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**EVALUATION OF LEGAL RISKS OF SALES REPRESENTATIONS IN
INTERNATIONAL FRANCHISE TRANSACTIONS**

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BY: Silvia Bortolotti and Erik Wulff*

INTRODUCTION

As many franchise companies follow the general commercial trend of globalization, one needs to be increasingly aware of the legal framework that may impact transborder transactions, not only with respect to contracting but also the pre-contractual phase that leads up to the signing of contracts. Many countries now have franchise laws that require pre-sale disclosure; however, a vast majority still don't. Moreover, even in those countries with pre-sale disclosure laws there also exists a general legal framework on pre-contractual representations and behavior.

What constraints exist on pre-sale discussions under the laws of various countries? What laws apply? Does it matter where the discussions take place? Does the ensuing contract have any effect on these questions?

This paper seeks to shed some preliminary light on these questions. We undertake a brief survey of common law and civil law concepts in order to highlight the similarities and differences in legal approach to pre-contractual sales representations.

I. COMMON LAW COUNTRIES – THE UNITED STATES

Common law countries are those whose legal systems emanate from the English legal tradition and consist mostly of the former British colonies. It is a legal system highly dependent on judicial decisions, the binding nature of such decisions on lower courts and subsequent decisions (*stare decisis*), and the long term evolution of the law through this process. Some of the better known common law countries include the United Kingdom, the United States, Canada, Australia and India. Although the laws in common law jurisdictions have evolved independently over time, there is a strong similarity in basic legal principles. This paper will focus on the common law of the United States.

A. What is a representation?

A representation is an assertion of fact. A misrepresentation, being a false assertion of fact, commonly takes the form of spoken or written words. Whether a statement is false depends on the meaning of the words in all the circumstances, including what may fairly be inferred from them. An assertion may also be inferred from conduct. Concealment or even nondisclosure may have the effect of a misrepresentation.

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B. What is actionable at common law?

1. Fraudulent Misrepresentation

Willful misrepresentation of a material fact, made to induce another to act, upon which such person acts to his injury, will give rise to an action in fraud. The elements of fraud are: (1) a false representation; (2) of a material fact; (3) made with culpable intent (scienter) to induce plaintiff to act or refrain from acting; (4) justifiable reliance by the plaintiff upon the representation; and (5) with damage to plaintiff proximately caused by the induced reliance.

a. Materiality

Reliance upon a fraudulent misrepresentation is not justifiable unless the matter misrepresented is material. The matter is material if: (a) a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question; or (b) the maker of the representation knows or has reason to know that its recipient regards or is likely to regard the matter as important in determining his choice of action, although a reasonable man would not so regard it.

b. Scienter

To establish the necessary element of scienter, the deceived party must show that the deceiving party made the representation with the knowledge of its falsity, with an intent to deceive, and with the intent that the misrepresentation shall be acted on in a certain way.

c. Justifiable Reliance

One who makes a fraudulent misrepresentation is subject to liability to the persons or class of persons whom he intends or has reason to expect to act or to refrain from action in reliance upon the misrepresentation, for pecuniary loss suffered by them through their justifiable reliance in the type of transaction in which he intends or has reason to expect their conduct to be influenced.

d. Fact v. Opinion

Misrepresentations of fact are actionable; erroneous statements of opinion are not. However, the distinction between fact and opinion is extremely tenuous. Generally, “puffery,” “trade talk,” broken promises, conjecture regarding future events, and unfulfilled predictions do not qualify as false representations. Courts generally deem the foregoing statements as immaterial statements of opinion or hold that no one has the right to rely on statements of “puffery.” For example, the Federal Trade Commission’s Franchise Rule Compliance Guide distinguishes fact from opinion in the context of financial performance representations. The Compliance Guide explicitly states that “[m]ere puffery does not fall within the ambit of the amended Rule’s definition. Examples of what may be considered puffery, depending on the full context, include such statements as ‘make big money,’ ‘this business is a real cash cow,’ or ‘opportunity of a lifetime.’” The Compliance Guide goes on to state that financial performance representations include implied representations, that “suggest – or from which “a prospective franchisee can easily infer – a specific level or range of income, sales, or profits.” Examples of

implied representations are: “earn enough to buy a new Porsche;” and “100% return on investment within the first year of operation.”

e. Remedy

The recipient of a fraudulent misrepresentation is entitled to recover as damages in an action of deceit against the maker the pecuniary loss to him caused by the misrepresentation, including: (a) the difference between the value of what he has received in the transaction and its purchase price or other value given for it; and (b) pecuniary loss suffered otherwise as a consequence of the recipient’s reliance upon the misrepresentation. The recipient of a fraudulent misrepresentation in a business transaction is also entitled to recover additional damages sufficient to give him the benefit of his contract with the maker, if these damages are proved with reasonable certainty.

