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Arbitration in Brazil

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Arbitration was established in Brazil by the Commercial Code of 1850. Although it is true to affirm that, compared to most European countries, Brazil is still taking its first steps in this field and has to further develop the concepts of arbitration among its citizens, Brazil has made some substantial progress in the last decade.

Law 9307/96 – The Brazilian Arbitration Law

The Brazilian Arbitration Law (Law 9307/96) was enacted on September 24, 1996. Before that, arbitration was ruled by the Civil Code and the Code of Civil Procedure. One of the major advantages established by this law was the recognition of the arbitral award (including a foreign one) as an extra-judicial document subject to judicial enforcement.

Before the Arbitration Law the party interested in enforcing the arbitral award had to request its recognition to the Judiciary first, and only thereafter that party would be able to enforce the award. This procedure lasted many years and, so, was time-consuming. It was one of the many controversial points of the then existing arbitration in Brazil. Some parties used this requirement to postpone (or even avoid) complying with the terms the award.

Now only in a few cases, as established in Law 9307/96, can there be a review by the Judiciary. However, the court cannot make another analysis on the merits; it can only verify if the procedure was followed and the enforcement requirements were fulfilled.

Despite all the advantages brought by this law in 1996, Brazilian citizens were not used to alternative dispute resolution: so, the law was not well received by many people. In fact,

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the law had its constitutionality challenged before the Brazilian Federal Supreme Court² (STF), which only in the year 2000 confirmed that the Arbitration Law was constitutional and should be applied in its entirety.

Law 10303/2001 – Arbitration and Corporate Law

Law 6404/76 is responsible for ruling the Corporations (*Sociedades Anônimas*)³ and was amended in 2001 by Law 10303/01, which allowed the use of Arbitration settlement disputes involving interpretation of by-laws. This modification was considered a huge step for arbitration in Brazil and celebrated by those who defended its comprehensive use. Its main importance was because in many circumstances Brazilian courts may be less familiar with corporate law than those who have been working in this field for many years. A special Arbitral Tribunal has been established by the São Paulo Stock Exchange (Bovespa) to deal with the interpretation of by-laws and similar matters.

Decree 4311/2002 – The ratification of the New York Convention

In July 2002 the Brazilian Government took another huge step to promote Arbitration in Brazil through the ratification of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958, and its internalization through the enactment of Decree 4311/02.

Many principles established by the Convention had been introduced in the Brazilian system before the ratification of the Convention for the Arbitration Law was based on the principles set forth by such treaty. Nevertheless, the ratification of the Convention is considered a positive point to develop arbitration in Brazil since it shows the efforts that Brazil is making to spread the concepts of arbitration to its citizens. Besides this, in the international scene, the ratification confirms the Brazilian interests in using this kind of alternative dispute resolution. Many commentators, practitioners and arbitrators are very hopeful that the arbitration procedures will be easily accepted by the Brazilian society after this ratification.

² Brazil has two superior Courts: the Federal Supreme Court (*Supremo Tribunal Federal – STF*), which is a constitutional court, and the Superior Court of Justice (*Superior Tribunal de Justiça – STJ*).

³ There are basically two types of Companies in Brazil: Corporations (*Sociedades Anônimas*), ruled by Law 6404/76, and Limited Companies (*Sociedades Limitadas*), ruled by the Civil Code.

Acceptance of the Arbitration Institute

In Brazil many companies prefer to use arbitration instead of going to the Judiciary to solve a litigation problem. They are aware that this litigation could take years to be solved in the Judiciary, while in an arbitration process it can be solved in months.

However, some individuals are still suspicious of a private Tribunal with powers to decide the question presented and with the force of the arbitral award received under the Arbitration Law. The main point is that by some arbitration is seen as if it were a “privatization of the Judiciary.”

Fortunately this philosophy is changing and Arbitration is being accepted little by little. This new tendency can be shown through the numbers presented by the National Council of Arbitration and Mediation Institutions (*Conima – Conselho Nacional das Instituições de Mediação e Arbitragem*). In 2001 the number of lawsuits established in the Arbitral Tribunal was 2,315 and in 2002 this number increased to more than 4,000.⁴ In addition to this increase in the processes ruled by Arbitration the number of Arbitral Tribunal has also increased. In 1996 (when the Arbitration Law was published) there were only 10 Arbitral Tribunals. In 2001 there were 95.

Conclusion

Brazil is trying to spread Arbitration philosophy to its people through ratifications of international conventions and internal laws, and it is getting success little by little as the numbers show. People are getting less suspicious of this alternative dispute resolution and want a quick decision to their questions.

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Brazil

⁴ This council had not published the number of processes established in 2003 by the time this Article was written; however, since Arbitration is more developed now, it can be supposed that this number increased.