Arbitration in Brazil

a brief overview

Arbitration in Brazil

a brief overview

Migalhas

Summary

Drafting Committee

Conceiver:
Pedro Martini

Coordinators:
Aline Henriques Dias
Ivan Iegoroff de Mattos
Pedro Martini

Drafters:
Agatha Brandão
Aline Henriques Dias
Álvaro Pupo
Ana Carolina Dall'Agnol
Bernardo Freire Cabral
Guilherme Cardoso Sanchez
Ivan Iegoroff de Mattos
Maria Tereza Borges
Michelle Rodrigues Martins
Pedro Martini

Reviewers:
Eduardo Grebler
João Bosco Lee
Selma Lemes
Ricardo Dalmaso Marques

English Reviewer:
Luiz Felipe Calabria Lopes

Editor:
Miguel Matos

Publisher:
Migalhas
www.migalhas.com.br

Organizer:
ABEArb – Brazilian Association of Arbitration Students

ABEArb

In the context of the consistent growing support of arbitration by Brazilian courts and the huge expansion of its use as a dispute settlement mechanism, it is also natural to find that the academic community dedicated to the study of arbitration has also expanded. Such study has found strong catalysts on the Willem C. Vis International Commercial Arbitration Moot and recently on the Petrônio Muniz Brazilian Arbitration Moot.

It was precisely in this context that in August 2011 the Brazilian Association of Students of Arbitration – ABEArb was created, in order to meet the demands of the growing number of Brazilian arbitration students.

Among its many projects, ABEArb organizes events, coordinates collective projects and publications – such as listing Brazilian and international institutions, young associations, case law, among others –, promotes networking among Brazilian students and offers opportunities for students to present and publish the result of their studies.

From an international perspective, ABEArb has been a continuing contributor to the *newyorkconvention1958.org* website, jointly organized by UNCITRAL, Columbia Law School and Shearman & Sterling, submitting translations of decisions from the Brazilian Superior Court of Justice on the recognition and enforcement of international arbitral awards.

ABEArb's projects are only possible through the hard work of its directors, supporters and volunteering members, whose main objectives are to promote arbitration among law students from all over Brazil and to provide opportunities to those students already engaged with its study.

2013 Executive Board

President: Jorge Vargas Neto
Vice-President: Rodrigo Moreira
Secretary: Aline Henriques Dias
Treasurer: Daniel Barbosa
Academic Officer: Agatha Brandão
Events Officer: Ana Carolina Dall'Agnol
International Officer: Daniel Tavela Luis
Officer: Isabelle Bueno
Officer: Bernard Potsch
Officer: Laura França Pereira

2013 Academic Council

Prof. Carlos Alberto Carmona
Prof. Eduardo Grebler
Prof. João Bosco Lee
Prof. Lauro Gama Jr.
Prof. Selma Lemes

Migalhas

Migalhas was founded in November 2000 as a daily electronic newsletter, by Miguel Matos, a lawyer in São Paulo. It soon became a success in Brazil, appealing to readers in legal and business circles who wanted smart and lively coverage of the daily news. Since then, Migalhas has reported on every important issue with a great sense of humor and lyricism.

Nowadays, Migalhas circulates electronic newsletters in Portuguese (Migalhas), English (Migalhas International) and Spanish (Migalhas LatinoAmerica). The Web sites are a complement to the publications and feature reference articles, important opinions on current issues, personality profiles, book reviews, practical information on continuing education, seminars and events.

Migalhas also publishes the magazine Conexão, a thematic review of the current legal issues and developments, with contributions from lawyers of prominent international law firms and officers of the judicial institutions.

With over 500 firms in their roster, Migalhas, Migalhas International and Migalhas LatinoAmérica are exclusively sponsored by the finest law firms and companies in Brazil and abroad.

Migalhas (in Portuguese) is at www.migalhas.com.br
Miguel Matos, editor

Migalhas International (in English) is at www.migalhas.com
Michael Ghilissen, editor

Migalhas LatinoAmérica (in Spanish) is at la.migalhas.com
Roxana Cazón, editor

Abbreviations

§
Paragraph

BAL
Brazilian Arbitration Law. Federal Law no. 9,307, enacted on September 23rd, 1996.

BM&FBOVESPA
BM&FBOVESPA S.A. – *Bolsa de Valores Mercadorias e Futuros*. Located in São Paulo, it is the most important Stock Exchange in Brazil.

Consumer Protection Code
Brazilian Consumer Protection Code (*Código de Defesa do Consumidor*). Federal Law no. 8,078, enacted on September 11th, 1990.

Federal Constitution
Brazilian Federal Constitution (*Constituição Federal*), enacted on October 5th, 1988.

Consolidation of Labor Laws
Brazilian Consolidation of Labor Laws (*Consolidação das Leis do Trabalho*). Decree-Law no. 5,452, enacted on May 1st, 1943.

Criminal Code
Brazilian Criminal Code (*Código Penal*). Decree-Law no. 2,848, enacted on December 7th, 1940.

Civil Procedure Code
Brazilian Civil Procedure Code (*Código de Processo Civil*). Federal Law no. 5,689, enacted on January 11th, 1973.

EC 45/04
Constitutional Amendment (*Emenda Constitucional*) no. 45, enacted on December 30th, 2004.

Law of Concessions
Lei das Concessões e Permissões. Federal Law no. 8,987, enacted on February 13th, 1995.

Law of Electric Energy
Lei de Energia Elétrica. Federal Law no. 10,848, enacted on March 15th, 2004.

Bankrupcy Law
Lei de Falências e Recuperação Judicial. Federal Law no. 11.101, enacted on February 9th, 2005.

Law of Petroleum
Lei do Petróleo. Federal Law no. 9,478, enacted on August 6th, 1997.

Law of Public Private Partnership
Lei das Parcerias Público-Privadas. Federal Law no. 11,079, enacted on December 30th, 2004.

Corporate Law
Lei das Sociedades por Ações. Federal Law no. 6,404, enacted on December 15th, 1976.

Law of Telecommunications
Lei das Telecomunicações. Federal Law no. 9,472, enacted on July 16th, 1997.

Law of Water and Land Transports
Lei de Transportes Aquaviários e Terrestres. Federal Law no. 10,233, enacted on June 5th, 2001.

New York Convention
1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards

RSTJ 09/2005
Resolution no. 09 of the Superior Court of Justice, enacted on May 4th, 2005

STF
Supreme Federal Court (*Supremo Tribunal Federal*)

STJ
Superior Court of Justice (*Superior Tribunal de Justiça*)

TJ/MG
Minas Gerais State Court of Appeal (*Tribunal de Justiça do Estado de Minas Gerais*)

