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Juristische Gesellschaft, and the British Chamber of
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The Future for the UK's jurisdiction and English law after Brexit

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**Sir Geoffrey Vos, the Chancellor of the High Court of England
and Wales**

Introduction

1. Mr Justice Simon Picken and I were here in Munich almost exactly a year ago. We are very grateful to both the Münchener Juristische Gesellschaft, and the British Chamber of Commerce in Germany for inviting us back and for hosting us here in these magnificent surroundings at the Justizpalast in München.
2. The rapidly changing events of the last year have been quite extraordinary. A year ago, we all thought that Brexit would be done and dusted by now. But as we all know, that is far from being the case. It is not for judges to speculate on political issues, and particularly on what is probably one of the most sensitive such issues to have arisen for many years.
3. What judges can do, however, is to consider some of the certainties of the legal position, whether before or after Brexit. There are, in fact, a number of factors that we have all been thinking about ever since the referendum took place in June 2016, now nearly 3 years ago. There are the several newly established commercial courts in EU countries and beyond. There is the question of how attractive the UK

courts will be to international parties after Brexit, and also what effect Brexit may or may not have on London as a seat for international arbitrations after Brexit. Then, there is the question of the enforcement of UK judgments in EU member states after Brexit. I will return to these issues.

4. But I want to start by making it clear that nothing that we say tonight should be interpreted as being parochial, insular or jingoistic. Both Simon and I practised as commercial lawyers and advocates, before we became judges. We appeared in cases in many countries across the world. Moreover, I sat as a judge overseas. We both worked for more than 25 years with business lawyers from almost every imaginable jurisdiction.
5. In addition to our domestic roles, we both have a long history of working with European lawyers and judges in our dealings with the EU and beyond. I am a past President of the European Network of Councils for the Judiciary, which some of you may know is really the only systemic judicial network in Europe. The ENCJ brings together the Councils for Judiciary and analogous governance bodies of the judiciaries of EU member states, and candidate member states. Mr Justice Picken is now the senior judge representing England and Wales in the ENCJ, having taken over from me, and he and I are personally committed to continue working with the ENCJ after Brexit.
6. Before coming on to Brexit, I would like to take a moment to consider the factors that are perhaps most important when business people come to choose the law and the jurisdiction that they want to be applicable to their contracts. That is, of course, when they have a choice. If, for example, you are investing in real property in China, you will not have that choice as PRC law will be applicable automatically. But I digress.
7. There are two preliminaries to any consideration of a choice of law and jurisdiction.
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9. The first is to understand that law and legal systems are by their very nature local and parochial. There are more than 200 legal systems in the world, and they are almost all operated in the local language of the country in question, by judges who generally only speak that language, and they have developed to serve the needs and interests of the local population. It is essentially unusual to have a legal system that serves the needs, let alone the interests, of international business parties. Historically, only a few legal systems have - perhaps England and New York stand out as examples, but there are, of course, others. This is partly because legal systems use their own peculiarly parochial procedural rules to determine their disputes – something to which I shall return.
10. The second preliminary is, I think, to understand the growing impact of technology on the dispute resolution process. Until recently, almost all legal systems resolved disputes using the minimum, if any, technology. But that is changing very rapidly indeed. In my view, at least, the way in which legal systems respond to the new technologies, such as distributed ledger technology, artificial intelligence and smart contracts will have a significant influence on the choices of law and jurisdiction that are made by the international business community in the future. It will not have escaped your notice that the technologies that I am speaking about are all almost entirely borderless. Distributed ledger technology in particular is borderless by definition in that the computer record is verified and indelibly recorded on nodes (or computers) across the world.

Factors affecting choice of law and jurisdiction

11. What then is important when businesses come to choose law and jurisdiction? Above all, I would identify the rule of law as a critical factor. Commercial parties have always been reluctant to invest in countries that do not benefit from the rule of law, because of the risk of systemic or political interference, and the risk of expropriation without any

effective legal remedy. An essential part of the rule of law is a functioning independent legal system, operated by high quality independent judges.

12. These factors, in my view, are top of the tree. But the costs and the speed of the legal system are also important. The costs of common law dispute resolution have historically been higher than the costs of comparable civil law systems. Speed is variable, but almost all legal systems have in the past taken a long time to resolve complex disputes, often partly because of the availability of unlimited rights of appeal.
13. It is also important, as I have already mentioned, for the judgments of the courts in question to be recognisable overseas, because otherwise judgments delivered may prove unenforceable. But, it is generally in the interests of all nations to enter into reciprocal enforcement mechanisms. Ultimately, I take the clear view that the imperative of good international relations means that friendly countries will agree mutually beneficial judicial recognition regimes.
14. So, if these are the factors, what is going to happen to the UK's jurisdictions and the usage of English law after Brexit?

