

Jurisdiction and applicable law for Consumers contracts: Spain

Mariscal & Asociados
A B O G A D O S

Madrid | Barcelona | Palma de Mallorca

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Wir sind den Wünschen unserer Mandanten einen Schritt voraus
We anticipate the needs of our clients
Nous anticipons les besoins de nos clients

JURISDICTION

A) INTERNATIONAL PERSPECTIVE

I) Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters: disputes arising from consumers contracts are subject to a partially exclusive jurisdiction of the consumers' address courts

II) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters: its regulation is the same as the Lugano Convention regulation

JURISDICTION B)INTERNAL PERSPECTIVE

❖Our courts:

- ✓guideline of protecting the consumer from 1994
- ✓consider that the clause establishing an express submission seriously prejudices the consumer

❖Consumers Law:

- ✓the Courts guideline determined the content of our Consumers Law
- ✓article 90 of our Consumers Law (*Real Decreto Legislativo 1/2007, of the Law for Consumers Defense*): the clause of express submission is considered abusive when the submission is different than the Court corresponding, among others to: i) consumer's domicile ii) place in which the obligation has to be fulfilled.

JURISDICTION

C) CONCLUSION

- ✓ courts corresponding to the consumers' domicile is the most important rule
- ✓ any bank would fulfill the requisites of our law and have minor risk of actions claiming the non competence of the courts when the consumers contracts establish that the competent courts are those of the consumers domicile.

II. APPLICABLE LAW

A) INTERNATIONAL PERSPECTIVE

Rome Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations:

- ✓ Article 6, in case that there is not any agreement, the applicable law will be the law of the country where the consumer has his habitual residence.
- ✓ Roma Regulation does not impede the possibility of submission to a specific law, nevertheless such choice may not deprive consumer of the protection afforded to him by provisions of the law which, in the absence of choice, would have been applicable

II. APPLICABLE LAW

B) INTERNAL PERSPECTIVE

❖ Consumers Law: article 90:

✓the entrepreneur cannot impose any law that does not have any connection with the contract

✓the right of law disposition of the entrepreneur is limited to any of the following: i) place in which the consumer express its contractual will or ii) where the promotion of the contract (same or similar contract) takes place

II. APPLICABLE LAW

C) CONCLUSION

Both perspectives, national and international are complimentary, because:

(i) as established by article 90 of our Consumers Law, the choice of a law different that the two laws permitted by such article does not have any effect.

(ii) And even in case of choosing one of the laws permitted by article 90 the minimum protection level established by the imperative rules corresponding to the consumers address have to be respected.

Conclusion: Banks have to take into consideration the imperative protection established by the Spanish law when the consumer's domicile is in Spain