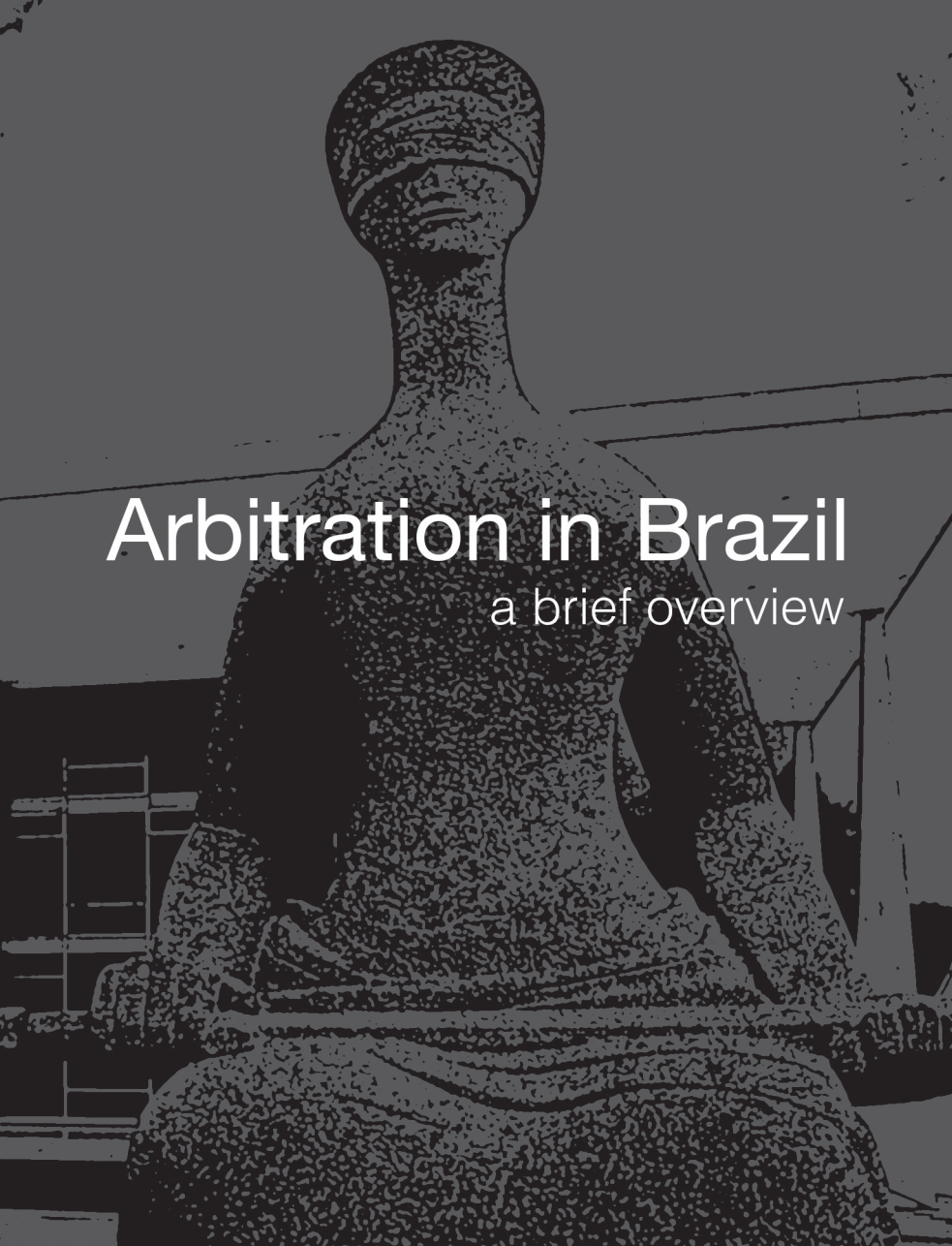
TJ/PR
Paraná State Court of Appeal (*Tribunal de Justiça do Estado do Paraná*)

TJ/RJ
Rio de Janeiro State Court of Appeal (*Tribunal de Justiça do Rio de Janeiro*)

TJ/SP
São Paulo State Court of Appeal (*Tribunal de Justiça do Estado de São Paulo*)

TST
Superior Labor Court (*Tribunal Superior do Trabalho*)

UNCITRAL
Unites Nations Commission on International Trade Law



Arbitration in Brazil

a brief overview

1. Legal Framework

In Brazil, arbitration is regulated by the BAL, which was enacted on September 23rd, 1996. The BAL aimed to modernize and consolidate the domestic legal framework on arbitration as a result of Brazil's need to provide an arbitration-friendly legislation, with reliable dispute resolution mechanisms alternative to State courts.

Since a Brazilian delegation participated actively in the drafting of the 1985 UNCITRAL Model Law on International Commercial Arbitration, the BAL was strongly influenced by this important instrument for the promotion of arbitration worldwide. Other influences to the BAL can be attributed to: the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the 1975 Inter-American Convention on International Commercial Arbitration and the Spanish Arbitration Law of 1988.

Arbitration in Brazil has been widely adopted since the STF declared the constitutionality of the BAL in 2001. The growth of arbitration in Brazil is evidenced by the increasing number of arbitration proceedings in the country, both domestic and international (with several cities being appointed as seat of arbitration), and of arbitral institutions qualified to administer complex proceedings.

It is noteworthy that, on November 22nd, 2012, the Brazilian Senate created a committee to revise the BAL, composed by members varying from scholars to politicians, expected to present a draft by May 1st, 2013. However, an actual change in the Brazilian arbitration regulatory framework is still uncertain and the BAL, together with other important instruments such as the New York Convention, has been adequately fulfilling its purpose and provid-

ing a safe environment for arbitration in Brazil.

In this new arbitration-friendly legal framework which has been implemented by the BAL, the (previously skeptical) Brazilian legislator began to foster arbitration in many important and strategic sectors and national State courts have increased its support for arbitration, making it a reliable and effective means of settling disputes.

This guide is intended to be the starting point for understanding the BAL. Nevertheless, most of the details presented herein require further study of the Brazilian legal system and its application by the Brazilian courts.

2. Arbitration Cornerstones

i. **Arbitrability** (Article 1, BAL)

Under the BAL, subjective arbitrability relates to the parties capacity to consent (as set forth in the Brazilian Civil Code, the legal age to enter into contracts is eighteen years old and the contracting party must not be unconscious). As to objective arbitrability, only disputes related to disposable patrimonial rights may be resolved by arbitration.

ii. **Applicable law** (Article 2, BAL)

Parties are free to choose the rules of law that will be applicable to the merits of the dispute, such as any national law, international treaty or even general principles of law and equity. The only limitation imposed by the BAL is that the choice of law does not violate good morals or the public order.

iii. Enforceability of the arbitration agreement (Article 7, BAL)

The BAL recognizes the binding nature of arbitration agreements. In case the arbitration agreement agreed between the parties do not establishes the procedure for appointment of arbitrators, Article 7, BAL sets forth a specific judicial mechanism to enforce the arbitration agreement and compel reluctant respondents to arbitrate. In extreme cases, the State court may designate the arbitrator *in lieu* of the party that does not do so.

iv. *Kompetenz-kompetenz* (Article 8, BAL)

The BAL expressly adopts the *kompetenz-kompetenz* principle, according to which only the Arbitral Tribunal has jurisdiction to decide matters related to its own jurisdiction or to the existence or validity of the arbitration agreement.

v. Separability (Article 8, BAL)

The BAL also enshrines the principle of separability of the arbitration clause, providing that the annulment of the main agreement does not entail *per se* the annulment of the arbitration agreement, because the validity of the latter is not necessarily attached to the validity of the former.

vi. Duty of disclosure (Article 14, BAL)

Any person with legal capacity and who is deserving of the parties' trust may be an arbitrator. The arbitrator must act in an impartial, independent, competent and diligent manner. Additionally, the BAL expressly requires that, the person appointed as an arbitrator must disclose, before accepting the nomination, any and all circumstances that may give rise to justifiable doubts by the

parties as to the arbitrator's impartiality and/or independence. It is important to note that this is a broad and subjective obligation in line with the concept of justifiable doubt adopted by the UNCITRAL Model Law on International Commercial Arbitration.

