



INTERNATIONAL DISPUTE RESOLUTION SPECIALTY GROUP

BRAZIL

This is to answer the Group's questionnaire regarding recognition and enforcement in Brazil of foreign judgements and arbitration awards.

- 1) What procedures exist for recognition and enforcement of foreign judgements pursuant to conventions?

Brazil has signed conventions for "judicial cooperation" in civil and commercial matters with Italy (1989), Uruguay (1992) and France (1996). A "criminal law" similar treaty links Brazil and the United States of America since 2001, but we will not deal with this last convention in the present report, in view of its specific nature.

In a few words, we may say that these conventions in reality do not contain provisions setting forth the formalities that have to be followed for the recognition or the enforcement of any other judgement or arbitral award issued in whatever foreign country, which will be the purpose of our answer to your next question.

- 2) What procedures exist for recognition and enforcement of foreign judgements pursuant to statute or common law?

Articles 413 and 484 of the Brazilian Civil Procedure Code state that any judgement emanating from a foreign Court will only become enforceable after recognition or, to use the local expression, "homologation" by the

Federal Supreme Court, in accordance with the terms and conditions of these Tribunal's "Internal Regulations".

Similar to what happens in the great majority of countries, any judgement considered offensive to national sovereignty, public policy or good morals will not be recognized. On the other hand, it must have been issued by a Court having jurisdiction, preceded by due service of process to the Defendant(s), and turned "res judicata". An authentic copy of the judgement, with a duly sworn translation must be attached to the homologation request. After proper summons of the interested party(ies) and possible defensive motions, the Court will take its decision thereon, which is subject only to a special type of appeal which does not suspend judgment enforcement.

- 3) Are there any practical problems or special time factors that a party seeking to enforce a foreign judgement should bear in mind?

Practical problems seem to be nonexistent, in view of the procedural simplicity, but the time element might be relevant. Although our laws fail to contemplate statutes of limitation rules in this specific situation, our opinion is that the recognition request may be considered barred if the foreign law under which the judgement was obtained would, in its turn, establishes a time period for enforcement, which has elapsed when the homologation requested is properly introduced. This opinion might be subject to discussions and further studies depending on the specific judgment presented for enforcement.

- 4) Are there any public policy or other issues which may affect enforceability?

This question has been answered in item "2" above.

- 5) What are the time limits for bringing civil claims?

Article 206 of the Brazilian Civil Procedure Code specifies, on a case by case basis, the applicable statutes of limitation, which may be of one, two, three, four or five years. Article 205 states that not otherwise clearly provided for a time limit of ten years will apply.

6) Are Court proceedings confidential or public?

As per Article 155 of the Brazilian Civil Procedure Code, Court proceedings are generally public, with the exception of cases in which the public interest might impose secrecy (at the Judge's discretion) and also in lawsuits related to marriage affiliation, divorce, alimony and child custody.

7) How are civil proceedings commenced?

In accordance with articles 270 through 294 of the Brazilian Civil Procedure Code, the general procedural rule is to start through the presentation of a written petition, indicating the formal claims of the Plaintiff, the Court to which it is directed, the full qualification of the involved parties, the facts and the juridical reasons for the claim, the specific relief requested, the amount involved, the probative measures intended and a request for the service of a summons.

8) What interim remedies are available?

It is not easy to indicate all the possible interim measures available, since the Judge is authorized by article 798 of the Brazilian Civil Procedure Code to grant any of such remedies that he might consider appropriate to avoid gross or irreparable injuries.

Anyway, the Code makes specific reference to measures such as seizure, attachment, bail, impounding, anticipated evidence production, provisional alimony, enrollment of properties, etc.

- 9) Does the Court have power to order costs or to order security for costs?

All Court proceedings are, in Brazil, subject to the payment of judicial costs, including attorneys' fees, which are provided for in our laws and regulations (except for a few cases in which poor individuals may obtain the exceptional benefit of "gratuitous" justice). This means that the Court actually verifies if costs have been duly paid, in order to either go ahead with the procedure or dismiss the case or the appeal, as the case may be. In the matter of recognition and enforcement of a foreign judgement, the claimant will, more frequently be domiciled abroad, and in this event the Court will apply article 835 of the Brazilian Civil Procedure Code and order a cost's guarantee whenever such party will not own property in Brazil sufficient to cover the involved amount.

Under certain conventions, however, cost guarantees are not applicable.

- 10) If a contract has some connection with your jurisdiction, are there mandatory laws under the local law that would apply to the contract irrespective of the parties choice of law in the contract?

Yes, the involvement of real estate properties being the easiest example to be given, when the law of the actual location of the property (as well as the jurisdiction) is mandatory.

- 11) What procedures exist for enforcement of foreign awards?

This is a question obviously connected to arbitration cases, and the answer is found in article 35 of Law 9370/96 (The Arbitration Act), which subjects a foreign award to recognition and enforcement similarly to what happens to foreign judgements, already explained in item 2 above.

- 12) Is your country party to New York Convention, Washington Convention and/or Geneva Convention?

Brazil was a party of the Geneva Convention, until a couple of years ago when it became a signatory to the New York Convention. For some odd reason, Brazil did not yet include itself in the list of signatories of the Washington Convention.

- 13) Is the Arbitration Law based on the Uncitral Model Law?

Yes, as well as taking guidance from the New York Convention.

- 14) Are there arbitration Awards which will not be enforced due to the subject matters of the dispute?

Again, we believe that our answer to question 2 is applicable hereto.

- 15) Are there any specific features of the dispute resolution system not addressed in any of the previous questions?

In our opinion, ADRs have not been mentioned, but this mission is not relevant in Brazil, at least for the time being, since the only ADR which has been considered or practiced up to now is, to the extent of our knowledge, mediation. There is a legislative project of law dealing with mediation in discussion at the National Congress, but we can not guess when and if it will be approved.

