

Meet McGuireWoods LONDON

What Lies Ahead?

As we embark on a phased return to normality, the McGuireWoods London commercial litigation team offers thoughts on what this means for the commercial real estate market...

Is the global prioritization of climate-related issues also leading to more litigation?

Absolutely. There is much greater regulation, imposition of social and environmental obligations in contracts, and recognition of harm caused to communities and ecologies historically. An important battleground for such claims is jurisdiction, and whether a UK parent company can be pursued for the alleged offences of its overseas subsidiaries. The recent English Supreme Court judgment in *Okpabi v Royal Dutch Shell Plc* clarified that jurisdiction can be established as long as the pleaded case is arguable, and no part of it is “demonstrably untrue or unsupportable.” The judgment makes it clear that groupwide policies, models of management, control or decision-making could trigger a duty of care for a parent company in a group.

Will the changes to witness evidence required by Practice Direction 57AC, which came into effect in England and Wales last month, improve things?

Maybe. Its scope is limited to trial witness statements in the Business and Property Courts, but it does demonstrate a big shift in attitude toward concepts of memory and truth (and reflects comment in other arenas, such as the ICC Commission report on witness memory in international arbitration, published November 2020). The Practice Direction introduces greater transparency about the use of documents to refresh memory and the witness’s strength of recollection. Many problems surrounding the unreliability of memory and the effects of post-event information are difficult, if not impossible, to eradicate but, as well as creating obligations to tackle some of those, the Practice Direction goes some way to acknowledge and increase awareness of the issues.

Has a resolution been reached regarding the recognition and enforcement of court judgments between the UK and EU in light of Brexit?

Sadly not. Despite the hopes of UK negotiators, the UK/EU trade deal was silent on these issues. Expect to hear within weeks whether the UK will be successful in joining the Lugano convention, which would replicate much of the pre-Brexit position on UK/EU recognition and enforcement of judgments, but unanimity is required from all other member countries (including the EU). Meanwhile, commercial parties may well be choosing to rely instead on arbitration clauses in UK/EU cross-border contracts, based on the knowledge that the New York Convention offers a proven regime for enforcing arbitral awards between countries.

Meet the Team



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McGuireWoods' London based international dispute resolution team leverages decades of experience to deliver results driven, cost-effective and innovative solutions, whether our client is in English litigation, international arbitration, or at the earliest stages of a dispute or regulatory issue. The team is known for handling complex, high stakes matters across a wide range of industries.

For more information, please contact any member of the team.