Enforcement of judgments and arbitral awards in Brazil: overview

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JUDGMENTS: LEGAL FRAMEWORK

Domestic framework

1. What is the applicable domestic legislative framework for enforcement of judgments?

Domestic

The legal framework for enforcement of domestic judgments is contained within Articles 513 to 538 of the Federal Law 13.105/2015 (Brazilian Code of Civil Procedure).

Foreign

The Brazilian legal framework for the enforcement of foreign judgments is based on the:

- Brazilian Federal Constitution (Article 105, letter I, item i, and Article 109, letter X).
- Brazilian Code of Civil Procedure (Article 515, item VIII and Articles 960 to 965).
- Rules of Procedure of the Superior Court of Justice ((Articles 216-A to 216-X) that by virtue of Amendment No. 16 of 17 December 2014, replaced Resolution No. 9 of the same court).

International conventions/agreements

2. What international conventions and agreements on enforcement of judgments is your jurisdiction a party to?

Brazil is party to the following bilateral or multilateral treaties that, among other issues, cover the reciprocal recognition and enforcement of foreign judgments:

- Convention of Judicial Cooperation on Civil Issues, between the Government of the Federative Republic of Brazil and the Kingdom of Spain, enacted in Brazil by Decree No. 166, dated 3 July 1991.
- The Protocol of Cooperation and Jurisdictional Aid on Civil, Commercial, Labour and Administrative Issues between the Countries of the MERCOSUL, enacted in Brazil by Decree No. 2.067, dated 12 November 1996.
- The Treaty to Judicial Cooperation on Civil and Commercial Issues between the Federative Republic of Brazil and the People’s Republic of China, enacted in Brazil by Decree No. 8.430, dated 9 April 2015.

In general terms, Brazil has no significant reservations on entering into such kinds of treaties, provided that the provisions of the Brazilian Federal Constitution concerning the protection of Brazilian public policy and national sovereignty are preserved. Any bilateral or multilateral treaties entered into by Brazil must first be approved by the Brazilian National Congress and enacted by a Presidential Decree, in order to be considered effective and enforceable in Brazil.

Definitions

3. What is the definition of judgment in your jurisdiction for the purpose of enforcement proceedings?

Domestic

For domestic enforcement proceedings, a judgment is the final and non-appealable decision rendered by a judicial court on any dispute submitted to it.

Foreign

For foreign enforcement proceedings, a judgment is the final and non-appealable decision rendered by a foreign court. However, to be enforced in Brazil, the foreign judgment must first be granted recognition by the Superior Court of Justice (Article 963 Brazilian,
It is also possible to enforce foreign interlocutory decisions in Brazil, in accordance with the requirements provided by Articles 216-O to 216-X of the Rules of Procedure of the Superior Court of Justice.

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<th>Enforceable/excluded types of judgment</th>
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**4. What types of judgment in commercial matters are enforceable, and what types are excluded?**

**Domestic**

**Enforceable.** As a general rule, final judgments enforceable under Brazilian law include the following:

- Money judgments.
- Executory judgments (obligations to perform, or not to perform and non-monetary obligations).
- Judgments ordering the delivery of something.
- Decisions that confirm judicial or non-judicial settlement agreements.
- Arbitration awards.

If there are appeals that are still pending that have not stayed the proceedings, the judgment can also be provisionally enforced. However, if the decision is not subject to any further appeal, the enforcement is definitive.

**Excluded.** As a general rule, final and provisional judgments are enforceable in Brazil, even if they consist of declaratory judgments or ex parte judgments (made without notice).

**Foreign**

**Enforceable.** In order to be enforced, the foreign judgment must comply with the following requirements (Article 963, Code of Civil Procedure and Articles 216-D and 216-F, Rules of Procedure of the Superior Court of Justice):

- It must be rendered by a competent foreign authority.
- It must be preceded by regular summons.
- It must be effective in the country in which it was rendered.
- It cannot offend Brazilian res judicata.
- The decision must have an official and certified translation attached, unless stipulated differently in an international convention.
- It cannot offend Brazilian public order, national sovereignty or human rights.

