

ANNEX IV
BRAZILIAN ARBITRATION ACT

LAW No. 9,307 OF SEPTEMBER 23, 1996
AS AMENDED BY LAW No. 13,129 OF MAY 26, 2015

THE PRESIDENT OF THE REPUBLIC

Let it be known that the National Congress enacts and I ratify the following Law:

CHAPTER I
GENERAL PROVISIONS

Article 1. Those who are capable of entering into contracts may make use of arbitration to resolve conflicts regarding freely transferable property rights.

Paragraph 1. Direct and indirect public administration may use arbitration to resolve conflicts regarding transferable public property rights. (Added by Law No. 13,129 of 2015)

Paragraph 2. The competent authority or direct public administration entity that enters into arbitration agreements is the same entity that enters into agreements or transactions. (Added by Law No. 13,129 of 2015)

Article 2. At the parties' discretion, arbitration may be at law or in equity.

Paragraph 1. The parties may freely choose the rules of law that will be used in the arbitration, as long as their choice does not violate good morals and public policy.

Paragraph 2. The parties may also agree that the arbitration shall be conducted under general principles of law, customs, usages and the rules of international trade.

Paragraph 3. Arbitration that involves public administration will always be at law, and will be subject to the principle of publicity. (Added by Law No. 13,129 of 2015)

CHAPTER II

THE ARBITRATION AGREEMENT AND ITS EFFECTS

Article 3. The interested parties may submit their disputes to arbitration by means of an arbitration agreement, which may be in the form of either an arbitration clause or an arbitration agreement.

Article 4. An arbitration clause is an agreement by which the parties to a contract undertake to submit to arbitration any disputes that might arise with respect to that contract.

Paragraph 1. An arbitration clause will be in writing, and it may be inserted into the contract itself or into a separate document to which it refers.

Paragraph 2. In adhesion contracts, an arbitration clause will only be valid if the adhering party takes the initiative to file an arbitration proceeding or if it expressly agrees with its initiation, as long as it is in an attached written document or in boldface type, with a signature or special approval for that clause.

Paragraph 3. (Vetoed by message 162 of May 26, 2015)

Paragraph 4. (Vetoed by message 162 of May 26, 2015).

Article 5. If the arbitration clause makes reference to the rules of a particular arbitral institution or specialized entity, the arbitration shall commence and be conducted in accordance with such rules. The parties may also agree in the arbitration clause or in a separate document, the procedure for the commencement of arbitral proceedings.

Article 6. In the event of absence of provision as to the method of commencing the arbitration, the interested party shall notify the other party, either by mail or by any other means of communication, with confirmation of receipt, of its intention to commence arbitral proceedings, and to set up a date, time and place for the execution of the submission agreement.

Sole Paragraph. If the notified party fails to appear, or if it appears but refuses to sign the submission agreement, the other party may file a lawsuit as provided in Article 7 of this Law, before the judicial authority originally competent to hear the case.

Article 7. If there is an arbitration clause and there is objection for the commencement of arbitration, the interested party may request that the other party be served with process to appear in court so that the submission agreement is drawn up. The court judge will designate a special hearing for this purpose.

Paragraph 1. The plaintiff will accurately define the subject matter of arbitration, including in its request the document that contains the arbitration clause.

Paragraph 2. If the parties show up at the hearing, the judge shall first try to bring the parties into a settlement. If this is not successful, the judge will lead the parties for a consensual submission agreement.

Paragraph 3. If the parties fail to agree on the terms of submission agreement, after hearing the party against whom the request is filed, the judge shall determine on the contents of the submission agreement, either at the hearing or within ten days there from, in accordance with the wording of the arbitration clause, taking into account the provisions of Articles 10 and 21 Paragraph 2 of this Law.

Paragraph 4. If the arbitration clause has no provision as to the appointment of arbitrators, the judge, after hearing the parties, shall make a determination, and is allowed to appoint a sole arbitrator to resolve the dispute.