2. Negligent Misrepresentation

The essential elements of negligent misrepresentation at common law are: (1) one person’s negligent supply of false information to another person; (2) such other person’s reasonable reliance upon that false information; and (3) economic injury proximately resulting from such reliance.

a. Nondisclosure

As a general matter, at common law there is no duty to disclose information.

However, courts have held that one party to a business transaction is under a duty to exercise reasonable care to disclose the following type of information to the other party before the transaction is consummated: (a) matters known to him that the other is entitled to know because of a fiduciary or other similar relation of trust and confidence between them; (b) matters known to him that he knows to be necessary to prevent his partial or ambiguous statement of the facts from being misleading; (c) subsequently acquired information that he knows will make untrue or misleading a previous representation that when made was true or believed to be so; (d) the falsity of a representation not made with the expectation that it would be acted upon, if he subsequently learns that the other is about to act in reliance upon it in a transaction with him; and (e) facts basic to the transaction, if he knows that the other is about to enter into it under a mistake as to them, and that the other, because of the relationship between them, the customs of the trade or other objective circumstances, would reasonably expect a disclosure of those facts.

b. Concealment

A party to a transaction who conceals material information or who takes positive action to intentionally prevent the other party from acquiring material information is subject to liability. Concealment, under the aforementioned circumstances, is considered similar to an affirmative statement by a party of the nonexistence of the information that the other was prevented from discovering.

c. Remedy

The damages recoverable for a negligent misrepresentation are those necessary to compensate the plaintiff for the pecuniary loss to him of which the misrepresentation is a legal cause, including: (a) the difference between the value of what he has received in the transaction and its purchase price or other value given for it; and (b) pecuniary loss suffered otherwise as a consequence of the plaintiff's reliance upon the misrepresentation.

d. Contractual Safeguards

The effectiveness of contractual merger clauses stating that the writing contains the entire contract and that no other representations, other than those contained in the writing have been made, is uncertain. These merger clauses certainly cannot negate reliance on statutorily required disclosures, such as under the FTC Rule on Franchising and state franchise registration statutes (see below). However, these clauses can be a shield to common law liability in some jurisdictions, and ineffective in others; they are very dependent on the facts and circumstances of each case, and this is so even among the states of the United States.

For example, under Georgia law, when the parties include a merger clause in a written agreement, a party cannot establish justifiable reliance on alleged misrepresentations not embodied within the contract. On the other hand, under New York law, an integration clause will only preempt a fraud action where the integration clause expressly references a specific subject of prior representations, or where the clause is included in a transaction executed between sophisticated business people and a fraud defense is inconsistent with other specific recitals in the contract.

II. CIVIL LAW

A reference to the "civil law countries" covers a large number of countries, many of which present important differences in the civil law of their respective jurisdictions (e.g. France, Germany, Italy, some South American or African countries, Japan, the Province of Quebec, Canada, etc.).

Obviously it is impossible to cover all of the civil law countries in this paper. Therefore this paper will discuss the common principles developed in some civil law countries, by mainly focusing on the laws of one specific country (Italy), as well as on the rules applicable within the European Union (where the EU provides common rules).

A. What is a representation?

A notion of representation does not exist in the civil law system: reference is made to information (or lack of information).

If one considers the notion of representation under common law, namely a statement of a fact, which induces the other party to enter into a contract or otherwise act to his detriment, the following general principles on contracts may apply (depending on the specific circumstances of the case at issue).

1. Principle of good faith during negotiations (pre-contractual liability)

The principle of good faith that exists in the civil law and applies during the negotiation of contracts implies that, if information is disclosed, it must be correct; and a general obligation to disclose (e.g. in Italy or in France; while in Germany a general disclosure obligation is not provided, but Courts envisage it, under certain circumstances).

The violation of this principle gives rise to a pre-contractual liability, which in most civil law countries is considered as an extra-contractual liability (tort), while in some other countries falls within the contractual liability.