vii. Due process of law (Article 21, §2, BAL)

The parties are free to choose the procedural rules that will be followed during the proceedings, provided that the principle of due process is observed, which includes, *inter alia*, the right to a fair trial, the right to be heard and equal treatment of the parties.

viii. Requisites of the award (Article 26, BAL)

In order to be valid and enforceable in Brazil, the award must be composed of: (a) a report with the summary of the dispute and the parties' identity, (b) the grounds for the decision, (c) the *decisum* of the award and (d) the date and place where it was rendered.

ix. Enforceability of the award (Article 31, BAL)

Under the BAL, arbitral awards are equivalent to judicial awards. Therefore, the arbitral award does not need to be granted *exequatur* and may be validly enforced before any Brazilian court, exception made to foreign arbitral awards that need to be recognized by the STJ.

x. Annulment of the award (Article 32, BAL)

The annulment of the arbitral award is an exception acceptable only in limited cases, closely similar to the grounds for refusal of recognition and enforcement set forth in the New York Convention. Such cases are: (a) invalidity of the arbitration agreement; (b) the award rendered by someone who could not serve as an arbitra-

tor; (c) the award that does not fulfill the requisites of Article 26, BAL (see item viii above); (d) the award that does not decide the entire dispute submitted to arbitration or decides beyond the limits imposed by the parties; (e) the award that is rendered through unfaithfulness, extortion or corruption; (f) the award that is not rendered within the time limit agreed by the parties; and (g) the award rendered in proceedings that have not observed the principles of Article 21, §2, BAL (see item vii above).

3. Specificities of the Brazilian Arbitration Law

i. Written arbitration agreement (Article 4, §1, and Article 9 BAL)

Albeit with different requirements, the BAL makes no relevant distinction between the enforceability of arbitration clauses and submission agreements and requires that both be made in writing.

ii. Adhesion Contracts (Article 4, §2, BAL)

Article 4, §2 confers enforceability to the arbitration clause inserted in adhesion contracts, provided that (a) the arbitration proceedings are commenced by the adhering party; or (b) the adhering party has expressly consented to arbitration, signing a separate document for such purpose or initialing that clause specifically, which shall be written in bold type.

iii. Termination of submission agreement (Article 12, BAL)

Three situations shall result in the termination of the submission agreement: (a) in case any arbitrator withdraws before accept-

ing its appointment, as long as the parties have expressly declared that they do not accept a substitute; (b) in case any arbitrator dies or for some reason is not able to rule, also as long as the parties have expressly declared that they do not accept a substitute; and (c) in case the award is not rendered within the established time limit, as long as the interested party has notified the arbitral tribunal, granting it ten extra days to render and present the award.

iv. Reference to the core rules set forth in the Brazilian Code of Civil Procedure in case of conflict of interests (Article 14, heading, BAL)

Article 14, BAL, establishes the application, to arbitrators, of the same rules provided by the Code of Civil Procedure in regards to State judges' conflicts of interest. In other words, the same situations that entail the impediment or the suspicion of judges in court proceedings are grounds for refusing or challenging arbitrators.

v. Arbitrators' Liability (Article 17, BAL)

While in the exercise of their role, arbitrators are subject to the sanctions provided by the Criminal Code for crimes committed by public officials. There is no specific provision regarding immunity of arbitrators.

vi. Party and witness statements (Article 22, §2, BAL)

If a party fails, without cause, to comply with an Arbitral Tribunal's order to give its personal statement in the arbitration hearing, the arbitral tribunal may take into consideration the behavior of the absent party while rendering the award. Under the same circumstances, the arbitral tribunal may request the assistance of

State courts to ensure the attendance of an absent witness, provided that a valid arbitration agreement exists.

vii. Interim and coercive measures (Article 22, §4, BAL)

Except for the provision established in Article 22, §2, BAL (see item iv above), the arbitrators may grant interim measures. In practical terms, the judicial authority will normally be required to enforce the measure granted by the Arbitral Tribunal or to grant the measure if needed before the constitution of the Arbitral Tribunal. Notwithstanding, the courts will intervene only in order to ensure that the arbitral proceedings are successfully carried out and will not replace the Arbitral Tribunal with regard to the merits of the award.

viii. Inarbitrable incidental issues (Article 25, BAL)

If, during the course of the arbitral proceedings, a dispute over inalienable rights arises of which the award is dependent on, the arbitral tribunal may refer the dispute to the competent judicial authority, suspending the arbitral proceedings until the incidental issue is decided by such authority.

4. Main Controversial Matters/Disputes

i. Corporate disputes

Brazilian Corporation Law provides for the possibility of arbitration clauses in companies' bylaws. The application of this provision by the State courts is still under development – there are court cases in which the effectiveness of the arbitration clause in relation to a shareholder is not recognized without an express

consent to the arbitration agreement. Still, practice has shown that an increasing number of companies have been choosing arbitration over judicial litigation. Moreover, under BM&FBOVESPA regulations on Corporate Governance, the arbitration agreement is a mandatory clause to be inserted in the bylaws of companies listed in the New Market or Level 2 of Corporate Governance (the listing segments that impose high corporate governance standards in Brazil).

a. Related provision:
   - Article 109, §3, Corporate Law.

b. Relevant cases:
   - TJ/SP, Interlocutory Appeal no. 9035710-89.2004.8.26.0000, Walpires S.A. Corretora de Câmbio, Títulos e Valores Mobiliários *v*. BOVESPA, February 22nd, 2005;
   - TJ/MG, Interlocutory Appeal no. 1.0035.09.169452-7/001, Rosangela Dorazio et al *v*. Frigorífico Mataboi S.A., April 13th, 2010;
   - TJ/SP, Appeal no. 267.450-4/6, Trelleborg do Brasil Ltda. et al *v*. Anel Empreendimentos Participações e Agropecuária Ltda., May 24th, 2006.

ii. Public sector – State and State controlled companies

According to the majority of Brazilian authorities, Brazilian State and State controlled companies may submit disputes to arbitration, provided that the dispute involves solely disposable patrimonial rights. Several Federal laws related to public sectors have also included provisions reaffirming such possibility. The growth of arbitration may also be noted in strategic sectors, such as in electricity and oil industries.

a. Related provisions:

- Article 23-A, Law of Concessions;
- Article 93, item XV, Law of Telecommunications;
- Article 43, item X, Law of Petroleum;
- Article 35, item XVI, Law of Water and Land Transports;
- Article 4, §6, Law of Electric Energy;
- Article 11, item III, Law of Public Private Partnership.

b. Relevant cases:

- STF, Interlocutory Appeal no. 52.181, Brazilian Federal Union *v*. Organizações Lage, November 14th, 1973;
- STJ, Writ of Mandamus no. 11.308, Terminal Multimodal de Coroa Grande *v*. Nuclebrás Equipamentos Pesados – NUCLEP, April 9th, 2008;
- STJ, Special Appeal no. 612.345, AES Uruguaiana Empreendimentos Ltda. *v*. CEEE, October 25th, 2005;
- TJ/PR, Precautionary Measure no. 160.213-7, Copel *v*. UEG Araucária Ltda, July 1st, 2004;
- TJ/PR, Special Appeal no. 904.813/PR, Companhia Paranaense de Gás – Compagás *v*. Consórcio Carioca – Passarelli, October 20th, 2011.

iii. Insolvency proceedings

The STJ has consolidated the possibility of companies in bankruptcy or judicial reorganization resorting to arbitration. The specific bankruptcy process must still be carried out by the State courts, but questions dealing with the existence of a credit, for instance, may be resolved through arbitration.

a. Related provision:

- There is no specific legal provision in on the matter.

