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COMMERCIAL DISPUTES

Disputes in the commercial world are inevitable and it takes a sound knowledge of the laws that surround it to ensure a fair and satisfactory outcome for all parties. To find out more, *Lawyer Monthly* speaks to Gordon Nardell QC from 39 Essex Chambers in London.

You qualified as a solicitor in 1987 and moved to the Bar in 1997, what changes have you personally witnessed that have affected the commercial dispute resolution sphere during that time?

I practised litigation in what was then a regional commercial firm. It's now one of the major international players. The internationalisation of legal practice is the biggest single change in dispute resolution work. For a while the Bar was behind the curve, but it is now fully engaged in this transformation. My chambers have opened annexes in Singapore and Malaysia, and I regularly work with lawyers in other jurisdictions in Europe and beyond. The change has forced the Bar to become much more attuned to team-working and clients' business needs.

How would you like to change the legislative framework which regulates dispute resolution?

One of the biggest challenges is the piecemeal legislative framework at international level. For commercial claims within the EU we have the luxury of recast Brussels I and a host of other instruments that aid cross-border dispute resolution. The New York Convention enables almost universal international recognition of arbitral awards. There is no obvious reason why we shouldn't move closer to a more uniform regime for cross-border enforcement of state courts' commercial judgments. It's a question of political will.

I see much of your work surrounds renewable and conventional energy projects in Europe and Asia; what are the main causes of dispute in these areas?

Renewables especially are high capital cost, high risk projects that can easily be toppled by a change in the political or financial wind. The two often go together: European governments' austerity response to the financial crisis led to some major reversals in energy policy, provoking an unprecedented wave of high-value investor claims under the Energy Charter Treaty. Meanwhile one of Europe's most successful exports to emerging markets, including BRICS and MINT countries, has been its sophisticated rules for regulating areas such as competition and environmental impacts. Some parts of the global energy sector have faced particular problems of adjustment to the new rules, spawning large numbers of disputes. This is where English legal expertise in areas such as EU law can add real value to the work of local lawyers.

You also work on EU procurement cases; what are the biggest challenges you face within this? How do you overcome these challenges?

Like many areas of EU regulation, the law is fast-moving and can catch out public bodies and businesses that are slow to respond. My colleagues and I now find ourselves involved at much earlier stages of major projects, attempting to minimise the risk of disputes. Procurement is another area where EU principles – including transparency and equal treatment – have been absorbed into other legal systems, especially those with historic problems of corruption in governmental contracting. There the challenge is to ensure the rules are not just enacted but properly enforced. I have been collaborating with lawyers in a number of jurisdictions to help achieve that.

Have you seen a rise in popularity of alternative types of dispute resolution? If so, to what do you attribute this?

Certainly – this is another of the big shifts in approach since I began practising law. The rising cost of litigation and arbitration has focused business minds on finding better methods of settling disputes. The increasing professionalization of mediation is also a factor. The advocate's mind-set is no longer the simplistic "how do we win this battle". It's a much more subtle judgment about getting the best from a spectrum of processes of which litigation and arbitration are just a part, alongside a growing range of options including mediation, med-arb and so on.

From a personal point of view, which do you enjoy working on the most, litigation or arbitration? Why?

Arbitration wins for the flexibility of its processes, and the chance it gives the Bar to demonstrate our skills as advocates and dispute resolvers on a wider canvas than just the traditional courtroom setting. But I'd be sorry to abandon the courtroom altogether.

Is there anything else you would like to add?

What's exciting is that commercial law is now so much more than litigation in the London civil courts. I see the crossover between commercial claims, regulation, EU and international law as the major growth area of the next few years, and I'm looking forward to the challenge. **LM**

39 Essex CHAMBERS