As a matter of principle, there are no commercial matters that are not enforceable in Brazil. As is the case with domestic judgments, as long as the foreign judgment is recognised by the Superior Court of Justice, many types of judgments can be enforced, including:

- Money judgments.
- Executory judgments (obligations to perform, or not to perform and non-monetary obligations).
- Judgments ordering the delivery of something.
- Decisions that confirm judicial or non-judicial settlement agreements.
- Arbitration awards.

**Excluded.** Commercial matters decided on foreign judgments that offend public policy, national sovereignty or human rights are not enforceable in Brazil.

**JUDGMENTS: PROCEDURE FOR ENFORCEMENT**

5. What is the general outline of enforcement proceedings?

**Domestic**

The enforcement action must be filed by an attorney before the same court that rendered the judgment award. The enforcement action will run as an ancillary proceeding at the same case law in which the judgment award was rendered. The procedural outline will depend on the nature/type of judgment award.

**Monetary awards.** The party must file a motion with a statement of its credit claim, accruing the award according to the limits provided in the judgment award.

As a rule, the debtor will be notified through the Official Gazette to pay the debt within fifteen business days. After this time period has elapsed, if the party has not complied with the award (partially or entirely) the debtor will be subject to the following:

- Payment of a fine and the other party's legal fees of 10% of the award.
- Attachment of assets.
- Online freezing of cash funds and bank accounts.
- If all conditions are met, the disregard of the legal entity, which will affect the assets of the shareholders.

After the period for payment has elapsed, the debtor will have an additional 15 business days to submit a response to the enforcement proceedings. The response cannot challenge the merits of the case, but only procedural matters, for example (**Article 525, paragraph 1, Code of Civil Procedure**):

- Lack of a valid summons.
- Unenforceability of the obligation.
- Wrongful attachment or appraisal of the debtor's assets.
- Excessive amount of the claim.
- Lack of jurisdiction.
- Any fact or act which has modified or terminated the debtor's obligation being enforced.

The debtor's response does not, as a general rule, stay the enforcement of the judgment. After the judge renders a decision on the defence, the debtor will still be able to appeal against it to the State Court of Appeals.

Creditors do not need to present any security for the court costs or the other party's legal fees when it comes to a definitive enforcement of judgment. Such obligation exists when creditors initiate a provisory enforcement of judgment.

**Executory judgments.** Creditors commence the enforcement action by filing a motion requesting the notification of the debtor to comply with the award. In order to ensure fulfillment of the obligation, the court can impose a daily fine on the debtor.

Finally, as a general rule, the enforcement of judgment is subject to the same time limitation that governs the main obligation.

**Foreign**

The interested party must submit a request for recognition of a foreign judgment to the Brazilian Superior Court of Justice. Along with the request, the applicant must present documents that demonstrate the requirements for ratification, such as:

- The original or a notarised copy of the judgment to be recognised.
Any other document necessary for the recognition of the foreign judgment.

The documents must be:

- Accompanied by a sworn translation into Portuguese and have been previously authenticated by the competent Brazilian consular authority.
- Notarised and apostilled by the foreign authority if the HCCH Convention Abolishing the Requirement of Legalisation for Foreign Public Documents 1961 (Apostille Convention) is in force in the country where the documents were issued.

After receipt of the request and documents, the President of the Superior Court of Justice will analyse whether the documents presented are sufficient and will determine the service of process to the defendant, who will have the opportunity to file a response.

If the defendant agrees with the request for recognition, the President of the Superior Court of Justice will decide on the case. If the defendant files a response challenging the request, the case will be decided by a Special Court. The claimant and defendant can also present other petitions and additional documents if necessary. The Public Prosecutor’s Office will be summoned to present an opinion on this request. After this proceeding, the Special Court will render the final decision.

In very exceptional cases, the parties involved can present extraordinary appeals to the Federal Supreme Court.

If the recognition is granted, the decision is made final and unappealable, and the party can present a request for enforcement of decision before a federal court.

**Foreign judgments: formal/simplified proceedings**

6. **Is the enforcement of a foreign judgment subject to formal proceedings or simplified procedures?**

The enforcement of foreign judgments in Brazil are subject to formal procedures. As a general rule, the enforcement of a foreign judgment must follow the rules of Articles 960 to 965 of the Brazilian Code of Civil Procedure and Articles 216-A to 216-X of the Rules of Procedure of the Superior Court of Justice.