Bankruptcy and judicial reorganization processes are regulated by the Bankruptcy Law.

b. Relevant cases:

- STJ, Special Appeal no. 804.306, RS Components Limited *v*. RS do Brasil Comércio Importação Exportação Consultoria e Representações Ltda., August 19th, 2008;
- STJ, Precautionary Measure no. 14.295, Interclínicas Planos de Saúde S.A. *v*. ABC Serviços Médico-Hospitalares Ltda., June 9th, 2008;
- TJ/SP, Interlocutory Appeal no. 531.020-4/3-00, Jackson Empreendimentos Ltda. *v*. Diagrama Construtora Ltda., June 25th, 2008.

iv. Labor disputes

Several provisions in the Brazilian Consolidation of Labor Laws indicate that individual labor rights are inalienable, thus being unable to be resolved by to arbitration. Notwithstanding that, the Brazilian Constitution authorizes the use of arbitration where the dispute arises out of a collective bargaining process, or by the breaches of a collective employment agreements. In this context, most of precedents from the by the Brazilian Superior Labor Court show that no employee may be compelled to submit an individual labor right to arbitration.

c. Related provisions:

- Consolidation of Labor Laws;
- Article 114, §1, Federal Constitution.

d. Relevant cases:

- TST, Appeal no. 25900-67.2008.5.03.0075, Câmara De Mediação e Arbitragem de Minas Gerais S/S Ltda *v*. Ministério Público do Trabalho, December 11th, 2009;

- TST, Appeal no. 192700-74.2007.5.02.0002, Comércio de Tecidos Silva Santos Ltda. *v*. Josimar Santana de Souza, May 28th, 2010;
- TST, Appeal no. 189600-42.2008.5.07.0001, Brazil Properties S/C Ltda. *v*. Brazil USA Vacations Ltda. et al, November 16th, 2012;
- TST, Appeal no. 79500-61.2006.5.05.0028, Xerox Comércio e Indústria Ltda. *v*. Mário de Castro Guimarães Neto, May 7th, 2010.

v. Consumer Law

The Consumer Protection Code establishes that mandatory arbitration clauses inserted in consumer agreements are null and void. However, Brazilian legal scholars and case law sustain that a consumer dispute may be submitted to arbitration (i) if the parties agree to do so by means of an instrument containing the express declaration of the consumer's intention; or (ii) in case the agreement entered into by supplier and consumer contains an arbitration clause and the own consumer initiates the arbitral proceedings.

a. Related provisions:
   - Article 51, item VII, Consumer Protection Code;
   - Article 4, §2, BAL.

b. Relevant cases:
   - STJ, Special Appeal no. 819.519, Conac – Construtora Anacleto Nascimento Ltda. *v*. Manoel Alonso et al., October 9th, 2007;
   - STJ, Special Appeal no. 1.169.841, CZ6 Empreendimentos Comerciais Ltda. et al *v*. Davidson Roberto de Faria Meira Júnior, November 6th, 2012;

- TJ/RJ, Appeal no. 0006037-18.2008.8.19.0209, Pan 2007 Empreendimentos Imobiliários S.A. *v*. Robson da Silva Pereira et. al., February 25th, 2011;
- TJ/RJ, Appeal no. 0000840-48.2009.8.19.0209, Lelio Ribeiro Carneiro da Silva Neto *v*. Cyrela Milão Empreendimentos Imobiliários S.A, September 8th, 2009.

5. Recognition and Enforcement of Foreign Awards

i. General comments on the recognition of foreign awards

The BAL governs both international and domestic arbitration and it provides that the awards rendered outside of Brazilian territory are considered foreign and thus need to be recognized in order to produce effects and be enforceable in Brazil. Among other important treaties and conventions, Brazil is a signatory party of the New York Convention

ii. Competent court

The STJ is the competent judicial body to decide on the recognition of foreign awards, pursuant to Article 105, item I, sub item "i", of the Federal Constitution. Originally, such competence was held by the STF, however, the EC 45/04 changed this system and concentrated the competence for recognition of foreign awards solely in the Superior Court of Justice.

iii. Applicable provisions

The main substantive and procedural requirements for recognizing arbitral awards in Brazil are provided for by Articles 34 to 40 of the BAL, the New York Convention and the RSTJ 09/2005.

iv. Requirements

To be recognized in Brazil, a foreign arbitral award must: (a) be in compliance with Brazilian public policy, sovereignty and good moral; (b) be rendered by a competent authority; (c) have had a valid service of process on the defendant or a due certification of default by the absent defendant; (d) be final and binding, complying with the necessary formalities in the country where the award was rendered; and (e) be certified by the Brazilian consul in the country where the decision was rendered, together with a sworn translation of the decision or award into Portuguese. In addition, the applicant must demonstrate the existence of a valid arbitration agreement and present its sworn translation into Portuguese.

v. Grounds for refusal of recognition

Both Article 38 of the BAL and Article 9 of the RSTJ 09/2005 provide the grounds which may be used by the party against whom recognition is sought to object to it, which mirror the provisions of the New York Convention. The merits of the dispute decided through arbitration may not be discussed in any event.

vi. Procedure (RSTJ 09/2005)

The procedure for the recognition of a foreign award comprises the main following steps: (a) the applicant requests recognition and provides the necessary documents; (b) the applicant may request the concession of interim or conservatory relief, such request to be decided by the Chief Justice of the STJ, based on the existence of a *prima facie* case in favor of the applicant and the risk of irreparable damage; (c) the respondent is served notice of process and must present its defense within 15 days of service; (d) in case recognition is not disputed, the case is adjudicated by the

President of the STJ alone; (e) in case a defense is presented, the case is adjudicated *en banc* by the Special Court of the STJ (composed by the 15 most senior Justices of the STJ); (f) the Public Attorney's Office is granted an opportunity to present its opinion regarding the case; and (g) the STJ renders a decision.

vii. Interim measures

Pursuant to article 4, §3, of the RSTJ 09/2005, before the final decision on the recognition of the foreign award, the STJ is authorized to grant an interim or conservatory relief in order to avoid frustrating the purpose of the request.

viii. Proceedings after recognition

After the recognition, the award becomes enforceable in Brazil. Enforcement is carried out by the competent Federal Court, pursuant to Article 12 of the RSTJ 09/2005.

6. Arbitral Institutions in Brazil

When choosing an arbitral institution, tone should consider its reputation, experience and expertise, in order to avoid a future setback. The CONIMA – Council of Mediation and Arbitration Institutions has been keen on certain institutions which adopt questionable methods for administering arbitration proceedings, and which have accused of mishandling arbitration for pecuniary purposes.

There are more than 100 arbitration institutions in Brazil, several of which also offer mediation services. According to recent reports, the most recognized arbitral institutions in the country

are the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CCBC), the Chamber of Conciliation, Mediation and Arbitration CIESP/FIESP, the Chamber of Business Arbitration – Brazil (CAMARB) and the FGV Chamber of Conciliation and Arbitration, which together administrated in 2011 a total of 122 cases, involving an approximate amount of US$ 1.5 billion.

