

**FORUM CLAUSE AND
FORUM SHOPPING:
AN ITALIAN
PERSPECTIVE**

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FORUM SHOPPING

“Forum shopping is a dirty word: but it is only a pejorative way of saying that, if you offer a Plaintiff a choice of jurisdiction, he will naturally choose the one in which he thinks his case can be most favourably presented; this should be a matter neither for surprise nor for indignation” (Lord Simon of Glaisdale – The “Atlantic Star”)

Why?

- Substantive law;
- Procedural law;
- Costs;
- Other practical considerations

How?

Think carefully, strike first.

Alternative jurisdiction

- **EU Council Regulation no. 44/2001**
(incorporating the 1968 Brussels Convention)
 - Defendant's place of business (art. 2);
 - Place of performance (art. 5.1);
 - Place of tort (art. 5.5);
- **1952 Brussels Convention on arrest of ships**
 - Place of arrest (art. 7)

Related proceedings

- More than one defendant, claims closely connected
- Action on a warranty or guarantee
- Actions regarding limitation of liability

The defendant can be sued in the courts of a different State from those mentioned before but where another defendant is domiciled

Lis - Pendens

- Proceedings simultaneously pending in different jurisdictions involving :
 - same parties,
 - same cause of action (including negative declaration);

Priority given by time factor

Forum clauses

- The contractual choice of a forum clause reduces the possibility of forum shopping.
- Contained in:
 - charterparties;
 - bills of lading;
 - MOA;
 - shipbuilding contracts;

Forum clauses and related proceedings

- Do forum clauses help in case of related proceedings?
- Yes (Court of Cassation judgment n. 7854/2001)

Forum clauses and simultaneous proceedings

- Do forum clauses help in case of simultaneous proceedings?
- Limited help:
 - No more anti-suit injunctions (Turner – Grovit; Front Comor)