The conventions and treaties signed by Brazil (in this case, the Las Leñas Protocol, the Panama Convention and the Inter-American Convention) state that the enforcement of foreign judgments must follow the rules where such decision will be recognised (in this case, Brazil).

Other conventions in which Brazil is a signatory, do not state any specific rules regarding enforcement proceedings of foreign judgments (see Question 2).

7. **Must applicants institute a new action on the foreign judgment in the form of main proceedings instead of making an application for enforcement based on the judgment?**

The institution of a new action is not necessary. After the Superior Court of Justice recognises the enforceability of the foreign judgment, the applicant must file the judgment enforcement proceeding before the competent Brazilian Federal Court (Articles 513 to 538, Brazilian Code of Civil Procedure).

**Form of application**

8. **What documents and information must be provided with an application for enforcement?**

**Domestic**

The application for enforcement must be accompanied by the judicial award (Article 515, Brazilian Code of Civil Procedure).

If the case relates to the enforcement of a monetary award, the creditor must file an application as an ancillary proceeding with the following documents (Article 524, Brazilian Code of Civil Procedure):

- Formal motion, stating the full name of the applicant and the Brazilian taxpayer's number (CPF/CNPJ), from both parties, if applicable.
- Credit statement, with the information necessary for indexation, interest, initial term and final term from interest and indexation.
- Indication of assets of the debtor that can be attached (if possible), in case the debtor fails to pay the due amount within 15 business days.

Whenever the enforced judgment does not stipulate an amount to be collected, the parties can either request that the court stipulate the amount of the credit, with the help of an expert appointed by the court, or provide new evidence in court to offer proof of the amount of the credit.

**Foreign**

Recognition requests filed before the Brazilian Superior Court of Justice must be accompanied by the following documents:

- The original or a certified copy of the judgment.
- Any other documents necessary to demonstrate the fulfilment of the formal and substantive requirements for recognition.

As a rule, documents presented in recognition proceedings must:

- Be accompanied by a sworn translation of its content into Portuguese.
- Have been previously authenticated by the competent Brazilian consular authority, or simply notarised and apostilled by the foreign authority if the Apostille Convention is in force in the country where the documents were issued.

After the filing of the recognition request, the President of the Court can demand that the interested party presents additional documents and/or amend its initial application. If the court decides that the documents presented by the claimant are sufficient and the request is formally adequate, it will determine that service of process be effected on the defendant.

As a matter of Brazilian law, in order to be enforced in Brazil, the award for damages must be converted into local currency (which is currently the Brazilian Real).

9. **What information must be included in the application regarding the judgment, the claim as awarded in the judgment, the facts and legal grounds of the case, and that the judgment is no longer appealable?**

**Domestic**

See Question 8.

Since it is an ancillary proceeding, there is no need to present detailed information regarding the facts or legal grounds of the case, or state whether or not the judgment is appealable. The claimant and defendant can only cross-refer to the documents...
presented in the original proceedings and they do not need to present them again in the enforcement of judgment proceedings.

Foreign

The applicant must present information that the final decision was ruled by a competent authority and that the parties were regularly summoned (Article 216-D, Rules of Procedure of the Superior Court of Justice) (see Question 3). The applicant must also present a certificate that the decision is no longer appealable.

Although the law does not require the applicant to present facts, legal grounds of the case or explanation of the judgment, it is considered good practice to present such information. However, during the confirmation proceedings that precede enforcement, the Superior Court of Justice will not revise or render any decision on the merits of the foreign judgment.

CHALLENGING ENFORCEMENT

Service

10. Does the enforcing court review service of the proceedings? What conditions regarding service of the proceedings must be satisfied?

Domestic

The enforcement court is expected to consider the judgment null if it detects that the service of process in the lawsuit did not meet the requirements of Brazilian Law (all public matters in Brazilian proceedings must be recognised ex officio).

The service of process in a lawsuit in which an award is later rendered and parties wish to enforce it must comply with the following rules (Article 244, Code of Civil Procedure):

- The service of process must be in person (Article 242, Brazilian Code of Civil Procedure).
- The service of process cannot be made during a religious ceremony.
- The service of process cannot be made within seven days of the death of a member of the defendant's family.
- The service of process cannot be made within three days of the defendant's marriage.
- The service of process cannot be made if the defendant has a serious illness.

