

Masotti & Berger wins in the Court of Cassation on the grounds of lack of 'Special Jurisdiction' of the Italian courts to hear a case brought against a person not domiciled in Italy

The Milan based law and tax firm successfully defends Russian client, Alfa-Bank, on the grounds of lack of jurisdiction of the Italian courts

Milan, 20 February 2014 – The Italian Court of Cassation (Supreme Court) has considered **for the first time** questions relating to the burden of proof in a matter concerning the lack of special jurisdiction of the Italian courts under the Brussels Convention 1968 (now Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters): a successful outcome for the defendant, Russian bank **Alfa-Bank**, who was advised throughout the litigation by the international law and tax firm **Masotti & Berger**.

The proceedings were commenced in 2007 in the **Court of Milan** by the Italian company **SOGO S.r.l.**, a supplier to the Ministry of Foreign Trade of the former USSR, and involved a claim against Russian Bank **Alfa-Bank** for the repayment of certain allegedly outstanding receivables arising from a securitisation and assignment of the underlying debts during the 1990s. The Court of Appeal rejected SOGO's appeal against the original decision, which led to a further appeal by SOGO to the Court of Cassation.

Assisting the bank throughout the litigation, the law firm Masotti & Berger argued that a claimant who sues, in the Italian courts, another person who is not domiciled in Italy - thereby attempting to introduce an exception to the general rule that the defendant's domicile applies to determine the jurisdiction of the courts in which to bring the case - is required to prove the existence in fact and in law of the criteria that form the basis of the **rules of 'Special Jurisdiction' under Article 5 of the Brussels Convention (or Article 5, EC Regulation no. 44/2001)**.

The Court of Cassation, acting in Joint Chambers, accepted Alfa-Bank's arguments and confirmed that **the complainant must prove (with exhibits) the connecting factors which justify the application of 'Special Jurisdiction'**, failing which the complainant cannot legitimately invoke a derogation to the general rule that the domicile of the person being sued applies (in this case, Russia).

*"The decision is particularly innovative and interesting because for the first time we now have confirmation of the relationship between the rule and the exceptions to the general rule under the Brussels Convention 1968 (EC Regulation no. 44/2001) regarding jurisdiction in civil and commercial matters, – stated **Luca Masotti** and **Carlo Piatti** – with the result that it falls upon the claimant to show that the general rule on jurisdiction (that the domicile of the party being sued applies) does not in fact apply, in order to argue that the Italian courts have Special Jurisdiction to hear the case".*

Julian Berger, English partner of the law firm **Masotti & Berger** adds – *"Litigation before the Italian courts will take most non Italian firms and corporations well outside their comfort zone; it gives rise to significant inconvenience and extra costs, and can put pressure on foreign defendants to settle irrespective of the merits of the case. This case represents an outstanding result for Alfa-Bank, advised by Masotti & Berger, which will be of great interest to any foreign (non Italian domiciled) entity that finds itself on the wrong end of an Italian law suit, and in circumstances where it is not clear whether Italian jurisdiction applies. For example, this can happen (i) if the underlying contract cannot be produced in evidence (as was the case here), (ii) if the*

underlying contract makes no mention of the jurisdiction applicable for resolving disputes, or (iii) more generally, where it is not clear on the facts whether Italian jurisdiction applies under the Brussels Convention 1968 or EC Regulation no. 44/2001. With this judgment, the Italian Supreme Court is quite correct in confirming the principle that the onus is on the claimant first to prove, both on the applicable facts and the law, its purported right or entitlement to drag a person not domiciled in Italy before the Italian courts”.

Notes for editors:

1. The Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters was made in 1968.
2. The Convention provides that persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State, subject to certain exceptions mentioned in 3 below.
3. Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of the Convention, which relate among other things to matters of Special Jurisdiction (Article 5) (for example, in matters relating to a contract, in the courts of the place of performance of the obligation in question).
4. Italy was one of the original contracting parties to the Brussels Convention 1968, which was later ratified by other European member states. In 2001, EC Regulation no. 44/2001 entered into force and superseded the Brussels Convention 1968 among EU member states. In the meantime, in 1995 Italy had adopted new legislation on international, private and procedural law that made specific reference to the Brussels Convention in order to determine the connecting factors that justify the jurisdiction of the Italian courts. The courts of Italy must therefore apply the Brussels Convention even against persons who are domiciled in states that have never adopted the Convention, such as Russia.

Masotti & Berger is an international business law firm based in Milan, established in 1965, with a multi disciplinary practice of lawyers and tax accountants. The Firm specialises in advising on cross border transactions, and on international litigation and arbitration matters.

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