The UK's jurisdiction after Brexit

15. The first thing to say is that, whilst there may be some political turmoil, the legal system of England and Wales is less affected by the uncertainty. Indeed, certainty and consistency are the essential benefits of English law. The common law system of precedent offers business people the assurance that the outcome can be predicted by the application of a set of rules that have been interpreted over centuries. Those legal rules can be adapted predictably to meet the demands of new and ever-changing commercial situations. That is one of the reasons why, as I see it, the common law is well-suited to meet the challenges posed by the use of the new technologies for financial transactions.

16. Secondly, the judges in England and Wales are pro-active in developing and improving our legal system to cater more effectively for the commercial world in which we now operate. There are three strands to this process.
17. In England & Wales, we have a major court reform project that is introducing Online Dispute Resolution for small claims up to £10,000, for divorce, for guilty pleas in criminal cases, and for many tribunal claims in relation to social entitlements and other issues. I am sure that smaller commercial disputes will ultimately follow. This is a crucial development, because it is properly aimed at improving access to justice, reducing costs and speeding up mainstream dispute resolution.
18. The second strand of development in the UK relates to smart contracts. In my view, it is extremely important that judges of the Business and Property Courts in England and Wales are up to speed with the way in which smart legal contracts will operate. 10 days ago, I gave a lecture at the University of Liverpool entitled *Cryptoassets as property: how English law can boost the confidence of would-be parties to smart legal contracts*. My thesis was that English law was in a good position to provide the necessary legal infrastructure to facilitate smart legal contracts. It is interesting that the coders who are developing the algorithms for smart contracts tend to believe, everywhere – not just in the UK – that no legal basis is necessary because the answer to every question and every dispute is built into the code. This is a mistake, because mainstream investors will not be prepared to put good money into cryptoassets unless they have the confidence their investments will be protected by an appropriate system of legal redress if things go wrong, or in the case of fraud or cyber-crime. As I said in my lecture last week, the lawyers will need to be persuasive about this, as coders are now developing technologies aimed at not having to wait until the legal position has clarified. I hope that English law and UK jurisdictions will be in the vanguard of providing state-of-the-art dispute resolution mechanisms specifically tailored to inclusion in smart contracts: they will need self-evidently to be cost effective and expeditious.

19. The third strand concerns the way in which we resolve major commercial disputes in the Business and Property Courts in London, and major commercial arbitrations too. The Commercial Court in London has a huge reputation internationally, and most of the parties to the disputes it resolves are based outside the UK. To enhance that reputation for the future, we are looking very carefully at our procedures and processes to ensure that international litigants (a) get value for money, and (b) are able to take full advantage of the opportunities offered by new technologies, LawTech and artificial intelligence to provide dispute resolution fit for the 21st century.
20. There are three good examples of this. First, on 1st January 2019, we introduced a disclosure pilot. Discovery in English legal proceedings has always been a strength, but an expensive one. We have now introduced a disclosure pilot at the specific request of the GC100 – the general counsel of the biggest UK and European corporations. It will limit disclosure to what is strictly necessary to enable the real dispute between the litigating parties to be fairly and economically resolved. The second example is the cost-capping pilot, also launched this year, that will enable the parties to agree in advance to limit the award of adverse costs. Thirdly, we are looking again at the rules on witness statements in commercial cases, with a view to limiting the need for lengthy witness statements in appropriate situations. In this connection also, London once had a reputation for delays in hearing cases in the Court of Appeal, the court in which I mostly sit. I am pleased to say that these delays are things of the past. We are now able to deal with appeals very rapidly. Appeals from our Financial List (the specialist judges that try our biggest cases about the international financial markets) are expedited even further, and can sometimes be dealt with in a matter of weeks.
21. These three strands of change add up to an imaginative programme of improvement to our commercial dispute resolution processes. But it is, of course, not all about court-based dispute resolution. In fact, London is holding its own as a seat for major international arbitrations. Enforcement of

London arbitration awards will, of course, not be affected by Brexit, since the New York Convention will continue to be applicable. The Arbitration Act 1996 in the UK is friendly to the commercial parties that decide to arbitrate in London. The Commercial Court, in particular, has supervisory jurisdiction over London arbitration. The links with the arbitration community are strong and beneficial.

22. Let me come then to what you are probably most interested in, which is Brexit. How will Brexit affect the use of English law and the UK's jurisdictions?

How will Brexit affect the use of English law and the UK's jurisdictions?