In Brazil, the service of process can be performed by (Article 246, Brazilian Code of Civil Procedure):

- Letter (performed by the Official Post Office).
- A law clerk.
- Electronic means (regulated by Law No. 11.419/06).
- A call notice (published in the court official gazette).

The most common type of service of process in Brazil is by letter.

The aim of the Brazilian Code of Civil Procedure is to ensure that defendants will have the opportunity to file a proper defence. In this regard, if the service of process does not meet the formal legal requirements, but the defendant appears before the court presenting defence or any kind of claim during the course of the case, the service of process will be considered valid. In addition, the service of process becomes valid on the date the defendant appears before the enforcing court.

In the event the service of process is not performed properly (that is, the defendant was not personally served or the requirements were not met), creditors will not be able to apply for the enforcement of judgment.

Foreign

An important requirement of the application to enforce a foreign judgment is the submission of evidence that the debtor was regularly summoned or served process in its own country (Article 216-D, Rules of Procedure of the Superior Court of Justice) (see Question 3).

Based on the case law of the Superior Court of Justice, Brazilian domiciled defendants must be served of process under the issuance of a letter rogatory (a formal letter of request from a court to a foreign court for some type of judicial assistance).

Otherwise the confirmation of the foreign judgment is not expected to be granted by the Superior Court of Justice.

If the Superior Court of Justice considers that the applicant was not able to evidence the regular service of process on the defendant in the foreign lawsuit proceedings, it will grant the applicant a reasonable deadline to fulfill such requirement (216-E, Rules of Procedure of the Superior Court of Justice).

Final/provisional judgments

11. Must a judgment be final and have conclusive effect, and what is the effect of pending appeal proceedings?

Domestic

It is possible to file a provisional enforcement of judgment when there is a pending appeal against the award which does not stay the case.

In a provisional enforcement of judgment, the applicant can adopt all the necessary measures to receive its credit (for example, freeze bank accounts, attach assets or rights). However, any frozen cash needs to remain deposited in a bank account opened in a public bank with co-operation from the judiciary branch, so that the applicant will be entitled to actually withdraw it only if they post a bond.

As a general rule, appeals against lower court awards stay the proceedings. However, interlocutory appeals and appeals to the Superior Court of Justice and Federal Supreme Court do not have such effect.

Foreign

Only a final and non-appealable foreign decision can be enforced in Brazil (Article 962, Brazilian Code of Civil Procedure and Article 216-D, III, Rules of Procedure of the Superior Court of Justice). Brazil also accepts the enforcement of interlocutory decisions.

The Brazilian authorities have the power to grant injunctions or commence the provisory enforcement of the judgment (paragraph 3, Article 961, Brazilian Code of Civil Procedure). The court can, at its own discretion, condition the provisory enforcement on the posting of a bond by the creditor.

Foreign judgments: jurisdiction

12. Is the enforcing court entitled to consider the grounds on which the court assumed jurisdiction (and if so, on what jurisdictional grounds can enforcement be refused)?

The following are not entitled to analyse the grounds of the foreign judgment:

- Superior Court of Justice (when analysing the recognition request of the foreign judgment).
- Federal Court (where the enforcement of judgment will be conducted).

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An exception to this rule would be if the judgment offends Brazilian public policy. In this case, the Superior Court of Justice would have powers to deny enforcement of the foreign decision.

13. If the court assumed jurisdiction on the basis of an exorbitant ground of jurisdiction, can the enforcing court review the judgment on that ground?

**Exorbitant ground of jurisdiction**

The Superior Court of Justice can deny the enforcement recognition request if it verifies that the foreign judgment was rendered by a court without jurisdiction.

**Voluntary acknowledgement**

There are no specific rules regarding voluntary acknowledgment. However, assuming that the voluntary acknowledgment is possible in the foreign jurisdiction, there would be grounds to maintain that the Superior Court of Justice should not deny the enforcement recognition request based on lack of jurisdiction.

**Foreign judgments: review of judgment**

14. Can the enforcing court review the judgment as to its substance if all formalities have been complied with and if the judgment meets all requirements?