Paragraph 5. If the plaintiff fails to appear at the hearing designated for drafting the submission agreement without showing good cause, the case will be dismissed without judgment on the merits.

Paragraph 6. If the defendant fails to attend the hearing, the judge, after hearing the plaintiff, shall be competent to draw up the contents of the submission agreement, and to appoint a sole arbitrator.

Paragraph 7. The court ruling that grants the plaintiff's request will be considered the submission agreement.

Article 8. An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

Sole paragraph. The arbitrator has jurisdiction to decide ex officio or at the parties' request, the issues concerning the existence, validity and effectiveness of the arbitration agreement, as well as the contract containing the arbitration clause.

Article 9. The submission agreement is the judicial or extrajudicial agreement by which the parties submit an existing dispute to arbitration by one or more persons.

Paragraph 1. The judicial submission agreement shall be entered into by a written instrument registered within the dockets of the case before the court where the suit was filed.

Paragraph 2. An extrajudicial arbitration agreement shall be entered into by a private written instrument signed by two witnesses, or by a public notary.

Article 10. The arbitration agreement must contain:

- I – The name, profession, marital status and domicile of the parties;
- II – The name, profession and domicile of the arbitrator or arbitrators, or, if applicable, the identification of the institution to which the parties have entrusted the appointment of the arbitrators;
- III – The subject matter of the arbitration; and
- IV – The place where the award shall be rendered.

Article 11. The arbitration agreement may also contain:

- I – The place or places where the arbitration will be held;
- II – If the parties so agree, the provision authorizing the arbitrators or arbitraters to decide in equity;
- III – The time limit for making of the arbitral award;
- IV – An indication of national law or institutional rules applicable to the arbitration, if agreed upon by the parties;
- V – A statement regarding the responsibility for the fees and costs of the arbitral proceedings; and
- VI – The fees of the arbitrator or arbitrators.

Sole paragraph. By setting up the arbitrator or arbitrators' fees in the submission agreement, such document will be considered an enforceable extrajudicial instrument. In the absence of such provision, the arbitrator will request the court with original jurisdiction to hear the case to rule upon the issue.

Article 12. The arbitration agreement is terminated:

I -If either arbitrator excuses himself prior to accepting his appointment, as long as the parties have expressly declared that they will not accept substitution;

I -If either arbitrator dies or becomes unable to act as such, as long as the parties have expressly declared that they will not accept substitution; and

III - Upon expiration of the time limit referred to in Article 11, item III, as long as the interested party has notified the arbitrator, or the president of the arbitral tribunal, granting a further period of ten days to render and present the arbitral award.

CHAPTER III THE ARBITRATORS

Article 13. Any individual with legal capacity, who is trusted by the parties, may serve as arbitrator.

Paragraph 1. The parties will appoint one or more arbitrators, always an uneven number, and they may also appoint their respective alternates.

Paragraph 2. When the parties appoint an even number of arbitrators, the arbitrators are authorized to appoint an additional arbitrator. Failing such agreement, the parties shall request the State Court which originally would have had jurisdiction to hear the case to appoint such arbitrator, following to the extent possible, the procedure established in Article 7 of this Law.

Paragraph 3. The parties may mutually agree to set up the procedure for the appointment of arbitrators, or they may choose the rules of an arbitral institutional or specialized entity.

Paragraph 4. By mutual agreement, the parties may choose not to be bound by the provision of the rules of arbitral institution or specialized entity that requires the appointment of sole arbitrator, co-arbitrator, or president of the tribunal from the respective roster of arbitrators. It is however preserved the arbitral institution's control over the appointment of arbitrators. In the event of impasse and with multiparty arbitration, the respective applicable institutional rules shall be observed. If several arbitrators have been appointed they shall elect, by majority, the president of the arbitral tribunal. In the absence of an agreement, the eldest will be the president. (Amended by Law No. 13,129 of 2015)

Paragraph 5. An arbitrator or the president of the arbitral tribunal will, if appropriate, appoint a secretary who may be one of the arbitrators.