2. Dolus (fraud)

The category of *dolus* (fraud) in the civil law relates to intentional deceptions (which may include both cases of false information and concealment), without which the other party would not have contracted at all (*dolus principalis*), or would have contracted on different terms (*dolus incidens*).

In case of *dolus principalis*, the innocent party is entitled to seek the annulment of the contract (and/or to claim damages); while the *dolus incidens* does not allow the annulment of the contract, but only gives rise to a pre-contractual liability of the *deceptor*.

According to a general principle developed in several civil law jurisdictions within the framework of sales' contracts but then extended to all contracts, the simple exaggeration of the qualities of the goods tolerated by custom (*dolus bonus* – "puffery") is not actionable.

3. Breach of contract

If the information provided during negotiation is then included in the contract (e.g. the franchisor promises a certain profitability to the prospective franchisee during negotiations and transposes such information into a business plan, included in the franchise contract), in case such information does not come to fruition, it may be regarded as a breach of contract.

B. What is Actionable in Civil Law?

1. Principle of good faith during negotiations (pre-contractual liability)

Under the rules on pre-contractual liability (general principle of good faith), providing false information as well as a concealment during negotiations is actionable, provided that the party who provided (or omitted to provide) the information was in fraud, or just negligent; and the information (or lack of information) concerns reasons of invalidity of the contract, reasons concerning the effectiveness of the contract, or its profitability (under certain circumstances).

In some civil law jurisdiction, such pre-contractual liability is no longer actionable after the contract has been concluded (e.g. Belgium); while pursuant to other legal systems such claim would be actionable also in case the contract has been subsequently concluded. In Italy, the first mentioned interpretation has been followed by Courts in the past, but recently they have started

allowing the innocent party to bring an action based on pre-contractual liability, even if the contract has been subsequently concluded.

In any case, the innocent party needs to provide evidence of the violation of the principle of good faith by the other party as well as of the damages suffered (which, in practice, restricts the number of cases in which Courts effectively grant damages).

Damages granted to the innocent party in this case are limited to the "negative interest", i.e. lost opportunities in addition to expenses.

2. Dolus (fraud)

Under the rules on *dolus* (fraud), false information as well as a concealment during negotiations are actionable, provided that the party who provided (or omitted to provide) the information intentionally deceived the other party; the other party fell under mistake; and there is a causality between the deceptive behavior and the mistake of the other party.

In some civil law jurisdictions (e.g. France) the second and third conditions are not required.

In case of *dolus principalis*, the innocent party is entitled to claim extra-contractual damages, which also include the "positive interest"; i.e. it will be restored in the position as if the illicit event would have not occurred. Instead, in case of *dolus incidens*, the damages granted to the innocent party are limited to the "negative interest" (as described above).

3. Breach of contract

Should the false information give rise to a contractual obligation, which has not been fulfilled, the innocent party will be entitled to take action for breach of contract, and to claim damages. In this case, the damages will not be limited to the "negative interest", but they will also include the actual loss as well as the loss of profits: i.e. the innocent party will be placed in the same position of that of an exact execution of the obligation.

In that case, the innocent party will only have to prove that it suffered damages, while the other party will have the burden of proof, in order to exclude its responsibility.

4. Contractual Safeguards in Civil Law

In most civil law countries liability for fraud and gross negligence cannot be excluded contractually (any such contractual provision is null and void).

Besides that, the courts in civil law countries normally do not simply rely on the provisions of the contract, but tend to evaluate the position and behavior of the parties, in light of the specific circumstances of the case.

Therefore, a contractual provision which excludes all franchisor's liabilities for any "representation" provided to the prospect franchisee during negotiation, will not necessarily attain its purpose.

III. COMPARISON OF THE COMMON LAW AND CIVIL LAW

In principle, it is not possible to compare the notion of representation in common law and civil law countries, considering that such notion in civil law does not exist.

However, if one considers the general principles of common and civil law respectively applicable to the notions of representation and information, one can see some important differences, e.g.:

- a general principle of good faith during negotiations does not exist in common law countries, while it is a basic principle in civil law countries;
- in the common law a general disclosure obligation during the negotiation of a contract does not exist, which is different from most civil law countries.

On the other hand, there are also important similarities, such as:

- the requirements provided by common law in order for a fraudulent representation to be actionable are not very different from those regarding the notion of *dolus* (fraud) in civil law;
- the omission to disclose information, under certain circumstances, is actionable both in common and in civil law;
- in analogous circumstances Courts do not consider actionable certain representation/information (“puffery” - “*dolus bonus*”).