Below there is basic information on the relevant Brazilian institutions. The proceedings under the rules of all these institutions do not differ substantially from each other, parties are entitled to an equal participation throughout the proceedings, and arbitrators are screened for impartiality and independence in each case.

It should be pointed out that there is no impediment for an ICC, ICDR/AAA, and/or LCIA (or any other international institution) arbitration to be conducted in Brazil, and arbitration proceedings with seat in Brazil, although administered by international institutions and governed by their rules are becoming increasingly common.

i. Chamber of Business Arbitration – Brazil (CAMARB)

Administers all types of disputes. Apart from providing arbitration services, it also gives courses, seminars and other academic activities, as the Brazilian Arbitration Competition.

Rua Paraíba, 1000, 16th floor
30130-141, Belo Horizonte, MG
Tel: + (55 31) 3213-0310
E-mail: camarb@camarb.com.br

ii. Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CCBC)

CCBC was the first arbitral institution established in Brazil. It

administers all types of disputes, both international and domestic.

Rua do Rócio, 220, 12th floor, cj. 121
04552-000, São Paulo, SP
Tel: + (55 11) 3044-4535
E-mail: ccbc@ccbc.org.br

iii. FGV Chamber of Conciliation and Arbitration

Administers all types of disputes, specially involving the electricity sector.

The Chamber has specific rules for expeditious arbitration.

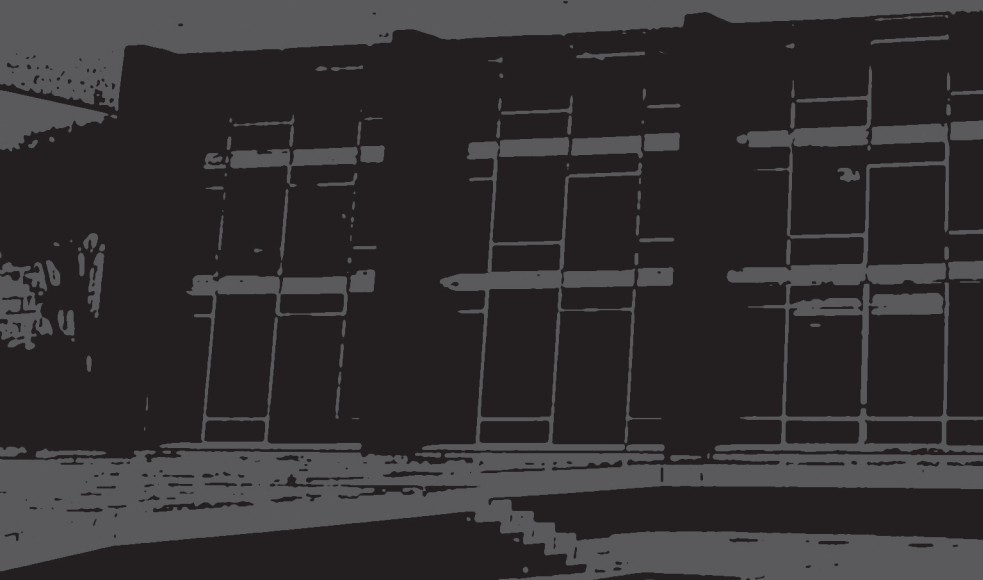
Praia de Botafogo, 190, 5th floor
22250-900, Rio de Janeiro, RJ
Tel: + (55 21) 3799-5526
E-mail: camara@fgv.br

iv. Market Arbitration Chamber / BM&FBOVESPA

Mandatory to companies listed on special segments of the New Market and level 2 of corporate governance and recommended to settle disputes involving any corporations and the securities market.

Rua XV de Novembro, 275, 5th floor
01013-001, São Paulo, SP
Tel: + (55 11) 2565-6815
E-mail: secretariacam@bvmf.com.br

Appendices



Appendix: Brazilian Arbitration Law

Law No. 9.307, September 23, 1996

Provides for arbitration.

The PRESIDENT OF THE REPUBLIC. I hereby make known that the National Congress decrees and I sanction the following Law:

Chapter I
General Provisions

Art. 1 Persons capable of contracting may refer to arbitration disputes related to disposable patrimonial rights.

Art. 2 The arbitration may be conducted under rules of law or of equity, at the parties' discretion.

First paragraph. The parties may freely choose the rules of law applicable to the arbitration provided that their choice does not violate good morals or public policy standards.

Second Paragraph. The parties may also establish for the arbitration to be conducted under general principles of law, customs, usages and international rules of commerce.

Chapter II
The Arbitration Agreement and its Effects

Art. 3 The interested parties may submit the resolution of their disputes to an arbitral tribunal through an arbitration agreement, which may take form of either an arbitration clause or a submission agreement.

Art. 4 The arbitration clause is the agreement whereby parties to a contract agree to resolve through arbitration all disputes that may arise related to such contract.

First Paragraph. The arbitration clause must be in writing, either inserted in the contract itself or in a separate document referring to it.

Second Paragraph. In adhesion contracts, the arbitration clause will only be effective if the adhering party initiates the arbitration proceedings or if it expressly agrees to its commencement, provided that it does so in writing either in a document attached to the contract or in a provision in bold and with a separate signature or initials specifically for this provision.

Art. 5 If the parties refer to rules of an arbitral institution or specialized entity in the arbitration clause, the arbitration shall be commenced and conducted pursuant to such rules, and the parties may also determine in the arbitration clause itself, or in a separate document, the agreed procedure for commencing the arbitration.

Art. 6 If the parties fail to agree in advance on the form of commencing the arbitration, the interested party shall notify the other party of its intention to commence the arbitration, either by mail or through any other means of communication against receipt, whereby the addressee will be called to sign the submission agreement on the date, time and place stated in the notice.

Sole Paragraph. If the notified party fails to attend, or, if attending, it refuses to sign the submission agreement, the other party may file the claim provided for in Article 7 of this Law at the court originally competent to decide the dispute.

Art. 7 If, despite the existence of an arbitration clause, there is resistance on the commencement of the arbitration, the interested party may request the court to serve notice on the other party to sign the submission agreement before the court in a special hearing scheduled for this purpose by the judge.

First Paragraph. The plaintiff shall specify in detail the subject matter of the arbitration, attaching to its motion the document containing the arbitration clause.

Second Paragraph. If the parties attend the hearing, the judge will first seek a conciliation on the dispute. If he does not succeed, the judge shall attempt to lead the parties to sign, by mutual agreement, the submission agreement.

Third Paragraph. If the parties disagree on the terms of the submission agreement, the judge shall, after hearing the defendant, decide on the contents thereof, either at the same

hearing or within 10 (ten) days, observing the provisions of the arbitration clause and considering the provisions of the Arts. 10 and 21, second paragraph, of this Law.

Fourth Paragraph. If the arbitration clause fails to provide for any rule regarding the appointment of arbitrators, the judge shall rule on the issue after hearing the parties, being able to appoint a sole arbitrator to decide the dispute.

Fifth Paragraph. The plaintiff's unjustified failure to attend the hearing scheduled for signature of the submission agreement will imply the dismissal of the case without judgment on its merits.

