Why businesses should choose English law and U.K. jurisdiction

Law, its extent and method are critical to doing business; and English law provides a highly desirable system. It is predictable yet innovative; and also apolitical. The legal environment it creates supports commercial transactions and all aspects of the commercial marketplace. The main reasons for selecting English law, and its advantages, are discussed below. This document is necessarily high level and does not constitute legal advice.

Key benefits of English law

The advantages of English law include the following factors.

(1) **The law supports business ambitions, powering global business rather than slowing it down.** For example, English law allows for:

a) **Contractual certainty and predictability.** The courts enforce contracts (where possible) in accordance with their terms.
- If necessary, they use techniques of predictable effect to discern what the parties intended when their meaning is unclear. Intention is considered objectively, based on what a reasonable person would have intended the contract to mean.
- The courts are less concerned with the factual circumstances surrounding the written contract than in many other jurisdictions.
- If, properly construed, a contract provides for a right to be exercisable, the fairness of or motivation behind the exercise of that right is not relevant.
- The courts are respectful of exclusion clauses and limitations of liability where these do not conflict with the parties' fundamental contractual obligations. They also respect specified time periods: there is no implied duty to allow a grace period.

b) **Commercial freedom:**
- English law views the contract as a mechanism for agreeing the allocation of risk; it is not concerned with the fairness of the bargain or the adequacy of the price. Allowances are not generally made for subsequent changes of circumstances where these have not been addressed in the contract. This contributes to predictability and certainty, and helps to facilitate hedging and insurance of contracts;
- Unlike some other systems, English law does not seek to apply a general legal duty of good faith to override or modify the effect of what was stipulated in the contract (except sometimes in a consumer context);
- there are in general no mandatory rules, or rules which apply to particular contracts in the absence of a contractual provision (except in a consumer context), and no rules for different types of contract. This avoids having to categorise the nature of the obligation and makes it easier to draft contracts to deal with sophisticated or complicated obligations;
- no party is bound until the contract is formed or (in some situations) performed (i.e., either can walk away before that moment); this is because, unlike the position in some other systems, there is no general duty of good faith for pre-contractual negotiations; and
- minor drafting errors do not generally nullify transactions; rather, the parties' intentions and actions are upheld and contractual provisions are construed accordingly or, in certain circumstances, rectified by the courts.

c) **Recognition of the trust and equitable ownership,** which allow for more sophisticated and flexible holdings of assets and provide a mechanism for insolvency-remote property holdings by intermediaries and custodians, and the holding of securities and financial assets by banks and custodians.

d) **Confidence in the system,** through the doctrine of precedent, which allows for flexibility and the evolutionary development of the law by the courts to match the modern business

environment, without waiting for legislative action. English law commercial precedent evolves through commercial practice, and comprises a long history of legitimate expectations of business persons reflected in the judgments given by the courts. In this way, the markets contribute to the development of the law, and English law can be applied with confidence to new areas such as sustainable finance, fintech and crypto assets. Precedent cases are publicly available and readily accessible.

e) **A sophisticated body of common law,** which provides for clear rules and principles on core legal issues not otherwise dealt with by legislation.
f) **Robust commercial law, which is suited to international trade.** English law's economic value is rooted in international and national business activities. English contract law grew out of commercial transactions and business practices. Commercial law is central to it, not a separate body of law as in some countries.
g) **Damages for contractual and tortious breach** which are awarded to compensate rather than punish. There is no concept of punitive or penal awards, and the approach is proportionate and moderate. Where damages are insufficient, equitable remedies may be awarded to compel specific performance by a non-performing party, but in most contracts this is the exception rather than the rule.
h) **No juries in commercial cases;** juries can create unexpected results or make excessive damages awards (as, in some cases, in the U.S.).
i) **Robust conflict of laws rules,** ensuring that international situations are properly and appropriately dealt with by the U.K. courts.

(2) **The English law system leads in the development of legal thinking.** It is visionary and progressive; constantly evolving and looking to the future; and built on a "can do" attitude. It has proved flexible for adapting to societal changes and events over the centuries. For example, English law has adapted easily to the emergence of technology used to "sign" or enter into contracts, while some other countries have had to introduce new, specific, rules. The volume of English law business, the global reputation and reach of leading U.K. practitioners and legal practices, and the long tradition of English lawyers being involved in the structuring and negotiation of transactions, means that there is a large body of practitioners with a great depth of international experience and specialist industry knowledge.

