

Eighteen Years of the Brazilian Arbitration Act

On the 23rd September, 2014, the Brazilian Arbitration Act (Law 9.307/96, the “Arbitration Act”) celebrated its 18 years of existence.

Upon its enactment in 1996, the Arbitration Act brought major changes to the existing legal scenario. It introduced the possibility of an “arbitration agreement” binding the parties, which can be set forth either before any controversy has arisen, via a covenant within the contract itself or in a separate document (the “arbitration clause”), or after, via an independent agreement indicating the contract and the fact that the controversy shall be resolved through arbitration (the “arbitration commitment”). It also conferred arbitral awards the same legal status as court decisions, thereby rendering judicial “approval” of arbitral or arbitral tribunal decisions unnecessary.

There was considerable state court resistance to the Arbitration Act before its enactment. Also, following its enactment parties were skeptical about submitting their disputes to arbitration as the very constitutionality of the act was being questioned. It was only in 2001 that the Federal Supreme Court ruled in favor of its constitutionality¹ and arbitration became fully accepted by Brazilian courts. The use of arbitration in Brazil has since grown exponentially.

The number of cases administered by national arbitration centers has soared in recent years. From 2010 to 2013, the major national arbitration centers processed approximately 603 disputes of a total value of nearly US\$ 6.5 billion. In 2013, Brazil was fourth in the world in ICC International Court of Arbitration dispute resolution filing.

Brazilian courts have played a pivotal role to the success of arbitration in Brazil by providing assistance in matters related to the taking of evidence and the granting of injunctions, refusing to set aside arbitral awards based on unsubstantiated claims and enforcing foreign arbitral awards.

Brazil shall likely maintain this favorable scenario, including by way of a Senate bill to amend the Arbitration Act (Senate Bill No. 406/2013). Amongst the changes proposed by the bill are the amplification of the scope of arbitration and the introduction of provisions on both the appointment of arbitrators and the activity of state courts prior to the commencement of arbitral proceedings.

The celebration of the 18 years of the Arbitration Act is undeniable testimony of the success of arbitration in Brazil, and should be commended.

Angela Di Franco
afranco@levysalomao.com.br

Lia Yokomizo
lyokomizo@levysalomao.com.br

São Paulo

Av. Brig. Faria Lima, 2601
12th floor - 01452-924
São Paulo, SP - Brazil
Phone. +55 11 3555 5000

Rio de Janeiro

Praia de Botafogo, 440
15th floor - 22250-908
Rio de Janeiro, RJ - Brazil
Phone. + 55 21 3503 2000

Brasília

SBN Q 1, Bl B, n. 14, Ed. CNC
2th floor - 70714-900
Brasília, DF - Brazil
Phone. + 55 61 2109 6070

contato@levysalomao.com.br

¹ Federal Supreme Court, SEC 5206 AgR / EP – Spain, Reporting Justice Supúlveda Pertence, decided December 12, 2001.