Both the Superior Court of Justice and the Federal Court will not review the judgment as to its substance.

**Foreign judgments: public policy**

15. Can enforcement of a judgment be refused on grounds of public policy? Does public policy include matters of substantive law?

Public policy includes matters of substantive law. The court can reject the enforcement recognition request if the judgment offends Brazilian public policy (Article 963, item VI, Brazilian Code of Civil Procedure, and Article 216-F, Rules of Procedure of the Superior Court of Justice). Such rejection can be made ex officio.

16. In what circumstances and against which types of judgments has the principle of public policy generally been applied?

The definition of public policy is a matter of discussion. However, based on Superior Court of Justice precedents, it is possible to state that the principle of public policy can be applied in judgments that affect or offend the following subject areas:

- Constitutional.
- Administrative.
- Civil and criminal procedure.
- Criminal matters.
- Judicial organisation.
- Taxation.
- Fundamental rights.
- Economic system.

**Domestic and foreign: other conditions for recognition and enforcement**

17. What other conditions exist to enforce and recognise a judgment/refuse recognition and enforcement?

**Domestic**

Brazilian domestic judgments are not subject to recognition proceedings, and can be directly enforced.

The debtor can object to the enforceability of the judgment based on the following grounds (Article 525, paragraph 1, Brazilian Code of Civil Procedure):

- Absence of regular service of process if in the original proceedings the defendant did not present a defence.
- A lack of standing to be sued.
- Unenforceability of the award or unenforceability of the obligation.
- Incorrect seizure or evaluation of assets.
- Excessive enforcement (the credit requested by the applicant surpasses the amount granted by the award).
- Lack of jurisdiction by the enforcing court.
- Any cause that occurred after the ruling of the judgment that modifies or extinguishes the obligation (for example, payment, compensation, settlement, renewal and prescriptive period).

The award can be considered unenforceable if the obligation is based on law or any kind of normative rule that was recognised by the Supreme Court as going against the Federal Constitution of Brazil (Article 525, paragraph 12, Brazilian Code of Civil Procedure).

In Brazil, the precedent and/or simultaneous existence of any foreign court proceeding and/or judgment still not recognised by the Superior Court of Justice does not cause conflict in relation to the enforcement of a domestic judgment.

As a general rule, the enforcement of judgment is subject to the same time period limitation that governs the main obligation.

**Foreign**

For conditions to enforce and recognise a foreign judgment, see Question 8 and Question 9.

For refusal of recognition and enforcement, see Question 9 and Question 15.

There is no specific law provision that regulates the time limitation period. Therefore, the determination of such a limitation period can give rise to a diverse range of opinions.

A conservative approach may consider that, based on the Supreme Court’s case law about the statute of limitations on enforcement proceedings in general (Súmula 15Q), it should be applicable to the enforcement of a foreign judgment for the same limitation period applicable to the legal action that led to the judgment. If this is the case, the limitation period should be considered from the moment the judgment becomes res judicata (that is, it becomes final and unappealable) and should refer to the statute of limitations of the foreign jurisdiction.

**JUDGMENTS: METHODS OF ENFORCEMENT**

18. What is the enforcement procedure after a declaration of enforceability is granted?

Brazilian domestic judgments are not subject to recognition proceedings, and can be directly enforced.
Foreign judgments are subject to a previous recognition procedure with the Superior Court of Justice in order to be enforceable in Brazil. The federal courts of Brazil have the jurisdiction to enforce such judgments once duly recognised by the Superior Court of Justice.

After recognition, the Superior Court of Justice must extract a writ of execution with the main procedural documents, which are later sent to the federal court that has jurisdiction to do so (which is determined by the internal jurisdiction rules). When the writ of execution reaches the federal court, it follows the same enforcement proceedings applicable to the enforcement of a domestic judgment. The federal court will then be able to order the fulfilment of the award or other actions necessary to enforce the foreign judgment, such as:

- The seizure and freezing of bank accounts.
- The seizure of assets and their subsequent sale at auction.
- The seizure of credit rights that the debtor is entitled to.
- Any other measures that are legally deemed to be necessary for the enforcement.