(3) **The system has the support of a robust court and arbitration infrastructure,** well equipped to handle English law disputes and, where appropriate, embedded non-English law issues.

a) **The U.K. is a leading place for the resolution of disputes** involving international contracts (whether governed by English law or not). The U.K has numerous alternative, well-established means of dispute resolution - e.g., arbitration, mediation and electronic dispute resolution - based on a sound dispute resolution infrastructure. It has a deep bench of commercial experts.
b) **The U.K. has strong and relatively fast and efficient judicial and arbitration systems,** with high quality judges and arbitrators who are expert in handling disputes, experienced, adept in commercial matters and ethically sound. These judges and arbitrators are generally chosen from the most successful practitioners, ensuring that no time is wasted in explaining basic commercial contexts and concepts. Specialist courts are presided over by judges dedicated to the particular topic, allowing complex cases to be dealt with predictably and efficiently.
c) **State of the art technology** is available for judicial proceedings - e.g., live streaming and remote hearings. There is a wider, progressive, dispute resolution sector, constantly innovating. For example, the U.K. Jurisdiction Taskforce recently introduced the Digital Dispute Resolution rules, which are designed to enable the quick and cost-effective resolution of commercial disputes involving new digital technology such as crypto assets, cryptocurrency, and smart contracts.

How to choose English law and U.K. jurisdiction

It is important to understand how English law may be invoked.

- **First**, in contract, it is possible expressly to choose English law. A further step is to submit to the jurisdiction of the U.K. courts, or to choose London as the venue and seat for arbitration. Both of these steps are possible for most corporate transactions, regardless of the counterparties or your/their location. However, there will be some exceptions, for example for consumer contracts, where local law is often applied.
- **Secondly,** another relevant governing law will often be the law where a service provider or counterparty is located. This will be relevant to aspects such as regulatory matters (including financial regulation), and the corporate law and insolvency laws to which the service provider or counterparty is subject. Taking advantage of U.K. regulation, and U.K. corporate and insolvency laws, generally requires a business to be located here (although other factors, including the law governing the obligations of the business, may be relevant).
- **Thirdly and importantly,** property rights are usually governed by the law of the place in which property is located. For immovable property such as land, and sometimes for valuable chattels, there will usually be little or no choice in this respect. However, for financial assets, such as securities, U.K. property law can usually be chosen by locating the relevant holder of the asset in the U.K., and it is sensible to choose the U.K., as the country which has a highly attractive system; the application of its rules is respected internationally under the so-called "PRIMA" approach. The advantages of English property and trust law have resulted in the U.K. being a key global jurisdiction for the custody and holding of financial assets.

Why establish business vehicles in the U.K.?

U.K. business vehicles – formation, restructuring and insolvency

It is easy to incorporate companies and set up other forms of business vehicle in the U.K.. Corporate law is flexible and the U.K's restructuring and insolvency laws are seen as efficient and fair, and having appropriate regard to creditor (including secured creditor) interests, thereby ensuring an attractive investment environment and an efficient capital market. The insolvency laws also apply to overseas debtors and provide for the recognition of overseas insolvency procedures, enhancing the efficiency of cross-border insolvencies. This means that the U.K. is often seen as a hub for international restructuring or insolvency matters. In addition, English law encompasses the highly developed recognition of trusts, security interests, netting, set-off and other means of reducing exposures. There have been no surprising decisions in the UK affecting the global financial markets – e.g., no decisions casting doubt on the viability of derivatives contracts, netting or other essential market tools.

U.K. regulation

The U.K.'s regulatory system is flexible, well managed, and can be changed quickly, by professional regulators. The regulators:

- are respectful of the free market;
- seek to focus on matters of untoward risk to customers, the credibility of the market and the ongoing strength of the system as a whole; and
- do not impose penal fines, nor fines imposed to fund their own, or U.K., activities. Fines are instead set at a level which achieves deterrence; compensatory orders can be made.