IV. FRANCHISE STATUTES

A. Franchise Statutes - Common Law - United States

1. The Franchise Rule

The Franchise Rule requires franchisors to provide all potential franchisees with a disclosure document containing 23 specific items of information, public and non-public, about the offered franchise, its officers, and other franchisees. Required disclosure topics include, for example: the franchise’s litigation history, past and current franchisees and their contact information, any exclusive territory that comes with the franchise, assistance the franchisor provides franchisees, and the cost of purchasing and starting up a franchise. If a franchisor makes representations about the financial performance of the franchise, this topic also must be covered, as well as the material basis backing up those representations.

Under the Franchise Rule, it is “an unfair or deceptive act or practice” within the meaning of Section 5 of the FTC Act for any franchisor or franchise broker, in connection with the offering or sale of any franchise, to fail to furnish to a prospective franchisee with written disclosure of various categories of information.

The Franchise Rule defines the terms “material,” “material fact,” and “material change” to include “any fact, circumstance, or set of conditions which has a substantial likelihood of influencing a reasonable franchisee or a reasonable prospective franchisee in the making of a significant decision relating to a named franchise business or which has any significant financial impact on a franchisee or prospective franchisee.”

Additionally, the Franchise Rule prohibits franchise sellers from disclaiming or requiring a prospective franchisee to waive reliance on any representation made in the disclosure document or in its exhibits or amendments. According to the FTC Franchise Rule Compliance Guide, this prohibition includes the use of integration clauses that purport to disclaim liability for statements authorized by franchisors in their disclosure documents.

Although no private right of action exists under the FTC Act, the FTC has the authority to enforce the Franchise Rule against franchisors committing violations when selling franchises. In addition to injunctive relief, the FTC can impose civil penalties for violations.

2. Corresponding State Laws

The regulation of franchise sales is not limited to the federal level. Fifteen states have franchise investment laws that require franchisors to provide pre-sale disclosures, offering circulars, to potential purchasers. Thirteen of these state laws treat the sale of a franchise like the sale of a security, and they typically prohibit the offer or sale of a franchise within their state until a franchise offering circular has been filed on the public record with, and registered by, a designated state agency. These state laws give franchise purchasers important legal rights, including the right to bring private lawsuits for violation of the state disclosure requirements. For example, the Illinois Franchise Disclosure Act contains specific language making misrepresentations or omissions unlawful. The Illinois Act states:

In connection with the offer or sale of any franchise made in this State, it is unlawful for any person, directly or indirectly, to:

- (a) employ any device, scheme, or artifice to defraud;
- (b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

815 ILCS 705/6.

Although the FTC does not provide for a private right of action, many states have enacted statutes analogous to the FTC Act that prohibit unfair or deceptive acts or practices. These laws, sometimes called “Little FTC Acts,” provide plaintiffs with a broad range of remedies to address perceived unfair conduct. The language of the particular Act, the types of conduct that are actionable, and the types of parties who may bring suit under the Act vary widely from state to state.

Additionally, many state statutes prohibit the franchisor from requiring the franchisee, at the time of entering into a franchise agreement, to agree to a waiver that would relieve the franchisor or any other person from liability imposed by the state franchise law. These

provisions may also prohibit choice of law provisions and integration clauses that have the effect of a waiver of liability.

Private remedies do exist under state law. State franchise and business opportunity laws, and state consumer fraud or “Little FTC Acts,” which typically cover the sale of franchises and sometimes make any violation of the FTC Rule a state law violation, generally provide a private right of action for rescission, damages, costs, and attorneys’ fees, and sometimes multiple or punitive damages. Willful violations of state laws may also result in criminal penalties, including fines and imprisonment. Also, in addition to specifically making misrepresentations and omissions unlawful, the Illinois Act provides by way of example, “[a]ny person who offers, sells, terminates, or fails to renew a franchise in violation of this Act shall be liable to the franchisee who may sue for damages caused thereby,” thus creating a statutory cause of action for misrepresentations or omissions of material fact.” 815 ILCS 705/26.

