

Sonya Rogerson, UK legal head at Bank of China, meanwhile, points to the increasing popularity of Asian jurisdictions and Brexit enforcement concerns, noting: “English law will always have its big attraction, but I certainly don't think it will be the exclusive 'go-to' position.” SMBC Head of Legal for EMEA, Sean Edwards, highlights pressure to abandon English law in European financial contracts: “We are seeing a lot more demands to avoid English law on the derivatives side and on the lending side it is starting. It's starting to ramp up and will only increase over the next few years.”

The UK becoming a formal signatory of the EU-backed Lugano Convention, which governs national jurisdiction and mutual enforcement of judgments, would go a considerable distance to resolving doubts regarding English law. But while few doubt English law will be anything other than hugely popular for cross-border agreements in the coming years, it is hard to see how it can avoid at least modest erosion of its position by 2030.

This is an excerpt from an HFW report on the future of dispute resolution. To read the rest of the report, which includes a series of 30 interviews with senior in-house counsel and other leading figures from across the global disputes industry, as well as insights from our expert litigators, visit: www.hfw.com/litigation

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