

Brazil's Legal Framework for International Agreements

The intense globalization of the World's economy over the last decades has resulted in the proliferation of international agreements. The structuring of said agreements is a challenge for businessmen and attorneys due to the potential invalidity of clauses under a particular domestic legal system.

International agreements usually contain choice of law and forum selection clauses, both intended to ensure a specific interpretation of agreements and their enforceability. Brazilian Law, however, limits the adoption of these clauses.

With respect to choice of law, Decree-Law No. 4.657, dated September 4, 1942¹ follows the principle of *locus regit actum*, which determines that obligations shall be governed by the law of the country in which they are created, or of the country of residence of the proponent.

As regards choice of forum, Law No 5.869, dated January 11, 1973, the Brazilian Code of Civil Procedure (*Código de Processo Civil* – “CPC”), provides that Brazilian courts are competent to adjudicate lawsuits in which the defendant is domiciled in Brazil, the obligation at issue must be fulfilled in Brazil or the fact(s) that gave rise to the lawsuit at point occurred in Brazil. Also, Brazilian courts have exclusive competence with respect to lawsuits concerning real estate or estate settlement and partition of assets located in Brazil (succession proceedings).

Any final judgment obtained in a foreign judicial or arbitration proceeding will be enforceable in the courts of Brazil if previously recognized by the Brazilian Superior Court of Justice (*Superior Tribunal de Justiça*). Such recognition depends on the fulfillment of certain requirements. The judgment must be valid under the laws of the country where issued and be rendered by a competent court after due service of process upon the parties to the lawsuit. Judicial awards subject to appeal or not authenticated by a Brazilian Consular Office accompanied by a sworn translation into Portuguese shall not be enforceable in Brazil. Lastly, in order to be enforceable a judgment must not conflict with Brazilian national sovereignty, public policy or morality. There is legal uncertainty concerning this requirement, as Brazilian law does not define “public policy” or “morality”; their definition is open to the discretion of the particular local judge.

Generally speaking, submission of agreements to the jurisdiction of foreign courts is valid under Brazilian law and the resulting judgments are enforceable in the Brazilian courts. Nevertheless, considering the limits and conditions mentioned above a case-by-case analysis is always recommendable.

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¹ Also known as “Law of Introduction to the Brazilian Legal Statutes” (Lei de Introdução às Normas do Direito Brasileiro – “LINDB”).