

LIS PENDENS IN CIVIL AND COMMERCIAL MATTERS AFTER THE EXIT OF THE UK FROM THE EUROPEAN UNION

In the very same days when the European Commission has blocked the application made by the United Kingdom for acceding to the 2007 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "**Lugano Convention**" - the decision is available [here](#)), the Italian Supreme Court has handled certain aspects of international procedural law – particularly with regard to international *lis pendens* in civil matters – following the United Kingdom's exit from the European Union.

The dispute settled by the decision no. 9863 of 15 April 2021 had arisen out of an insurance contract entered into between a company specialised in the sale of fishing clothes (the "**Company**") and several insurance companies (the "**Insurance Companies**"). More specifically, in the context of proceedings for setting aside and repealing a payment injunction issued by the Court of Treviso in favour of the Company, the Insurance Companies objected that:

- (a) An exclusive jurisdiction clause in favour of the English Courts was included in the insurance contract; and
- (b) The same proceedings had previously been lodged before the High Court in London.

In light of the aforementioned objections, the Court of Treviso, by order filed on 17 December 2019, declared the suspension of the set aside proceedings, pursuant to Article 31.2 of Regulation (EU) no. 1215/2012 ("**Brussels I Bis Regulation**"). This provision requires the suspension of the proceedings brought before any court other than the one chosen by the parties under an exclusive jurisdiction clause.

The Company appealed to the Supreme Court seeking a ruling on jurisdiction, *inter alia* claiming that the Brussels I Bis Regulation had become inapplicable by virtue of the United Kingdom's withdrawal from the European Union.

In the mentioned decision, the Supreme Court rejected the plea, based on the application of Article 67 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, the so-called "Withdrawal Agreement".

According to this article, European law - including, *inter alia*, the provisions of the Brussels I Bis Regulation - remains applicable to all proceedings instituted before 31 December 2020.

On the other hand, the question relating to the laws applicable to proceedings introduced as from 1 January 2021 is likely to be a much debated issue in the next future, especially following the European Commission's decision to deny the access of the UK to the Lugano Convention.

From an Italian law perspective, as regards the recognition and enforcement of judgments, the provisions of private international law set out in Law 218/1995 shall apply.

With regard to choice of court agreements in civil and commercial matters instead, the United Kingdom has autonomously acceded to the Convention of 30 June 2005 on Choice of Court Agreements (the so-called "Hague Choice of Court Convention"), which is applicable in cases where two parties belonging to Contracting States have agreed on an exclusive choice of court.

Newsletter

MAY 2021

The Dispute Resolution Department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

For further information:

Stefano Parlatore

Partner

T. +39 06.93.18.271/
+39 02.89.63.071
sparlatore@legance.it

Daniele Geronzi

Partner

T. +39 02.89.63.071
dgeronzi@legance.it

Daria Pastore

Partner

T. +39 06.93.18.271
dpastore@legance.it

Bianca Berardicurti

Managing Associate

T. +39 06.93.18.271
bberardicurti@legance.it

or your direct contact at Legance.

Newsletter

MAY 2021

THE FIRM

Legance is an independent Italian law firm with expert, active and result-oriented lawyers, with a strong team spirit that has permitted a flexible and incisive organisational model that, through departments active in all practice areas of business law, offers the right balance between the specialist and the lawyer as a global consultant. Legance comprises over 280 lawyers, working in its Milan, Rome, London and New York offices, and has a diverse and extensive practice covering the following areas: Administrative; Banking & Finance; Compliance; Corporate Finance; Data Protection; Debt Capital Markets; Dispute Resolution; Employment and Industrial Relations; Energy, Project & Infrastructure; Environmental; Equity Capital Markets; EU, Antitrust and Regulation; Financial Intermediaries Regulations; Food; Insurance; Intellectual Property; Investment Funds; Life Sciences & Healthcare; Non Performing Loans; Real Estate; Restructuring and Insolvency; Shipping, Aviation and Transportation; Tax; Telecommunications, Media and Technology; White Collar Crimes. For more information, please visit our website: www.legance.com.

DISCLAIMER

The only purpose of this Newsletter is to provide general information. It is not a legal opinion nor should it be relied upon as a substitute for legal advice.

This Newsletter is sent to persons who have provided their personal data in the course of professional relations, meetings, seminars, workshops or similar events. You may also receive this newsletter because Legance was authorized. You may finally receive it, because you have engaged Legance. If you wish not to receive the newsletter anymore, please write an email to newsletter@legance.it and you will be removed from the list of recipients. Until you cancel yourself from the list of recipients your personal data will be processed on paper or electronically for purposes which are related to the existing professional relations, or for information and divulgation reasons, but are not communicated to third parties, unless such communication is imposed by law or strictly necessary to carry out the relation. Data controller is **Legance – Avvocati Associati**. The list of the data processors is available if you write an email to clienti.privacy@legance.it. In any event, you are entitled to your rights as set forth in the current data protection legislation. All the above requests must be forwarded by fax to **Legance – Avvocati Associati**, on nr. +39 06 93 18 27 403.

Legance - Avvocati Associati and its partners are not regulated by the Solicitors Regulation Authority ("SRA") and the SRA's compulsory insurance scheme does not apply to them (they are instead covered by equivalent Italian insurance). A list of the partners of Legance - Avvocati Associati is open to inspection at the office of its London branch at Aldermay House 10-15 Queen Street - EC4N1TX, and also on the following website www.legance.com/professionals. Legance LLP only advises on Italian law related matters.