23. My short answer to this question is "not as much you may think". First, I think I can say, without undue immodesty, that the UK will continue after Brexit to appoint highly expert independent business and commercial judges. That is something for which we have, I think, acquired a good reputation over the years. The integrity of these judges is also not doubted, and that is, as I have already intimated, of great importance to those thinking of using a foreign jurisdiction for their international commercial dispute resolution.
24. Another important reason why I think London will continue to be attractive is because its domestic procedural systems are well-suited to international dispute resolution. I spoke last Summer at Erasmus University in the Netherlands attended by representatives of the new EU Commercial courts that are being established here in Germany and elsewhere. One of the main discussions was about procedure. There was quite a heated discussion between a senior Belgian judge and the representative of the new Brussels International Commercial Court about the legality of using a new bespoke procedural code instead of the Belgium Civil Procedure Code that would otherwise be applicable. The reality is that many of the new Commercial

Courts are dependent on the parties agreeing, much as they would if they were agreeing to arbitrate, to the applicability of a procedural code that allows the English language to be used and excludes the local Civil Code.

25. My third reason concerns the certainty of English law. People often say that English law will be rendered uncertain by Brexit. But that is a misunderstanding. In fact, English common law, as it applies to disputes between commercial parties, is quite unaffected by Brexit. European law, which will be frozen as at Brexit day is all about regulation, not the law of contract. So, the UK may have different regulatory rules after Brexit, but the law applicable to commercial dispute resolution will be the same.
26. At this point, I should return to new technology and artificial intelligence. My experience is that many lawyers have been reluctant to embrace these technologies, hoping perhaps that they will be able to retire before they have to get to grips with them. We are doing everything we can in the UK to take a different approach as I have tried to explain. Legal systems need to embrace the new technologies in order to preserve the rule of law. We also need to do so in order to take advantage of the costs savings that artificial intelligence will provide. Businesses will not be paying lawyers to do what machines do more quickly and effectively. This does not, contrary to what some fear, mean that lawyers and judges will be rendered obsolete. It just means that our legal systems will be more stream-lined.
27. In my view, therefore, English law and the UK's jurisdictions will continue to have many advantages after Brexit, as they have before. English law will remain certain, predictable and consistent, and the UK's jurisdictions will provide well-adapted, well-understood procedural systems adjusted specifically to facilitate international business dispute resolution.
28. The Business and Property Courts of England and Wales, including the London Commercial Court, have unrivalled expertise in financial services, insolvency, patents and

intellectual property, commercial cases, competition, corporate and property disputes. The Rolls Building, for which I have responsibility, has some 50 business and commercial judges sitting every day on major disputes. As such, it is the, or at least one of the, biggest dedicated business courts in the world.

29. Undoubtedly, Brexit has caused many international businesses to pause for thought when choosing English law and the UK jurisdiction. Many are, we know, waiting to see. But as I see it, the strengths that I have already alluded to will not be affected by Brexit, so that the Business and Property Courts in London should remain attractive after Brexit.
30. You will perhaps be surprised to hear that we are working closely with several of the newly established commercial courts in Europe and beyond to exchange ideas and improve our systems for the benefit of international businesses generally. In June and October this year, we have three judges from the new Paris Commercial Court visiting London for two weeks each to sit with our judges.
31. As things stand today, it is unclear whether there will be an immediate agreement, after any transitional period, as to the reciprocal enforcement of judgments between EU member states and the UK. But, as it seems to me and as I have said, it is to the advantage of both the EU and the UK for such an agreement to be reached, so I would not expect it to be long delayed. The UK Government has made clear that it intends to try to negotiate an arrangement with the EU that perpetuates the Brussels Recast Convention. It will replicate the Rome I and Rome II Conventions in English law. It has also said that it intends to become a party in its own right to both the Lugano Convention and the Hague Convention on Choice of Courts 2005.

Conclusions

32. I hope that I have been able to explain briefly why the English judiciary has high hopes for the future. We are determined not to stand still. We are moving forward rapidly with the provision of online dispute resolution, and hope to be instrumental in deciding cases involving smart legal contracts and distributed ledger technology in the very near future.
33. I should also say that the judges in the UK are keen to continue to participate in European judicial organisations. Over many years, the judges of European nations have undertaken numerous contacts and exchanges to broaden their experiences and to improve their own justice systems. UK judges have been enthusiastic participants, whether through the European Judicial Training Network or otherwise. We have a steady stream of judges from almost all European (and other) nations visiting our courts in London and across the UK almost every week. Whatever political events occur, justice systems will still need to work closely together to ensure that they can best serve their national and international users. The UK's judges will want to remain enthusiastic participants in these cross-border activities.
34. Many thanks for your attention. Simon Picken J and look forward to answering your questions.

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