**JUDGMENTS: INTERIM REMEDIES AND INTEREST**

**Interim remedies**

19. Is it possible to apply for interim measures from the enforcing court pending the enforcement proceedings?

**Domestic**

It is possible to request interim measures (Articles 520 to 522, Brazilian Code of Civil Procedure). In this case, the applicant can request the seizure of assets from the debtor, or the adoption by the court of the necessary measures in order to assure the fulfilment of the obligation by the debtor.

**Foreign**

The applicant can request injunctive relief before the final judgment on the recognition of the foreign judgment is rendered (Article 216-G, Rules of Procedure of the Superior Court of Justice). This request must meet certain requirements, such as (Article 204 to 311, Brazilian Code of Civil Procedure):

- Filing a formal request showing that the applicant’s statements contain a high probability of having grounds to be granted.
- Demonstrating that awaiting the final decision may cause the applicant damage that is uncertain or difficult to repair.

**Interest**

20. Is the judgment creditor entitled to interest? If so, on what basis is it calculated?

**Domestic**

The legal interest rate is 1% per month, unless provided differently. This is calculated from the date of the facts of the case, or from the service of process or the judgment, depending on the case.

**Foreign**

The interest rate is governed by the applicable law, in accordance with what has been judged.

**Currency**

21. Must the value of a foreign judgment be converted into the local currency?

As a matter of Brazilian law, in order to be enforced in Brazil, the money judgment must be converted into local currency (which is currently the Brazilian Real).

**ARBITRAL AWARDS: LEGAL FRAMEWORK**

**Domestic framework**

22. What is the applicable domestic legislative framework for enforcement of arbitral awards?

**Domestic**

The enforcement of arbitral awards is governed by:

- Article 237, item IV of the Brazilian Code of Civil Procedure.
- 22-A to 22-C of Federal Law No. 9.307/96 (Brazilian Arbitration Law).

**Foreign**

See Question 1.

Foreign arbitral awards are also subject to the rules of Articles 34 to 40 of the Brazilian Arbitration Law.

**International conventions/agreements**

23. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to?

Brazil is party to the following bilateral or multilateral treaties that, among other issues, cover the reciprocal recognition and enforcement of foreign judgments:

- The Las Leñas Protocol, enacted in Brazil by Decree No. 6,891/2009.
- The New York Convention, enacted in Brazil by Decree No. 4,311, dated 23 June 2002.
- The OAS Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards 1979
- OAS Inter-American Convention on International Commercial Issues between the Federative Republic of Brazil and the People’s Republic of China, enacted in Brazil by Decree No. 8,430, dated 9 April 2015.

In general terms, Brazil has no significant reservations on entering into such kinds of treaties, provided that the provisions of the Brazilian Federal Constitution concerning the protection of Brazilian public policy and national sovereignty are preserved. Any bilateral or multilateral treaties entered into by Brazil must first be approved by the Brazilian National Congress and enacted by a Presidential Decree, in order to be considered effective and enforceable in Brazil.
24. What is the definition of an arbitral award in your jurisdiction for the purpose of enforcement proceedings?

An arbitration award is the judgment rendered by the arbitrator or by the arbitration panel on a controversy that has been submitted to them.

**ENFORCEABLE EXCLUDED TYPES OF ARBITRAL AWARD**

25. What types of arbitral awards are enforceable, and what types are excluded?

**Domestic**

**Enforceable.** In order to be enforceable, all domestic arbitral awards cannot involve inalienable rights (Article 1, Brazilian Arbitration Law).

**Excluded.** Arbitral awards regarding rights are not considered to be:

- Patrimonial rights (that is, fundamental rights).
- Inalienable economic rights. (Brazilian civil law prescribes that anyone with an heir(s) cannot leave all of their equity in their will.)

Additionally, an arbitral award is considered invalid, and not subject to enforcement, if (Article 32, Brazilian Arbitration Law):

- The arbitration agreement is null.
- It was rendered by an individual who could not serve as an arbitrator.
- It does not comply with certain requirements as follows (Article 26, Brazilian Arbitration Law):
  - the arbitral award must contain a report including the names of the parties and a summary of the dispute;
  - the grounds of the decision with due analysis of the factual and legal issues, including a statement that the award is made in equity;
  - the provision by which the arbitrators should resolve questions presented before them, and establish a time limit for compliance with the decision; and
  - the date and place where the award is rendered.
- It has exceeded the limits of the arbitration agreement.
- It has been duly proven that it was made through unfaithfulness, extortion or corruption.
- It was rendered after the time limit has expired for the arbitration award to be rendered, as long as the interested party has notified the arbitrator, or the chairman of the arbitration panel, who will be granted an additional period of ten days for rendering the arbitration award (Article 12, item III, Brazilian Arbitration Law).
- It violates certain principles, for example (Article 21, paragraph 2, Brazilian Arbitration Law):
  - due process of law;
  - equal treatment of the parties;
  - impartiality of the arbitrator; and/or
  - freedom of decision.

