

Unfair terms, double signatures and the Italian reader

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A Swiss contract with an Italian party may also have to satisfy Italian formal requirements if it is invoked before an Italian court. Article 1341(2) c.c. requires that certain onerous clauses in general conditions, among them limitations of liability, rights of withdrawal, forfeiture clauses, restrictions on raising defences, tacit renewals, arbitration clauses and clauses derogating from the jurisdiction of the courts, be "specificamente approvate per iscritto" (specifically approved in writing).¹ Italian practice meets this requirement through a second signature under a list of the clauses concerned, the so-called *doppia firma*. Where jurisdiction is concerned, the Lugano Convention lays down its own formal requirements for choice-of-court agreements in Art. 23. Since the *Elefanten Schuh* judgment of 1981, the case law of the Court of Justice has excluded additional national requirements within its scope, such as a prescribed language for the clause. Lugano banks nevertheless often include a double signature in their Italian-language documentation as a precaution, because it costs little and removes an argument from the client's lawyer.²

For the practitioner. A language clause for a Swiss-law contract with an Italian party: - Name the language of conclusion and state whether other versions are binding or informative. - Designate a prevailing version and say that it governs interpretation in case of any discrepancy. - Provide that the legal terms of the Italian version have the meaning they have in the Italian version of the Swiss statutes. - Fix the language of notices and of any arbitration, and check whether Art. 129 CPC allows the chosen language before a state court. - Add a specific approval of onerous clauses (*doppia firma*) if enforcement in Italy is conceivable.

1 Notes

1. Brocardi.it, "Art. 1341 Codice civile – Condizioni generali di contratto", <https://www.brocardi.it/codice-civile/libro-quarto/titolo-ii/capo-ii/sezione-i/art1341.html>. ↩
2. Convention of 30 October 2007 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Lugano Convention), SR 0.275.12, Art. 23(1), OJ L 339 of 21 December 2007, [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1221\(03\)](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22007A1221(03)); Court of Justice, judgment of 24 June 1981, *Elefanten Schuh GmbH v Pierre Jacqmain*, 150/80, operative part, point 4 (national legislation may not call the validity of a jurisdiction agreement into question solely because it is not in the prescribed language), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61980CJ0150>. See Chapter H.IV. ↩

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