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Brazilian Arbitration Law: In Need of a Facelift?

Crina Baltag (Managing Editor) (Stockholm University) · Saturday, April 27th, 2013

At the beginning of April, the Brazilian Senate established a Committee for the modification of the **Brazilian Arbitration Law – Law no. 9.307 of September 1996**. The president of the Committee, *Luís Felipe Salomão*, believes that the new amendments will strengthen arbitration, as an alternative dispute resolution mechanism. *Salomão* suggests that the goal of these modifications will be the alignment of the Arbitration Law with the amendments of the Civil Code of 2002 and the reform of the judiciary system in 2004.

However, the actual need to amend the Brazilian Arbitration Law is under debate. Rumors in the corners of the Brazilian law firms suggest that the establishment of the Committee and the amendment of the Law have a political substrate, rather than a real reason based on the evolution of the judicial system in Brazil and the application of the Law. Arbitration practitioners suggest that there is no such necessity to amend the Arbitration Law, which since its entry into force has been a real success. The Law was the object of a constitutionality challenge in front of the Brazilian Supreme Court (*Supremo Tribunal Federal*) in 1996. On 12 December 2001, the Supreme Court ruled that the Arbitration Law does not breach the constitutional principle of free access to justice, since the parties voluntarily agree to submit a dispute to arbitration and, moreover, they preserve the right to challenge the arbitral award in the state courts.

The suggested amendments of the Arbitration Law concern, among others, the submission to arbitration of corporate disputes, the participation of public entities in arbitration and the arbitration of consumer disputes. In addition, the Committee plans to deal with mediation, which has no regulation under the Brazilian law. As to the arbitration of corporate disputes, the Committee will have to discuss whether there is a need for the Brazilian Arbitration Law to address the issue as to whether minority shareholders are obliged or not to comply with the arbitration clause contained in the corporate statute (articles of association). *Salomão* also mentioned the possibility to tackle the question of the competent organ to grant provisional measures. According to the president of the Committee, although the judiciary ruled that the courts are competent to grant provisional measures before the commencement of arbitration, there are still many issues to be clarified.

The Committee, consisting of nineteen members, judges, lawyers and academics, will present at the end of the month a “diagnosis” of the Brazilian Arbitration Law and arbitration in Brazil, in general, which shall deal with the following matters: public administration and public entities, corporate disputes, consumer law, labour law, international arbitration, provisional measures, third-party arbitration, appointment of arbitrators, evidence in arbitration, recognition and enforcement of foreign arbitral awards, competence-competence issues. The Committee also suggested the

implementation of a web page to accompany the works of the Committee and to ensure the participation of those interested in the amendment process.

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