Sixth Paragraph. If the defendant fails to attend the hearing, the judge shall, after hearing the plaintiff, establish the content of the submission agreement and appoint a sole arbitrator.

Seventh Paragraph. The judgment granting the plaintiff's motion shall have the force of a submission agreement.

Art. 8 The arbitration clause is autonomous from the contract in which it is contained, so that the nullity of the latter does not necessarily imply the nullity of the arbitration clause.

Sole Paragraph. The arbitrator has jurisdiction to decide, *ex officio* or upon request of either party, the matters concerning the existence, validity and effectiveness of the arbitration agreement and of the contract containing the arbitration clause.

Art. 9 The submission agreement is the agreement executed in or out of court whereby parties submit a dispute to arbitration by one or more persons.

First Paragraph. The submission agreement executed in court shall be put in writing in the case records before the court where the case is being processed.

Second Paragraph. The submission agreement executed out of court shall be entered into by a private written document, signed by two witnesses, or by a public deed.

Art. 10 The submission agreement shall provide:

I - the name, profession, marital status and domicile of the parties;

II - the name, profession and domicile of the arbitrator or arbitrators, or, if applicable, the particulars of the entity to which parties have delegated the appointment of arbitrators;

III - the subject matter referred to arbitration; and

IV - the place where the arbitral award shall be rendered.

Art. 11 The submission agreement may also establish:

I - the place or places where the arbitral proceedings shall be held;

II - the authorization for the arbitrator or arbitrators to decide in equity, if so agreed to by the parties;

III - the time limit for the rendering of the arbitral award;

IV - the choice of national law or institutional rules applicable to the arbitral proceedings, when the parties so agree;

V - the liability for payment of arbitration fees and costs; and

VI - the agreement on the arbitrator's or arbitrators' fees.

Sole Paragraph. If the parties establish the fees of the arbitrator or arbitrators in the submission agreement, such document will be considered an extrajudicial enforcement instrument; otherwise, the arbitrator shall request the court originally competent to set the arbitration fees.

Art. 12 The submission agreement is terminated:

I - if any arbitrator withdraws himself, prior to accepting his appointment, provided that the parties have expressly declared not to accept a substitute;

II - if any arbitrator dies or becomes incapable of ruling, provided that the parties have expressly declared not to accept a substitute;

III - upon expiration of the time limit referred to in Art. 11, item III, provided that the interested party gave notice to the

arbitrator or the chairperson of the arbitral tribunal, granting him or her a further period of ten days for rendering and presenting the arbitral award.

Chapter III
Arbitrators

Art. 13 Any legally capable person trusted by the parties may act as an arbitrator.

First Paragraph. The parties shall appoint one or more arbitrators, always at an odd number, also being able to appoint their respective substitutes.

Second Paragraph. Should the parties appoint an even number of arbitrators, the latter will be authorized immediately to appoint one more arbitrator. In case of disagreement thereon, the parties shall request the court originally competent to decide the dispute to appoint such arbitrator, following, to the extent applicable, the procedure set out in Article 7 of this Law.

Third Paragraph. The parties may, by mutual agreement, define the procedure for appointment of arbitrators or adopt the rules of an arbitral institution or specialized entity to this effect.

Fourth Paragraph. If several arbitrators are appointed, they will select, by majority vote, the chairperson of the arbitral

tribunal. In absence of consensus, the eldest member will be invested in the chairperson position.

Fifth Paragraph. The sole arbitrator or the chairperson of the arbitral tribunal may designate a secretary, who may be selected among the existing arbitrators, when deemed necessary.

Sixth Paragraph. In performing its duty, the arbitrator must behave in an impartial, independent, competent, diligent and judicious manner.

Seventh Paragraph. The sole arbitrator or the arbitral tribunal may order security for costs from the parties in order to cover expenses and actions it deems necessary.

Art. 14 Individuals in any way related to the parties or to the dispute in such a way as to fall within the impediment or suspicion criteria applicable to the judges are prevented from acting as arbitrators and will be subject, to the extent applicable, to the same duties and liabilities imposed on judges by the Code of Civil Procedure.

First Paragraph. Individuals appointed as arbitrators have the duty to disclose, prior to acceptance of such appointment, any facts likely to give rise to justifiable doubts as to their impartiality and independence.

Second Paragraph. An arbitrator may be challenged only for reasons that occurred after his appointment. However, it may be challenged for a reason predating his appointment, if:

a) he or she was not appointed directly by the party; or
b) the reason for the challenge of the arbitrator became known after his appointment.

Art. 15 The party who intends to challenge the arbitrator must submit, in accordance with Article 20, the respective challenge motion either directly to the arbitrator or to the chairperson of the arbitral tribunal, presenting its reasons and supporting evidence.

Sole Paragraph. If the motion is granted, the disqualified or challenged arbitrator will be discharged and replaced in accordance with Article 16 of this Law.

Art. 16 If the arbitrator withdraws himself or herself prior to accepting his appointment, or if, after acceptance, he dies or becomes incapable to perform his functions, or if he is successfully challenged by the parties, he or she will be replaced by the substitute appointed in the submission agreement, if any.

First Paragraph. If no substitute has been appointed, the rules of the arbitral institution or specialized entity shall apply, if such rules have been referred to in the arbitration agreement.

Second Paragraph. If the arbitration agreement is silent and parties do not agree on the appointment of a substitute arbitrator, the interested party shall act according to the procedure established in Article 7 of this Law, unless the parties have stated, in the arbitration agreement, that they would not accept a substitute.

Art. 17 The arbitrators, in the exercise of their functions or as a result thereof, are subject to the criminal law provisions applicable to public officials.

Art. 18 The arbitrator is the judge in fact and right, and his decision is not subject to appeal or recognition by the courts.

Chapter IV
Arbitral proceedings

Art. 19 An arbitration is deemed to be commenced when the appointment is accepted by the sole arbitrator or by all arbitrators, if several.

> Sole Paragraph. Once the arbitration is commenced, if the arbitrator or the arbitral tribunal considers that an issue included in the arbitration agreement must be clarified, an addendum shall be drafted, together with the parties, to be signed by all, which will become a part of the arbitration agreement.

Art. 20 A party wishing to raise issues as to the jurisdiction, suspicion or impediment of an arbitrator or arbitrators, or as to the nullity, invalidity or ineffectiveness of the arbitration agreement, must do so at the first existing opportunity after the commencement of the arbitral proceedings, in a timely manner.

> First Paragraph. If a suspicion or impediment challenge is accepted, the arbitrator shall be replaced in accordance with Article 16 of this Law; and, should the lack of jurisdiction of the

arbitrator or of the arbitral tribunal, or the nullity, invalidity or ineffectiveness of the arbitration agreement be confirmed, the parties shall be referred to the court competent to decide the dispute.

Second Paragraph. If the above motion is not granted, the arbitral proceedings shall proceed, without prejudice of the possibility of such decision being reviewed by the competent court, should the claim provided for in Art. 33 of this Law be filed.

Art. 21 The arbitration shall follow the proceedings agreed upon by the parties in the arbitration agreement, which may refer to the rules of an arbitral institution or specialized entity, being also possible for the parties to empower the sole arbitrator or the arbitral tribunal to regulate the proceedings.

First Paragraph. In the absence of any provisions regulating the arbitral proceedings, the sole arbitrator or the arbitral tribunal shall rule on the matter.

