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ARBITRATION IN BRAZIL¹

By Durval de Noronha Goyos²

Arbitration in Brazil is regulated by Law 9.307 of September 23, 1996 (the Arbitration Law), which allowed for commercial disputes in Brazil to be settled through arbitration, rather than via the country's Judiciary. Challenged in the courts, the constitutionality of the Arbitration Law was confirmed by Brazil's Supreme Court (STF) in 2001. The legal foundation for arbitration in the country was completed when Brazil ratified, in 2002, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

The Arbitration Law, which was inspired *inter alia* by the UNCITRAL Model Law on Arbitration, provides that parties to a contract may refer disputes concerning rights and obligations to arbitration and that, in such case, they will be bound by the respective arbitration clause.

This law provides for a rapid procedure by which a party can enforce such a clause. Furthermore, the Arbitration Law equals the arbitration award to a judicial sentence awarded by the Judiciary, with the same execution force, thus dispensing with the necessity of ratification or homologation in the domestic courts.

¹ Basic text of the presentation made in Madrid, Spain, on the 18th of June, 2011.

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There is no discrimination as to foreign or Brazilian arbitration, but foreign awards will have to be ratified by the Superior Court of Justice (STJ), in Brasilia and should be sworn translated to Portuguese. A foreign arbitration award will not be ratified by the STJ in case it violates Brazil's public policy principles, as allowed for by the New York Convention.

The ratification procedures before the STJ are quite simple and fairly time efficient. Eventual urgency injunctions are possible, in case of necessity. Between 2004 and 2009, the STJ dealt with 25 cases of ratification of foreign arbitration awards, accepting 17 and denying or dismissing 8 of the applications, a refusal of about 33%, but basically in line with the New York Convention.

Among the foreign arbitration centres commonly chosen by parties doing business with Brazil are the London Court of International Arbitration (LCIA), the International Chamber of Commerce (ICC), the American Arbitration Association (AAA) and the Corte Civil y Mercantil de Arbitraje de Madrid (CIMA). With the enormous growth of trade and investments between Brazil and China, the China International Economic and Trade Commission (CIETAC) rules and venues have been increasingly chosen to govern eventual disputes.

If the proceedings take place in Brazil, the arbitration will be considered as domestic, in spite of the rules applicable, the nationality of the arbitrators, the nationality of the parties, the language of the proceedings and the choice of law. In case the agreement fails to elect applicable law, the laws of the place of execution of the agreement will apply.

In the cases of concessions of public services or utilities and in matters related to public private partnerships, arbitration will necessarily take place in Brazil and have to be conducted in the Portuguese language, applying the relevant Brazilian laws to the dispute, as required by the respective laws.

Arbitration in Brazil has grown considerably over the past 17 years. At the end of 2008, there were more than 130 different domestic arbitration institutions active in the country. According to some estimates, there were in 2009 approximately 200 cases of arbitration in Brazil, a growth of 70% over the previous year.

Among the best well-known centres for arbitration in Brazil are those of the Federation of the Sao Paulo Industries (FIESP), the Canadian Chamber of Commerce of Sao Paulo and that of the Portuguese Chamber of Commerce of Sao Paulo. In Parana, the Chamber of Arbitration of the Commercial Association, in Curitiba, is very active.

Economic activity explains part of the success story of arbitration in Brazil, as the country became not only one of the largest recipients of foreign direct investments in the world (US\$ 55 billion estimated for 2011), but a great investor itself (US\$ 30 billion estimated for 2011). The chronic inefficiency of Brazil's judiciary will explain the other part.