

# 2013 ICC BRAZILIAN ARBITRATION DAY

Conference to be held at Pinheiro Neto Advogados  
18 June 2013  
São Paulo, Brazil

## Venue

Pinheiro Neto Advogados  
Rua Hungria, 1.100  
São Paulo, Brazil

## About the event

Leading practitioners gather once again in Brazil to discuss sensitive issues in international arbitration, with a special attention being placed to Brazilian practice and experiences under the ICC Arbitration Rules. Topics include an update on Brazilian case law, the needs of particular industries in international arbitration, the challenges posed by procedural issues and the duties of the arbitral tribunal when drafting the award.

## Who should attend

Practicing lawyers, corporate counsel, arbitrators, academics and professionals interested in and/or involved in international arbitration in Latin America.

## With the institutional support of



**Comitê Brasileiro de Arbitragem**

## Venue and lunch Sponsor:

**PINHEIRONETO**  
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## Welcoming cocktail and ICCYAF event sponsor:

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## Programme

### 09.00 – 10.00    **Introductory Session**

09.00 – 09.15    Opening Remarks

**José Emilio Nunes Pinto**, Vice-President, ICC International Court of Arbitration (São Paulo).

09.15 – 09.45

The 2012 ICC Rules of Arbitration: One Year of Application and Experiences

**José Ricardo Feris**, Deputy Secretary General, ICC International Court of Arbitration (Paris).

09.45 – 10.00

Q & A session

10.00 – 11.00

### **Roundtable on Brazilian Case Law**

The success of any country as a seat of international arbitration depends largely on the attitude of its judiciary towards arbitral work. Brazil has experienced a general progressive acceptance of arbitration by its courts, facilitating the blossom of a more harmonious relation between the judiciary and arbitration in general. Evidence to this is the increase in recent years of Brazilian-related cases handled by the ICC International Court of Arbitration. The figures are quite impressive: in 2012, Brazil was the seventh most chosen seat in ICC arbitration. 82 Brazilian parties took part of these proceedings, which represent 42% of all Latin American parties involved last year in ICC arbitration and ranks Brazil as the fourth country with more users of ICC arbitration, only behind USA, Germany and France.

This roundtable will cover the following topics:

- Application of mandatory rules (*lois de police*) in arbitrations seated in Brazil: Distinction between these and *ordre public international*.
- The *mandado de segurança* as a challenge recourse in Brazil: position of the Brazilian Superior Court of Justice. The *Jirau* case and others.
- Concurrent jurisdiction on interim measures: position of the Brazilian Superior Court of Justice.
- Denial of production of expert evidence: Does it amount to a breach of due process? Examination of awards annulled in Brazil based on this ground.
- The arbitrator's independence: How does the Brazilian judiciary understand it? What standard should prevail over the annulment due to impartiality: 'appearance of bias' or 'evident partiality'?
- Application of the New York Convention of 1958 by Brazilian courts.

### **Speakers**

**Flávia Bittar Neves**. Grebler Advogados (Belo Horizonte).

**Gilberto Giusti**. Pinheiro Neto Advogados (São Paulo).

**Fabiano Robalinho Calvacanti**. Sergio Bermudes Escritorio de Advocacia (Rio de Janeiro).

**Clavio Valença Filho**. Valença Advogados (Recife).

*Moderated by*

**Fernando Eduardo Serec**. Tozzini Freire Advogados (São Paulo).

11.00 – 11.30

Q & A session

11.30 – 12.00

Coffee Break

## 12.00 – 13.00 Arbitration and Industry-specific Disputes

Like an experienced tailor, arbitration has the capacity of crafting best-fitted solutions for industry-specific needs. For example, maritime arbitration has for decades being regarded as distinct from its commercial peer; and, more recently, dispute boards have emerged as the ideal method to tackle disputes in large construction projects. But the necessity of a given sector may be sufficed solely by the participation of highly technical arbitrators, such as in the banking and financial services sector.

This roundtable will cover the following topics:

### Construction:

- Interpretation of Model Contract and *Force Majeure* clauses with regard to the calculation of damages.
- Efficient practices to keep arbitrations short in big engineering projects: How does arbitration compare with dispute boards and other construction oriented dispute settlement methods?

### Energy:

- Proportionality in damage assessment: lessons learnt from *Occidental v Ecuador*.
- The growing development of *lex petrolea*: Towards a harmonization of petroleum agreements and governing rules.

### Speakers

**Rogério Bautista.** Odebrecht Energia (Rio de Janeiro).

**Christopher Seppälä.** White & Case (Paris).

**Joseph Tirado.** Winston & Strawn LLP (London).

### Moderated by

**Selma Maria Ferreira Lemes.** Member, ICC International Court of Arbitration (São Paulo). Selma Lemes Advogados Associados (São Paulo)

## 13.00 – 13.30 Q & A session

## 13.30 – 15.00 Lunch Break

## 15.00 – 16.00 When Arbitrating

The duty of the arbitral tribunal is a delicate one. It must take into consideration the needs of the parties and the dispute at hand, without disregarding the requirements imposed by the law of the seat and the institutional rules under which the proceedings are administered. To better comply with that duty, the arbitral tribunal has a wide set of procedural tools. Counsel has also a role to play in this regard: they determine the overall 'feeling' of the procedure through their submissions and the intention behind it.