Paragraph 6. In performing his duty, the arbitrator shall proceed with impartiality, independence, competence, diligence and discretion.

Paragraph 7. An arbitrator or the arbitral tribunal may order the parties to advance the funds to cover expenses and services it may deem necessary.

Article 14. Individuals somehow linked to the parties or to the submitted dispute, by any of the relationships that characterize the impediment or suspicion of judges, are prevented from serving as arbitrators and become subject, as the case may be and to the applicable extent, to the same duties and responsibilities incurred by court judges, as set up in the Code of Civil Procedure.

Paragraph 1. Prior to accepting the service, an individual appointed to serve as arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

Paragraph 2. A party may challenge the appointed-arbitrator only for reasons of which it becomes aware after the appointment has been made, unless:

- a) The arbitrator was not appointed directly by the party; or
- b) The reason for the challenge of the arbitrator becomes known subsequent to the appointment.

Article 15. The party who intends to challenge the arbitrator shall, pursuant to Article 20, present the respective motion either directly to the arbitrator or to the president of the arbitral tribunal, setting forth their reasons with the pertinent evidence.

Sole paragraph. If the motion is granted, the arbitrator will be removed and replaced in accordance with Article 16 of this Law.

Article 16. If an arbitrator withdraws prior to accepting the appointment, or if the arbitrator dies after acceptance, becomes unable to carry out his duties or is successfully challenged, the alternate indicated in the arbitration agreement, if any, will assume their position.

Paragraph 1. If no substitute has been appointed, the rules of the arbitral institution or specialized entity shall apply, if the parties have invoked them in the arbitration agreement.

Paragraph 2. In the absence of any arbitration agreement and if the parties fail to reach an agreement as to the appointment of the substitute arbitrator, the interested party shall proceed in the manner set forth in Article 7 of this Law, unless the parties have expressly stated in the arbitration agreement that they will not accept a substitute arbitrator.

Article 17. By performing their service, or as a result thereof, the arbitrators shall be considered comparable to public officials for the purpose of criminal law.

Article 18. An arbitrator is the judge in fact and in law, and his award is not subject to appeal or recognition by judicial court.

CHAPTER IV

ARBITRATION PROCEEDINGS

Article 19. The arbitration shall be deemed to be commenced when the appointment is accepted by the sole arbitrator or by all of the arbitrators, if there is more than one.

Paragraph 1. Once the arbitration has been commenced, and if the arbitrator or arbitration tribunal concludes there is a need to clarify a matter set forth in the arbitration agreement, an addendum will be drafted together with the parties, executed by all, and will become an integral part of the arbitration agreement. (Added by Law No. 13,129 of 2015)

Paragraph 2. The commencement of arbitration tolls the statute of limitations, retroactive to the date of the filing of the request for arbitration, even if the arbitration is terminated due to absence of jurisdiction. (Added by Law No. 13,129 of 2015)

Article 20. The party wishing to raise issues related to the jurisdiction, suspicion or impediment of an arbitrator or arbitrators, or as to the nullity, invalidity or ineffectiveness of the arbitration agreement, must do so at the first opportunity, after the commencement of the arbitration.

Paragraph 1. When the challenge of suspicion or impediment is accepted, the arbitrator shall be replaced in accordance with Article 16 of this Law; and if the lack of jurisdiction of the arbitrator or of the arbitral tribunal, as well as the nullity, invalidity or ineffectiveness of the arbitration agreement is confirmed, the parties shall revert to the Judicial Authority competent to rule on the matter.

Paragraph 2. When the challenge is not accepted, the arbitration shall proceed normally, subject however to review of that decision by the competent Judicial Authority if a lawsuit referred to in Article 33 of this Law is filed.