Second Paragraph. The principles of fair trial, equal treatment of the parties, impartiality of the arbitrator and freedom of decision shall always be respected.

Third Paragraph. The parties may be represented by legal counsel, being always respected the parties' freedom of choice of representative or assistant in the arbitral proceedings.

Fourth Paragraph. At the beginning of the arbitration, the

arbitrator or the arbitral tribunal shall attempt to conciliate the parties, applying, to the extent applicable, the provision of Art. 28 of this Law.

Art. 22 The arbitrator or the arbitral tribunal may take the parties' statement, hear witnesses and determine the production of expert investigations and other evidence deemed necessary, either at a party's request or *ex officio*.

First Paragraph. Statements by parties and witnesses shall be taken at the place, date and time previously notified in writing to the parties, and a summary record thereof shall be signed by or on behalf of the deponent, and also by the arbitrators.

Second Paragraph. If a party unjustifiably fails to comply with a request to render a personal statement, the arbitrator or the arbitral tribunal shall give due consideration to such behavior when issuing the award; and if a witness, under the same conditions, is absent, the arbitrator or the chairperson of the arbitral tribunal may request the court to compel the defaulting witness to depose, upon evidence of the existence of an arbitration agreement to this effect.

Third Paragraph. Default by a party does not prevent the rendering of an arbitral award.

Fourth Paragraph. With the exception of the provisions of the Second Paragraph, if coercive or injunctive orders become necessary, the arbitrators may request them to the court originally competent to decide the dispute.

Fifth Paragraph. If an arbitrator is replaced in the course of the arbitral proceedings, its substitute may determine, at its discretion, whether to retake evidence already produced.

Chapter V
Arbitral Award

Art. 23 The arbitral award shall be rendered within the time limit stipulated by the parties. If no express agreement has been made in this respect, the award shall be rendered within six months as from the date of the commencement of the arbitral proceedings or the date of replacement of an arbitrator.

Sole Paragraph. The parties and the arbitrators, by mutual consent, may extend the stipulated time limit for presentation of the award.

Art. 24 The decision of the sole arbitrator or of the arbitrators shall be made in writing.

First Paragraph. If there is more than one arbitrator, the decision shall be rendered by majority vote. Failing majority consent, the opinion of the chairperson of the tribunal shall prevail.

Second Paragraph. A dissenting arbitrator may, at its discretion, render his decision on a separate opinion.

Art. 25 If, during the course of the arbitration, a dispute concern-

ing inalienable rights arises, on which the final decision depends, the arbitrator or the arbitral tribunal shall refer the parties to the competent court, ordering the stay of the arbitral proceedings.

Sole paragraph. The arbitral proceedings shall resume its development once such incidental issue is resolved and evidence has been presented in the records of its final judgment.

Art. 26 The arbitral award must contain:

I - a report of the facts, containing the parties' personal data and a summary of the dispute;

II - the grounds for the decision, addressing the factual and legal aspects involved and expressly mentioning whether the decision was rendered in equity;

III - the *decisum*, in which the arbitrators shall resolve the submitted issues and establish a time limit for compliance with the ensuing decision, as the case may be; and

IV - the date and place in which the award was rendered.
Sole Paragraph. The arbitral award shall be signed by the sole arbitrator or by all arbitrators. If one or more of the arbitrators is unable to or refuses to sign the award, the chairperson of the arbitral tribunal shall attest to such fact.

Art. 27 The arbitral award shall decide upon the parties' liability for payment of the arbitration costs and expenses, as well as upon the pecuniary liabilities due to bad-faith litigation, as the case may be,

with due respect to the provisions of the arbitration agreement, if any.

Art. 28 If during the arbitration the parties settle the dispute, the arbitrator or the arbitral tribunal, at the parties' request, may state such fact through an arbitral award, containing the requirements provided in Art. 26 of this Law.

Art. 29 The arbitral proceedings end with the rendering of the arbitral award; the sole arbitrator or the chairperson of the arbitral tribunal shall send the parties a copy of the decision by mail or by any other means of communication against receipt, or through direct delivery to the parties against receipt.

Art. 30 Within 5 (five) days as from receipt or personal delivery of the award, the interested party may, upon notice to the other party, request the sole arbitrator or the arbitral tribunal to:

I - correct any material error in the award;

II - clarify any obscurity, doubt or contradiction in the arbitral award, or decide on an omitted issue that should have been addressed.

Sole Paragraph. Within ten days, the sole arbitrator or the arbitral tribunal shall decide this matter, through an addendum to the award, which shall be sent to the parties in accordance with Art. 29.

Art. 31 The arbitral award shall have the same effect on the parties

and their successors as a judgment issued by a State court, and if vested in a condemnatory nature, it shall constitute an enforceable instrument therefor.

Art. 32 An arbitral award will be deemed null and void if:

I - the arbitration agreement is null and void;

II - it is rendered by a person who could not be an arbitrator;

III - it does not comply with the requirements of Art. 26 of this Law;

IV - it has exceeded the limits of the arbitration agreement;

V - it does not decide the whole dispute submitted to arbitration;

VI - it has been duly proved that the award was made through unfaithfulness, extortion or corruption;

VII - it was rendered after its time limit has expired, with due regard for Art. 12, item III, of this Law; and

VIII - it violates the principles set forth in Art. 21, Second Paragraph, of this Law.

Art. 33 The interested party may submit to the competent court a motion to set aside the arbitral award in the cases established in this Law.

First Paragraph. The claim for setting aside the arbitral award shall follow the ordinary procedure provided for in the Code of Civil Procedure, and shall be filed within ninety days after receipt of the award or any addendum thereto.

Second Paragraph. The decision granting the claim shall:

I - render the arbitral award null and void, in the cases foreseen in Art. 32, items I, II, VI, VII and VIII;

II - order the sole arbitrator or the arbitral tribunal to render a new award, in all other cases.

Third Paragraph. The claim for setting aside of the arbitral award may also be submitted as a debtor's defense to the award enforcement, in accordance with Arts. 741 *et seq*. of the Code of Civil Procedure, if a judicial enforcement is sought.

Chapter VI
Recognition and Enforcement of Foreign Arbitral Awards

Art. 34 A foreign arbitral award shall be recognized or enforced in Brazil pursuant to international treaties in force in the national legal system, or, if non-existent, strictly in accordance with the present Law.

Sole Paragraph. A foreign arbitral award is an award rendered outside of the Brazilian territory.

Art. 35 In order to be recognized or enforced in Brazil, a foreign arbitral award is subject only to recognition by the Federal Supreme Court.

Art. 36 The provisions of Arts. 483 and 484 of the Code of Civil Procedure are applicable, to the extent possible, to the request for recognition of a foreign arbitral award.

Art. 37 The request for recognition of a foreign arbitral award shall be submitted by the interested party; this written motion shall comply with the rules of procedure of Article 282 of the Code of Civil Procedure, and must be substantiated with:

I - the original arbitral award document or a duly certified copy, authenticated by the Brazilian consulate, as well as a sworn translation thereof;

II - the original or a duly certified copy of the arbitration agreement, as well as a sworn translation thereof.