B. Franchise Statutes - Common Law – Other Countries

Several other countries with a common law systems have also introduced franchise laws, notably Australia and four of ten Canadian common law provinces. For instance, in the Province of Ontario, Canada, the franchise statute requires franchisors to furnish pre-sale disclosure documents in writing to franchisees prior to signing contracts or franchisees paying money and imposes a continuing obligation to advise a prospective franchisee of any material change in the information contained in the disclosure document up to the execution of the franchise agreement. Additionally, pursuant to the terms of the Ontario statute, reliance on any misrepresentation in the disclosure document is assumed. “If a disclosure document or statement of material change contains a misrepresentation, a franchisee who acquired a franchise to which the disclosure document or statement of material change relates shall be deemed to have relied on the misrepresentation.”

The Ontario statute provides only for a private rights of action for failure to comply with the law or for misrepresentations contained in the disclosure document. This is similar in approach to the other Canadian provincial statutes, none of which create any criminal or quasi-criminal liability for breach of the disclosure rules. Under all of these statutes, the franchisee who suffers a loss because of a misrepresentation contained in the disclosure document or in a statement of a material change or as a result of the franchisor’s failure to comply in any way with the disclosure obligation has a right of action for damages against a wide range of named person, including the franchisor, the franchisor’s agent, the franchisor’s broker, the franchisor’s associate; and every person who signed the disclosure document or statement of material change. Allowing for a right of action against these individuals often has the practical effect of permitting a franchisee to “pierce the corporate veil” and sue individuals who may be shareholders, directors or officers of the franchisor.

Notably, the United Kingdom does not have in force a specific statute which governs or regulates the sale of franchises.

C. Franchise Statutes - Civil Law

Besides the remedies described above, based on general principles of contract law, it is interesting to determine whether the franchise statutes of civil law countries specifically regulate the provision of sales information to the prospective franchisee.

Normally, franchise statutes in civil law countries do not specifically require the disclosure of sales information before entering into the contract; but only information regarding the franchisor's corporation, system, trademarks, possible disputes with franchisees etc. We will comment a number of examples.

1. ITALY (Law No. 129 of 2004 and Decree No. 204 of 2005)

According to the Italian statute on franchise agreements, the information to be disclosed must be delivered at least 30 days before signing the contract. It is not required that sales information be included.

However, Article 6 of Law 129/2004, the franchise law, provides a general principle of good faith and fair dealing during contractual negotiations and, in particular, it provides for the obligation of both parties to disclose any information requested by the other party or simply necessary, useful or appropriate for the purpose of concluding the contract.

An exception to such obligation is provided, for the franchisor, in case of objectively confidential information or information that, if disclosed, would constitute an infringement of the rights of third parties. In any case, the franchisor must give reasons to the prospective franchisee for not disclosing the information and data requested by the latter.

As far as the consequences of the violation of Article 6 are concerned, Law 129/2004 does not contain any provision in that regard. Namely the law does not regulate the consequences of an omission to disclose information, but only the consequences of the provision of false information. Pursuant to Article 8 of Law 129/2004: "If a party has provided false information, the other party may request the annulment of the contract as per Article 1439 of the Italian civil code [rules on fraud], and claim damages, if due."

2. FRANCE (Articles L330-3 and R. 330-1 of the commercial code)

Pursuant to French statutes, the pre-contractual information is to be disclosed at least 20 days before signing the contract. In case of breach of the disclosure obligation, French law provides criminal sanctions, besides the right to act for the invalidity of the contract and/or for damages.

The pre-contractual information to be provided to the prospect franchisee includes "the state and prospects for development of the market concerned".

French jurisprudence interprets such provision in the sense that the franchisor is not obliged to make a specific market analysis; however, if he decides to do it, such analysis must be drafted in accordance with the principles of good faith and seriousness.

3. BRAZIL (Law No. 8.955 of December 15, 1994)

According to the Brazilian franchise law, the information that is to be disclosed must be provided at least 10 days before signing the contract, and there is no requirement to include sales information.

V. CHOICE OF LAW AND FORUM

A. Common Law

1. Choice of Law

In many disputes, the parties to a franchise agreement hail from different jurisdictions and the subject of their dispute may be in still a third state. In such a situation, the court must first determine which substantive law to apply to the case. This inquiry is always conducted under the choice of law rules of the forum jurisdiction.

Many franchise agreements contain choice of law clauses selecting a particular jurisdiction's laws to govern the agreement, any disputes arising out of the agreement and, in some cases, any disputes arising from the parties' interactions prior to the execution of the agreement. While contractual choice of law provisions are instructive and often dispositive, a court does not always end its inquiry there.