Article 21. The sole arbitrator or the arbitral tribunal shall comply with the procedure agreed upon by the parties in the arbitration agreement, which may refer to the rules of an arbitral institution or specialized entity, it being possible for the parties to empower the sole arbitrator or the arbitral tribunal to regulate the procedure.

Paragraph 1. In the absence of any provisions on the procedure, the sole arbitrator or the arbitral tribunal shall conduct the arbitration in such a manner it considers appropriate.

Paragraph 2. The principles of due process of law, equal treatment of the parties, impartiality of the arbitrator and freedom of decision shall always be respected.

Paragraph 3. The parties may be represented by legal counsel, and the right to appoint someone to represent them or to assist them in the arbitration proceeding will always be respected.

Paragraph 4. The sole arbitrator or the arbitral tribunal shall, at the commencement of the procedure, attempt to reconcile the parties, applying, to the extent possible, Article 28 of this Law.

Article 22. The sole arbitrator or the arbitral tribunal, either ex officio or at the parties' request, may hear parties' and witnesses' testimony and may rule on the production of expert evidence, and other evidence deemed necessary.

Paragraph 1. Testimony of the parties and witnesses shall be taken at places, dates and hours previously communicated in writing to the parties, and a written record of such testimony shall be signed by the party or witness, or at his request, also by the arbitrators.

Paragraph 2. If a party fails, without good cause, to comply with a request to render personal testimony, the arbitrator or the arbitral tribunal shall give due consideration to such behavior when issuing the award; and if a witness, under the same conditions, is absent, the arbitrator or the president of the arbitral tribunal may request the State Court to compel the appearance of the defaulting witness, upon evidence of the existence of an arbitration agreement.

Paragraph 3. Default by a party shall not prevent the arbitral award from being made.

Paragraph 4. (Revoked by Law No. 13,129 of 2015)

Paragraph 5. If an arbitrator is replaced during the arbitral procedure, the alternate, at his discretion, may determine what evidence will be repeated.

CHAPTER IV-A PROVISIONAL MEASURES OF PROTECTION AND URGENT RELIEF

(Added by Law No. 13,129 of 2015)

Article 22-A. Prior to commencing the arbitration, the parties may seek provisional measures of protection and urgent relief from a judicial court (Added by Law No. 13,129 of 2015).

Sole paragraph. The efficacy of the provisional measure granted by the judicial court shall cease if the interested party does not file the request for arbitration within 30 (thirty) days from the date the respective decision takes effect. (Added by Law No. 13,129 of 2015)

Article 22-B. Once arbitration has been commenced, the arbitrators will have competence for maintaining, modifying or revoking the provisional or urgent measures granted by the Judicial Authority. (Added by Law No. 13,129 of 2015)

Sole paragraph. If arbitration proceedings have already been commenced, the request for the injunctive and urgent relief will be directly addressed to the arbitrators. (Added by Law No. 13,129 of 2015)

CHAPTER IV-B
ARBITRATION LETTER
(Added by Law No. 13,129 of 2015)

Article 22-C. An arbitrator or the arbitral tribunal may issue an arbitration letter so that the judicial court offers assistance or imposes compliance, in the area of their territorial jurisdiction, of an act requested by the arbitrator. (Added by Law No. 13,129 of 2015)

Sole paragraph. In compliance with the arbitration letter, the respective court proceedings will be under seal, as long as the confidentiality set forth in the arbitration is verified. (Added by Law No. 13,129 of 2015)

CHAPTER V
THE ARBITRATION AWARD

Article 23. The arbitration award shall be made within the time frame set up by the parties. If no timing has been determined, the arbitral award shall be made within six months from the date of the commencement of the arbitration or from the date of the substitution of an arbitrator.

Paragraph 1. The arbitrators may render partial awards. (Added by Law No. 13,129 of 2015)

Paragraph 2. The parties and the arbitrators, by mutual agreement, may extend the timing for the delivery of the final award. (Added by Law No. 13,129 of 2015)

Article 24. The arbitral award shall be in writing.