**Foreign**

**Enforceable.** See Question 4. A foreign arbitration award can be enforceable in Brazil if it:

- Does not involve inalienable rights (see above).
- Is in accordance with international treaties effective in the local legal system, or in accordance with Articles 1 and 34 of the Brazilian Arbitration Law.

**Excluded.** Recognition or enforcement of the foreign arbitration award can be refused by the court if the party against which it is invoked provides proof that (Article 38, Brazilian Arbitration Law):

- The parties to the arbitration agreement were under some incapacity.
- The arbitration agreement was not valid under the law to which the parties have subjected it, or failing any indication thereon, under the law of the country where the award was rendered.
- They were not given proper notice of the appointment of an arbitrator or the arbitration proceedings, or they were otherwise unable to present their case.
- The arbitral award was issued beyond the scope of the arbitration agreement and it was not possible to separate the exceeding portion from that which was submitted to arbitration.
- The commencement of the arbitration proceedings was not in accordance with the terms of reference or the arbitration agreement.
- The arbitral award has not yet become binding on the parties or it has been annulled or suspended by a court in the country where the arbitral award was rendered.

Recognition of enforcement of a foreign arbitral award will also be refused if the Superior Court of Justice finds that (Article 39, Brazilian Arbitration Law and Article 216-F, Rules of Procedure of the Superior Court of Justice):

- According to Brazilian law, the object of the dispute cannot be settled by arbitration (see Question 4).
- The decision violates national public policy, national sovereignty or human rights (see Questions 2 and Question 9).

**ENFORCEMENT PROCEEDINGS**

**Procedure**

26. What is the procedure for making an application to enforce an arbitral award?

**Domestic awards**

The enforcement proceeding in Question 5 also applies to the enforcement of an award rendered by a Brazilian arbitration panel.

Under the Brazilian Code of Civil Procedure, an arbitration award is considered to be a judicial execution title (Article 515, item VII, Brazilian Code of Procedure). Therefore, if the debtor fails to pay the due amount or fails to perform any obligation in due time, as determined in the arbitration award, a creditor can enforce it before the civil court with respect to the jurisdiction:

- Of the debtor’s domicile (if it involves a monetary judgment).
- Of the place where the affirmative or negative covenant must be fulfilled.
- As agreed on by the parties.

**Foreign awards**

See above, Domestic awards. The only difference is that a foreign award must first undergo the procedure described in Questions 2 and Question 5, in order to be enforced in Brazil.

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27. Can parties seek to enforce only part of the award?

There is no legal limitation for the applicant to only request the enforcement of part of the arbitration award.

**Form of application**

28. What documents and information must be provided with an application to enforce an award?

**Domestic**
See Question 5 and Question 8.

**Foreign**
See Question 5 and Question 8.

29. What information must be included in the application?

**Domestic**
See Question 8 and Question 9.

**Foreign**
See Question 8 and Question 9.

**CHALLENGING ENFORCEMENT SERVICE**

30. Does the enforcing court review service of the proceedings? What conditions regarding service of the proceedings must be satisfied?

**Domestic**
See Question 10.

**Foreign**
See Question 10.

**Pending challenge proceedings**

31. What is the effect of pending challenge proceedings to the award?

**Domestic**
See Question 11 and Question 19.

**Foreign**
See Question 11 and Question 19.

**Review/opposition**

32. Can the enforcing court review an award if all formalities were complied with and if the award meets all requirements?

**Domestic**
The enforcing court will not review the arbitration award in relation to its merits. However, it may analyse whether the arbitration award fulfils the legal requirements to be enforced (see Question 14 and Question 25).