This roundtable will cover the following topics:

- Bad faith litigation and ethics in international arbitration: the Brazilian experience.
- To bifurcate or not bifurcate: In what situations is it necessary? What is the practice in Brazil?

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Programme

- Evidence and production of documents: The application of the IBA Guidelines in arbitrations seated in Brazil.
- Due process v efficiency: When does the pursuit of the latter may entail a violation of the former?

## Speakers

**Pedro A. Batista Martins.** Batista Martins Advogados (Rio de Janeiro).  
**Nigel Blackaby.** Freshfields Bruckhaus Deringer LLP (Washington, D.C.).  
**Nelson Eizirik.** Carvalhosa e Eizirik Advogados (Rio de Janeiro).

## Moderated by

**Katherine González Arrocha.** Director for Latin America, ICC International Court of Arbitration (Panamá).

16.00 – 16.30 Q & A session

16.30 – 17.00 Coffee Break

## 17.00 – 18.00 An Award's Life

Once the arbitration is over, the award lives on as a testament of the work of the arbitral tribunal. Many times it has been regarded as an arbitrator's best way to convey a good impression for prospective nominations. On the other hand, some consider that the arbitrators have a duty towards the international arbitration community to give a well-researched and informative decision. Therefore, careful attention to its drafting should be taken, for its effects may echo longer than one may think.

This roundtable will cover the following topics:

- The award's length: Should an award address academic or policy issues? Is this trend in investment arbitration making its way into commercial arbitration?
- The award as the instrument that legitimates the arbitral process: should they be exhaustive in analysing the parties' pleadings?
- Entry into force of the CISG in Brazil: Has it been taken into account by arbitral tribunals?
- Tergiversated Correction and Interpretation: Are requests made under Article 35(2) of the ICC Rules of Arbitration 'appeals in disguise'?
- Enforceability of the award: What does the duty of the arbitral tribunal to make an enforceable award entail? Is the threshold too low?

## Speakers

**Luiz Olavo Batista.** L O Baptista Schmidt Valois Miranda Ferreira Agel (São Paulo).  
**Horacio Grigera Naón.** Independent Arbitrator. Director, Center on International Commercial Arbitration, American University (Washington, D.C.).  
**Francisco 'Chico' Müssnich.** Barbosa, Müssnich & Aragão (Rio de Janeiro).

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*Moderated by*

**Rodrigo Garcia da Fonseca.** Osorio e Maya Ferreira Advogados (Rio de Janeiro).

18.00 – 18.30

Q & A session

18.30 – 18.45

### Thoughts of the day and Closing Remarks

#### Speakers

**José Ricardo Feris.** Deputy Secretary General, ICC International Court of Arbitration (Paris).

**José Emilio Nunes Pinto.** Vice-President, ICC International Court of Arbitration (São Paulo). José Emilio Nunes Pinto Advogados (São Paulo).

**Arnoldo Wald.** Wald Advogados Associados (São Paulo).

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- **Rogério Bautista.** General Counsel, Odebrecht Energia (Rio de Janeiro).
- **Flávia Bittar Neves.** Grebler Advogados (Belo Horizonte).
- **Nigel Blackaby.** Freshfields Bruckhaus Deringer LLP (Washington, D.C.).
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- **Fernando Eduardo Serec.** Tozzini Freire Advogados (São Paulo).
- **Joseph Tirado.** Winston & Strawn LLP (London).
- **Clavio Valença Filho.** Valença Advogados (São Paulo).
- **Arnoldo Wald.** Wald Advogados Associados (São Paulo)

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18 June 2013

Local: Pinheiro Neto Advogados

Rua Hungria, 1.000

Working languages:

English and Portuguese with simultaneous translation.

To register, complete this form and send it before 14 June 2013 to LAP Eventos – A/C:  
Bruno ou Uíara

(T: +55 21 22278664 F: +55 21 22278651 E : iccarbitration@confirmar.com.br)

I wish to participate in the Conference “2013 ICC Brazilian Arbitration Day” on 18 June 2013,  
and I agree to pay the registration fee indicated below.

☐ Yes

☐ No

## Registration Fee: 500 reais (350 reais Student Price)

The Registration Fee includes participation in all sessions described in the 2013 ICC  
Brazilian Arbitration Day program, including materials, cocktail reception at Tozzini Freire on  
17 June, lunch at Pinheiro Neto on 18 June and coffee breaks.

## Payment:

### Bank transfer details:

Account Name: LAP Promoções e Eventos Ltda

CNPJ: 07.202.905/0001-93

Bank: Itaú - 341

Agency: 0726

Account: 60.466-3

For international transfers, please contact us.

## Participant information (Please print or type):

Title (Dr/Mr./Mrs./Prof/etc.):

Family name:

First/given name:

Position:

Company:

Address:

City/state:

ZIP/postal code:

Country:

E-mail:

Phone:

Fax:

Please note that the number of seats in the conference room is limited. As they will be distributed on a 'first come, first served basis, we recommend that you make your reservation ASAP, with the reference '2013 ICC Brazilian Arbitration Day'.



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