In many cases, the court must first determine whether the choice of law provision in the contract is valid. If it is, it will control. If it is not, the court must then apply one of several "tests" to determine what substantive law to follow.

Ordinarily, a state will apply the law chosen by parties to a contract, unless either: (a) the chosen law has no substantial relationship to the parties and there is no reasonable basis for the choice; or (b) the application of the chosen law would be contrary to a fundamental policy of a state with a materially greater interest than the chosen jurisdiction. Restatement (Second) Conflict of laws § 187(2).

Disputes regarding choices of law are problematic because they are often inconsistent and courts in different jurisdictions utilize and apply different "tests" to determine whether a contractual choice of law provision is valid. Therefore, it is very difficult to predict if a choice of law provision in a franchise agreement will be upheld or not.

2. Forum

Most international franchise arrangements typically include international arbitration clauses. As such, and particularly with respect to disputes between parties who are from jurisdictions that have adopted the 1958 New York Convention, courts will in principle not interfere with the arbitral process as the exclusive means to resolve the dispute. In absence of an international arbitration clause, the parties are at significant risk of having to participate in parallel proceedings in both countries, even with the presence of an exclusive jurisdiction clause in the contract requiring litigation exclusively in the franchisor's home country.

B. Civil Law

1. Choice of Law

The governing law will be determined under the rules of private international law (conflicts of law rules) of the forum. These rules normally allow the parties to choose the law applicable to a franchise agreement. This choice will normally be fully effective, but in some cases a national law may require in any case the application of its internationally mandatory rules. Thus, it cannot be forgotten that some countries will operate such that their national rules on disclosure be applied to local franchisees, regardless of the law chosen by the parties as the governing law of the contract.

As far as possible claims based on pre-contractual liability are concerned, the EC Regulation 864/2007 ("Regulation Rome II"), which applies to disputes arising out between parties of EU Member States, allows the parties (provided that they both pursue a commercial activity) to choose the law applicable to their contract. In the absence of choice, the "Rome II" Regulation provides for the application of the law that applies to the contract or that would have been applicable to it, had it been entered into.

Outside the EU the criteria may vary, depending on the specific conflict of law rules of the forum. For instance, the Italian Private International Law (which applies to disputes between Italian parties and parties of countries outside the EU) provides for the application to pre-contractual liability of the laws of the country where the harmful event occurred.

2. Forum

In regard to forum selection, most franchise contracts provide for the exclusive jurisdiction of a national court, or of an arbitral institution, over possible disputes between the parties, arising out of the contract. In most cases the chosen forum will be the competent court of the franchisor's place of business.

The question then often arises as to whether such a clause would be effective against a foreign franchisee, namely, would it exclude the franchisee's right to bring an action before the courts of his own country? The answer depends on the applicable procedural law which may (or may not) give effect to clauses which exclude the jurisdiction of the courts of the franchisee's country.

As regards possible contractual claims (e.g. based on fraud and/or breach of contract), within the EU such clauses will be valid (provided they are in writing); therefore, the choice of a forum in the franchisor's country will be effective. Outside the EU no general statement is possible, but this may change in the future if the Hague convention of 2005 on Choice of Court Agreements will be successful.

If one considers a possible dispute based on pre-contractual liability (see Section II above), under the laws which consider pre-contractual liability as a form of extra-contractual liability (tort), the forum clause provided in the contract will not cover such dispute, unless the clause expressly includes disputes arising out of the pre-contractual negotiation (where admitted).

Therefore, in the absence of a specific clause, within the EU the franchisee will be entitled to act before the Court of the country where the event which caused damages occurred. Outside the EU the solution may vary from case to case. Thus, for example, in the case of a dispute between an Italian franchisee and a franchisor of a country outside the EU, the same criteria applicable within the EU shall apply, i.e. the franchisee will be entitled to act before the Court of the country where the event which caused damages occurred.

3. Arbitration clauses

In principle, the courts of countries which have signed the 1958 New York Convention are obliged to refuse jurisdiction, in presence of an arbitral clause.

However, this will not be the case where the dispute is considered non arbitrable under the national law of the court before which the claim is made. This may happen in case of laws which protect the franchisee as a weaker party, when the legislature provides an exclusive jurisdiction of its courts for all claims regarding such law.