**Foreign**
See above, Domestic.

33. What are the grounds for refusing enforcement?

**Domestic**
See Question 25.

**Foreign**
See Question 25.

**Public policy**

34. Which country’s public policy applies? Does the court approach the issue differently depending on whether the award is a domestic or foreign award?

**Domestic**
See Question 15.

**Foreign**
See Question 15.

35. In what circumstances and against which awards has the principle of public policy generally been applied?

See Question 16.

**ACTUAL ENFORCEMENT**

36. What is the execution procedure when a declaration of enforceability is granted?

See Question 18.

37. Can defendants oppose the execution procedure, and if so, on what grounds/defences?

**Domestic**
See Question 5, Question 17 and Question 19.

**Foreign**
See Question 5, Question 17 and Question 19.

**ARBITRAL AWARDS: INTERIM REMEDIES AND INTEREST**

38. Is it possible to apply for interim measures from the enforcing court pending the enforcement proceedings?

**Domestic**
See Question 19.

**Foreign**
See Question 19.

**Arbitration**
See Question 5, Question 17 and Question 19.
39. Is the creditor entitled to interest? If so, on what basis is it calculated?

Domestic
See Question 20.

Foreign
See Question 20.

Currency
40. Is it required to convert the value of foreign awards into the local currency?

See Question 21

JUDGMENTS AND ARBITRAL AWARDS:
PROPOSALS FOR REFORM

41. Are any changes to the law currently under consideration or being proposed?

Judgments
There are no relevant changes to the law currently under consideration or being proposed before the National Congress.

Arbitral awards
There are no relevant changes to the law currently under consideration or being proposed before the National Congress.

ONLINE RESOURCES

Brazilian Code of Civil Procedure

Description. The website is hosted by the Federal Government. It is only available in Portuguese, and there are no available translations of it.

Arbitration Law
W www.planalto.gov.br/ccivil_03/leis/L9307.htm

Description. The website is hosted by the Federal Government. An unofficial translation of the law to English is available (http://cbar.org.br/site/legislacao-nacional/lei-9-30796-em-ingles).

Rules of Procedure of the Superior Court of Justice
W www.stj.jus.br/publicacaoinstitucional/index.php/Regimento/article/view/3115/3312

Description. The website is hosted by the Superior Court of Justice. There are no available translations of it.

International Conventions and Agreements on Enforcement of Judgments

Description. The website is hosted by the Ministry of Justice. Presently no English translations are available.
**Professional qualifications.** Lawyer, Brazil

**Areas of practice.** Insolvency and debt restructuring; litigagtion.

**Non-professional qualifications.** Law, Pontifical Catholic University of São Paulo; Specialisation Course in Contract, Pontifical Catholic University of São Paulo; LL.M. in Financial and Capital Markets Law, Institute of Education and Research – Insper; LL.M. degree in Corporate Governance and Practice, Stanford Law School, Stanford, California

**Recent transactions**
- Counseled clients in negotiating restructuring plans and turnaround measures with their creditors.
- Represented creditors in judicial restructuring proceedings (equivalent to Chapter 11) in Brazil.
- Prepackaged bankruptcies and bankruptcies, such as:
  - Parmalat, which was the second restructuring proceeding held in Brazil after the enactment of the law that regulates this area;
  - Grupo Rede Energia, such being the first public power distribution company to file for restructuring;
  - TMT Motoco, a subsidiary company of the American Tecumseh Group, for which we were nominated for the 'Deal of the Year' award, presented by Latin Lawyer, in 2008.

**Languages.** Portuguese, English, Spanish

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**Professional qualifications.** Lawyer, Brazil

**Areas of practice.** Litigation and dispute resolution.

**Non-professional qualifications.** Law degree, University of São Paulo, 1998; Doctor's Degree in Business Law, Law School of the University of São Paulo, 2004

**Recent transactions**
- Extensive experience of complex national and cross-border litigation and arbitration, in a number of areas of civil and commercial law, including shipping and aviation.

**Publications**
- Getting the Deal Through, 2012 to 2016 editions of Enforcement of Foreign Judgements (Brazil chapter) (Author).
- Ship Arrests in Practice and The Aviation Law Review (Brazilian chapter) (Co-Author).

**Languages.** Portuguese, English, Italian