Paragraph 1. If there are several arbitrators, the decision shall be made by majority vote. Failing majority determination, the opinion of the president of the arbitral tribunal shall prevail.

Paragraph 2. A dissenting arbitrator may, if he so wishes, render a separate decision.

Article 25. (Revoked by Law No. 13,129 of 2015)

Sole paragraph. (Revoked by Law No. 13,129 of 2015)

Article 26. The arbitral award must contain:

I – A report including the names of the parties and a summary of the dispute;

II – The grounds of the decision with due analysis of factual and legal issues, including, a the case may be, a statement that the award is made in equity;

III – The dispositive by which the arbitrators shall resolve questions presented before them, and establish a time limit for the compliance with the decision, as the case may be; and

IV – The date and place where the award is rendered.

Sole paragraph. The arbitral award shall be signed by the arbitrator or by all the arbitrators. If one or more arbitrators is unable to or refuses to sign the award, the president of the arbitral tribunal shall certify such fact.

Article 27. The arbitral award shall decide on the parties' duties regarding costs and expenses for the arbitration, as well as on any amount resulting from bad faith conduct, if applicable, complying with the provisions of the arbitration agreement, if any.

Article 28. If the parties reach a settlement during the course of the arbitral proceedings, the arbitrator or arbitral tribunal may, at the parties' request, render an arbitral award declaring such fact, containing the requirements provided for in Article 26 of this Law.

Article 29. The rendering of the arbitral award marks the end of the arbitration; the sole arbitrator or the president of the arbitral tribunal must send a copy of the decision to the parties by mail or by other means of communication, with confirmation receipt, or through direct delivery to the parties, with return receipt.

Article 30. Within five days immediately following receipt of the award or the personal delivery of that award, and having informed the other party, the interested party may request the sole arbitrator or the arbitral tribunal to: (Amended by Law No. 13,129 of 2015)

I – Correct any clerical errors in the award;

II – Clarify any obscurity, doubt or contradiction in the arbitral award, or decide on an omitted issue that should have been resolved.

Sole paragraph. The arbitrator or the arbitral tribunal will decide within 10 (ten) days, or within the timeframe agreed to by the parties, the amendment of the arbitral award, which shall be communicated to the parties in accordance with Article 29. (Amended by Law No. 13,129 of 2015)

Article 31. The arbitral award shall have the same effect on the parties and their successors as a judgment rendered by the Judicial Authority and, if it includes an obligation for payment, it shall constitute an enforceable instrument thereof.

Article 32. An arbitral award is null and void if:

I – The arbitration agreement is null; (Amended by Law No. 13,129 of 2015)

II – It is made by an individual who could not serve as an arbitrator;

III – It does not comply with the requirements of Article 26 of this Law;

IV – It has exceeded the limits of the arbitration agreement;

V – (Revoked by Law No. 13,129 of 2015)

VI – It has been duly proved that it was made through unfaithfulness, extortion or corruption;

VII – It is rendered after the time limit has expired, in compliance with Article 12, item III of this Law; and VIII.

VIII – It violates the principles set forth by Article 21, Paragraph 2 of this Law.

Article 33. The interested party may request to the competent Judicial Authority to declare the arbitral award null in the cases set forth in this law. (Amended by Law No. 13,129 of 2015)

Paragraph 1. A request for the declaratory nullity of the arbitral award, whether partial or final, will comply with the rules of cognizance procedure set up in the Law No 5869 of January 11, 1973 (Code of Civil Procedure), and it must be filed within 90 (ninety) days after receipt of notification of the respective award, whether partial or final, or of the decision on a motion for clarification. (Amended by Law No. 13,129 of 2015)

Paragraph 2. If the request is granted, it will set the arbitral award aside, and in the cases of Article 32, it will rule, if applicable, that the arbitrator or the arbitral tribunal issues a new ruling. (Amended by Law No. 13,129 of 2015)

