

The Revised Lugano Convention: Consumer Contracts, Place of Jurisdiction and Applicable Law

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The Revised Lugano Convention

Lugano Convention on jurisdiction, the recognition and enforcement of judgments in civil and commercial matters

- Revision entered into force on January 1, 2011
- Revision broadened the scope of the provisions related to consumer contracts
- Disputes arising from consumer contracts are subject to a partially exclusive jurisdiction of the courts at the consumer's domicile
- Instead of the agreed (Swiss) law, the law of the client's domicile will be applicable

The Revised Lugano Convention – Article 15

- “ 1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this section, without prejudice to Articles 4 and 5 (5), if:
- (a) it is a contract for the sale of goods on instalment credit terms, or
 - (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods, or
 - (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the State bound by this Convention of the consumer’s domicile or, by any means, directs such activities to that State, or to several States including that State, and the contract falls within the scope of such activities.”

The Revised Lugano Convention

- The changes in Article 15 clause 1(c) are of great importance
- The revision includes all kinds of consumer contracts. Therefore no more controversy on the interpretation of service agreements, etc. (see BGE 133 III 395 ff.).
- Conditions to be met (alternatively):
 - ➔ The other person must pursue commercial or professional activities in the State bound by this Convention of the consumer's domicile
 - ➔ The other person directs such activities to that State and the contract falls within the scope of such activities

The Revised Lugano Convention

- Activities of Swiss banks concerned by the Lugano Convention are namely cross-border private banking activities
- Investment banking as well as assets management activities are not primarily targeted

The Revised Lugano Convention

Presentation by members of Eurojuris IBG about the jurisprudence
in their home country on the revised Lugano Convention
(respectively the Brussels Convention) with regard to consumer
contracts, place of jurisdiction and applicable law