

# **THE REVISED LUGANO CONVENTION: Consumer Contracts, Place of Jurisdiction and Applicable Law in Italy**

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## Place of Jurisdiction - 1

In case of disputes arising from cross-border financial services contracts between a foreign Bank and an Italian consumer, the **place of jurisdiction** shall be determined as follows:

- a) If the Bank is based in EU (except for Denmark), **Article 16** of EU Regulation no. **44/2001**, also called Brussels I Regulation, shall apply. It will be replaced by EU Regulation no. 1215/2012 from 10 January 2015 (no relevant changes on consumers protection however);
- b) If the Bank is based in Switzerland, Denmark, Norway or Iceland, **Article 16** of the **Lugano Convention of 2007**, also called the **Revised Lugano Convention** (EIF for Switzerland on 01/01/2011), shall apply;
- c) If the Bank is based in other non-EU countries, **Italian Law 218/1995** (International Private Law) shall apply which refer to **Brussels Convention of 1968**.

## Place of Jurisdiction - 2

According to the legal provisions cited in the previous slide:

- The Bank **must compulsorily sue** the consumer in front of the Court of the consumer's domicile, despite the written agreement with the consumer states otherwise: thus, Italian Courts will always have exclusive jurisdiction if the consumer is resident or domiciled in Italy;
- The Bank **may always be sued** in front of the Court of the consumer's domicile, despite the written agreement with the consumer states otherwise: thus, Italian Courts may have jurisdiction on a case brought against a Swiss Bank if the consumer is resident or domiciled in Italy;

## Applicable Law - 1

The Italian Court shall determine the **applicable law** to the cross-border financial services contract as per the following provisions:

- a) If the Bank is based in EU (except for Denmark), **Article 6** of EU Regulation no. **593/2008**, also called **Rome I Regulation**, shall apply;
- b) If the Bank is based in Denmark, **Article 5** of Rome Convention of 1980, shall apply;
- c) If the Bank is based in other non-EU countries (including Switzerland), the conflict rules provided for by **Italian Law 218/1995** (International Private Law) shall apply, which now refer to **Rome I Regulation**.

## Applicable Law - 2

The rules mentioned in the preceding slide all state that a contract concluded by a consumer with a Bank shall be governed by the law of the country where the consumer has his habitual residence or domicile.

Said rules also state that the parties may by contract freely choose the law applicable to the contractual relationship. However, such a choice may not have the result of depriving the consumer of the protection afforded to him by the provisions of the law of the consumer's domicile.

Therefore, Italian Courts will apply the foreign law, chosen by the parties, as long as it provides the **same level of protection to consumer** as that of Italian law. Should foreign law be in contrast with the provisions of Italian law, the latter will apply instead.

## Most relevant Italian laws on Consumer Contracts 1

Before pursuing the sale of financial services in Italy, a foreign Bank should be aware of the consumer protection rules currently in force. Such rules are armonized and can be found in:

- a) The Consumers Code → Legislative Decree no. 206 of 2005: its provisions bring together and coordinates all existing Italian consumer protection provisions, applicable on consumers domiciled within the Italian jurisdiction, with the EU provisions. In particular, it includes, among others, the provisions applicable to the **so called distance contracts for retail of financial services**, which have transposed in Italy the EU directive no. 65/2002;
- b) The Decree no. 164 of 2007, which implements EU directive no. 39/2004, **on Markets in Financial Instruments (MiFID) and Investment Services**;
- c) The Decree no. 141 of 2010, which implements EU directive no. 48/2008, **on Consumer Credit Agreements**.

## Most relevant Italian laws on Consumer Contracts 2

The harmonized Italian consumer protection rules mentioned in the preceding slide consistently state that:

- the Bank or the Financial Institution is obliged to transmit, during the negotiation stage, a report on business and financial soundness of themselves as well as a draft contract to the consumer, including all the contractual terms, conditions and relevant pre-contractual information;
- the Bank or the Financial Institution is subject to fines in case of failure to provide the draft contract and the information mentioned above;
- The consumer is entitled to withdraw from the **distance contracts for retail of financial services or the consumer credit agreements** within 14 days running from the respective execution dates, without having to justify his/her decision.

# THANK YOU

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