Paragraph 3. A declaration of nullity of the arbitral award may also be raised by means of a debtor's defense, according to Article 475-L et seq. of Law No. 5869 of January 11, 1973 (Code of Civil Procedure), in case court enforcement proceedings are filed. (Amended by Law No. 13,129 of 2015)

Paragraph 4. The interested party may file a request for the rendering of a supplemental arbitral award if the arbitrator fails to rule on all matters submitted to arbitration. (Added by Law No. 13,129 of 2015)

CHAPTER VI

RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article 34. A foreign arbitral award shall be recognized or enforced in Brazil in accordance with international treaties effective in the internal legal system, or, in its absence, in strict accordance with the terms of this Law.

Sole paragraph. A foreign award is considered to be an award rendered outside the national territory.

Article 35. In order to be recognized or enforced in Brazil, a foreign arbitral award is only subject to homologation by the Superior Court of Justice. (Amended by Law No. 13,129 of 2015)

Article 36. The provisions of Articles 483 and 484 of the Code Civil Procedure shall apply, where applicable, to the request for recognition or enforcement of a foreign arbitral award.

Article 37. The interested party's request seeking recognition of a foreign arbitration award shall meet the requirements of the procedural law in accordance with Article 282 of the Code of Civil Procedure, and it must necessarily contain:

I – The original of the arbitral award or duly certified copy authenticated by the Brazilian consulate, accompanied by a certified translation;

II – The original arbitration agreement or a duly certified copy, accompanied by a certified translation.

Article 38. Recognition or enforcement of the foreign arbitral award may be refused if the party against which it is invoked, furnishes proof that:

I – The parties to the arbitration agreement were under some incapacity;

II – The arbitration agreement was not valid under the law to which the parties have subject it, or failing any indication thereon, under the law of the country where the award was made;

III – It was not given proper notice of the appointment of an arbitrator or the arbitral proceedings, or was otherwise unable to present his case;

IV – The arbitral award was issued beyond the scope of the arbitration agreement and it was not possible to separate the exceeding portion from what was submitted to arbitration;

V – The commencement of the arbitration proceedings was not in accordance with the submission agreement or the arbitration clause;

VI – The arbitral award has not yet become binding on the parties or has been set aside or suspended by a court in the country where the arbitral award was made.

Article 39. Recognition or enforcement of a foreign arbitral award will also be refused if the Superior Court of Justice finds that: (Amended by Law No. 13,129 of 2015)

I – According to Brazilian law, the object of the dispute cannot be settled by arbitration;

II – The decision violates national public policy.

Sole paragraph. The service with arbitral process of a party that resides or is domiciled in Brazil, pursuant to the arbitration agreement or to the procedural law of the country in which the arbitration took place, including mail with confirmation of receipt, shall not be considered as in violation of Brazilian public policy, provided the Brazilian party is granted proper time to present its defense.

Article 40. The denial of the request for recognition or enforcement of a foreign arbitral award based on formal defects does not prevent the interested party from renewing the request once such defects are properly cured.

CHAPTER VII FINAL PROVISIONS

Article 41. Articles 267, item VII; 301, item IX; and 584, item III of the Code of Civil Procedure shall be drafted as follows:

“Art. 267.....

VII – by the arbitration agreement.

“Art. 301.....

IX – arbitration agreement

“Art. 584.....

III. – the arbitral award and a court ruling affirming settlement or conciliation;”

Article 42. Article 520 of the Civil Procedure Code shall have a new item, drafted as follows:

“Art. 520.....

VI – rules admissible the request for arbitration.”

Article 43. This law shall enter into force sixty days after the date of its publication.

Article 44. Articles 1037 to 1048 of Law No. 3071 of January 1, 1916, Brazilian Civil Code; Articles 101 and 1072 to 1102 of Law No. 5869 of January 11, 1973, Code of Civil Procedure; and all other provisions to the contrary are hereby revoked.

Brasília, September 23, 1996: 175th year of Independence, and 108th year of the Republic.

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