Art. 38 The request for recognition or enforcement of a foreign arbitral award may only be denied if the defendant proves that:

I - the parties to the agreement lacked legal capacity;

II - the arbitration agreement was not valid under the law to which the parties have subjected it, or, failing any indication thereon, under the law of the country where the award was rendered;

III - it was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings, or in the cases of violation of the principle of due process, rendering the defendant unable to present its case;

IV - the arbitral award has exceeded the scope of the arbitration agreement, and it is not possible to separate the portion exceeding the scope from that which has actually been referred to arbitration;

V - the arbitral proceedings were not commenced in accordance with the submission agreement or the arbitration clause; and

VI - the arbitral award has not yet become binding on the parties, or has been set aside or suspended by a court of the country in which the arbitral award was rendered.

Art. 39 The request for the recognition or enforcement of a foreign arbitral award shall also be denied if the Federal Supreme Court ascertains that:

I - the subject matter of the dispute cannot be referred to arbitration in accordance with Brazilian law;

II - the decision violates the national public policy.

Sole Paragraph. The service of summons on a party resident or domiciled in Brazil pursuant to the arbitration agreement or to the procedural law of the country in which the arbitra-

tion took place, including through mail with confirmation of receipt, shall not be considered a violation of national public policy, provided that the Brazilian party is granted sufficient time to exercise his right of defense.

Art. 40 The denial of recognition or enforcement of a foreign arbitral award based on formal procedural flaws does not preclude the interested party from renewing its request, once such defects are properly corrected.

Chapter VII
Final Provisions

Art. 41 Arts. 267, item VII; 301, item IX and 584, item III, of the Code of Civil Procedure, shall henceforth read as follows:

"Art. 267.....
VII - by the arbitration agreement."

"Art. 301.....
IX - arbitration agreement."

"Art. 584.....
III - the arbitral award and the court decision ratifying a transaction or conciliation".

Art. 42 Art. 520 of the Code of Civil Procedure shall have a new item, with the following wording:

"Art. 520.....
VI - grant the request for commencement of arbitral proceedings".

Art. 43 This Law shall enter into force sixty days after its publication.

Art. 44 Arts. 1037 through 1048 of Law no. 3.071, of January 1, 1916, Brazilian Civil Code; Arts. 101 and 1072 through 1102 of Law no. 5869, of January 11, 1973, Code of Civil Procedure, and all other provisions to the contrary, are hereby revoked.

Brasília, September 23, 1996; 175th year from the independence and 108th from the beginning of the Republic.

FERNANDO HENRIQUE CARDOSO

Nelson A. Jobim

Appendix: STJ Resolution No. 9 of 2005

Resolution no. 9, May 4, 2005

Provides, on a temporary basis, for the jurisdiction ascribed to the Superior Court of Justice instituted by Constitutional Amendment no. 45/2004.

THE PRESIDENT OF THE SUPERIOR COURT OF JUSTICE, using his statutory powers provided in Art. 21, item XX, combined with Art. 10, item V, and based on the changes introduced by the Constitutional Amendment no. 45/2004, which vested the Superior Court of Justice with jurisdiction to adjudicate and judge, originally, the recognition of foreign awards and on the issuance of exequatur to letters rogatory (Federal Constitution, Article 105, item I, point "I"), subject to the Plenary Board of Justices, resolves:

Art. 1 The procedural classes of Recognition of Foreign Awards and Letters Rogatory are hereby created and added to the list of cases referred to the Superior Court of Justice; which shall be subject to the provisions of this Resolution, on an exceptional basis, until the Plenary Board of this Court approves specific statutory rules therefor.

Sole Paragraph. Payment of court costs shall be suspended in relation to cases dealt with in this Resolution and entering this Court after publication of the aforementioned Constitutional Amendment until the resolution referred to in the main section of this article is enacted.

Art. 2 The Chief Justice has authority to recognize foreign awards and issue *exequatur* to letters rogatory, exception made to the situation provided in Art. 9 of this Resolution.

Art. 3 Recognition of a foreign award shall be requested by the interested party through a motion following the procedural law, and shall be accompanied by the original or a certified copy of the full text of the foreign award, in addition to other essential documents, duly translated into Portuguese and certified.

Art. 4 A foreign award shall not be effective in Brazil without prior recognition by the Superior Court of Justice or its Chief Justice.

First Paragraph. Out-of-court decisions that are considered awards under Brazilian Law shall be subject to recognition.

Second Paragraph. Foreign awards may be partially recognized.

Third Paragraph. Interim measures may be granted in proceedings for recognition of foreign awards.

Art. 5 The following requirements are essential for recognition of a foreign award:

I – it must have been issued by a competent authority;

II – the parties must have been served process or lawfully judged by default;

III – it must be final, and

IV – the award must have been duly certified by a Brazilian consul and accompanied by a translation into Portuguese by an official or sworn translator in Brazil.

Art. 6 Recognition shall not be granted to foreign awards nor shall exequatur be issued to letters rogatory to the extent that they offend national sovereignty or public policy rules.

Art. 7 Letters rogatory may refer to decisional or non-decisional acts.

Sole paragraph. Applications for international legal assistance referring to acts that require no decision by the Superior Court of Justice on compliance with formal requisites, even if identified as letters rogatory, shall be forwarded or returned to the Ministry of Justice for proper direct assistance.

Art. 8 The interested party shall, within 15 (fifteen) days, be served to answer the motion for recognition of the foreign award or notified to challenge the letter rogatory.
Sole paragraph. The measure requested in a letter rogatory may be taken without hearing the concerned party when prior service of process could render ineffective the international assistance.

Art. 9 The defense against a motion for recognition of foreign awards or letters rogatory may only refer to the authenticity of documents, construction of the decision and compliance with the requirements hereunder.

First Paragraph. If the motion for recognition of foreign award is challenged, the case shall be distributed to the Special Court for judgment, and the Reporting Justice shall perform all further acts inherent to the development of the process and the production of evidence.

Second Paragraph. If there is a challenge to a decisional letter rogatory, the case may, by resolution of the Chief Justice, be distributed to the Special Court for judgment.

Third paragraph. If the defendant is at default or deemed legally incapable, a court-appointed guardian shall be named upon personal notice to the latter.

Art. 10 The Public Attorney Office shall be given access to the case records involving letters rogatory and motions for recognition of foreign awards, for a 10 (ten)-day period, being allowed to challenge them.

Art. 11 The rulings of the Chief Justice on motions for recognition of foreign awards and letters rogatory are subject to appeal according to specific court regulations.

Art. 12 Once it is recognized, a foreign award shall be enforced by writ of execution at the competent Federal Court.

Art. 13 Upon completion of the *exequatur*, the letter rogatory shall be submitted to the competent Federal Court for enforcement.

First Paragraph. Upon enforcement proceedings of the letter

rogatory by the competent Federal Court, any interested party or the Public Attorney may file motions (*embargos*) against any act related thereto within ten (10) days from said act, which shall be heard by the Chief Justice.

Second Paragraph. The decision to dismiss the motions is subject to special appeal according to specific court regulations.

Third Paragraph. When applicable, the Chief Justice or Reporting Justice of the appeal may directly order the adoption of the remedy sought.

Art. 14 Upon fulfillment of the letter rogatory, it shall be returned to the Chief Justice of the Superior Court of Justice within ten (10) days, who shall within a period of equal duration return the letter rogatory - through the Ministry of Justice or the Ministry of Foreign Affairs - to the original jurisdictional authority .

Art. 15 This Resolution shall come into force on the date of its publication, repealing Resolution no. 22, of 12/31/2004, and Act no. 15, of 02/16/2005.

Minister EDSON VIDIGAL