

2014 ICC BRAZILIAN ARBITRATION DAY

Conference to be hosted by Demarest Advogados
14 May 2014
São Paulo, Brazil

Venue

Auditorium
Rua dos Coropés, 88, Pinheiros
São Paulo, Brazil

About the event

Leading practitioners gather once again in Brazil to discuss sensitive issues in international arbitration, with a special attention being placed to Brazilian practice and experiences under the ICC Arbitration Rules. Topics include an overview of current problems and possible solutions in corporate arbitration in Brazil; a discussion on the recent experience in emergency arbitrator proceedings *vis à vis* provisional measures in Brazil and abroad; an examination of issues pertaining the use of experts in international arbitration; and, last but not least, a panel on mediation focused on the Brazilian launch of the 2014 ICC Mediation Rules, in force since 1 January 2014.

Who should attend

Practicing lawyers, corporate counsel, arbitrators, academics and professionals interested in and/or involved in international arbitration in Brazil and Latin America.

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Programme

09.00 – 10.00 **Introductory Session**

09.00 – 09.30 Opening Remarks

José Emilio Nunes Pinto. Vice-President, ICC International Court of Arbitration (São Paulo).

Frederico F. Curado. ICC Executive Board Member, Chief Executive Officer and President of EMBRAER, S.A. (São Paulo).

Yves Derains. President, ICC Institute of World Business Law (Paris).

09.30 – 10.00 ICC Arbitration: the current state of affairs

José Ricardo Feris. Deputy Secretary General, ICC International Court of Arbitration (Paris).

10.00 – 11.00 **Corporate Arbitration in Brazil: current problems and possible solutions**

Corporate arbitration has been one of the more recent trends in international commercial arbitration. Within the last five years, States from around the globe have amended either their arbitration or corporation laws to permit the resolution by arbitration of disputes between shareholders, or between one or more shareholders and the corporation itself. Brazil is no exception to this trend, and instances of corporate arbitration have taken place under Brazilian law.

This roundtable will cover the following topics:

- Validity of an arbitration agreement inserted in a company's bylaws. Is such agreement valid for shareholders who joined the company after the agreement was entered?
- Third-party intervention by the corporation in a shareholders' dispute: is there a difference in this intervention if the arbitration agreement is contained in a shareholders' agreement or in the company's bylaws? Should the company be obliged to intervene?
- The right of minority shareholders to be 'bought out.'
- *Kompetenz-Kompetenz* in Brazil: where do we stand after *Samarco Mineração S/A v Jerson Valadares da Cruz*?
- Remedies and enforcement of arbitral awards in this field.

11.00 – 11.30 Q & A session

11.30 – 12.00 Coffee Break

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12.00 – 13.00 **The 2014 New ICC Mediation Rules**

ICC's new Mediation Rules came into force on 1 January 2014. Produced within the ICC Commission on Arbitration and ADR by a task force of dispute resolution specialists and company representatives from 29 countries, the new Rules are administered by the ICC International Centre for ADR. They replace the ICC ADR rules, used for amicable dispute resolution since 2001. Akin to similar events organized in other parts of the globe, this panel will constitute the official launch of the 2014 ICC Mediation Rules in Brazil. This panel will offer the participants the opportunity to acquire a comprehensive overview of the new Rules, including the new ICC model clauses for mediation and multi-tiered clauses; its main differences with its predecessor, the ICC ADR Rules, will also be covered. A general appraisal of mediation, and more specifically administered mediation in business today, will kick off this panel's discussion.

This roundtable will cover the following topics:

- Why mediate? Why mediate under institutional rules? The relevance of mediations and administered mediation to business today.
- ADR becomes Mediation: the drafting of the new ICC Mediation Rules.
- Getting started: how to initiate proceedings under the ICC Mediation Rules (Articles 2 and 3).
- The mediator: finding the right person for your dispute (Article 5).
- Conduct of the proceedings: avoiding and overcoming hurdles and dealing with confidentiality (Articles 4, 7 and 9).
- Money matters: Costs and payments under the new ICC Mediation Rules (Articles 6 and Appendix).
- The new ICC model clauses for mediation and multi-tiered clauses.

13.00 – 13.30 Q & A session

13.30 – 15.00 Lunch break

15.00 – 16.00 **Emergency Arbitrator and provisional measures: recent experience**

Since its inclusion in major institutional arbitration rules around the world, emergency arbitrator proceedings have proven to be fertile ground for dynamism in international arbitration. This panel will examine the major developments in emergency arbitrator proceedings administered under the ICC Arbitration Rules, in cases seated in Brazil and elsewhere; topics include the costs of emergency arbitrator proceedings and the legal basis of the decisions issued by them. Since these proceedings are closely related to provisional measures, an examination of the latter under Brazilian arbitration law is also scheduled for this panel. The relationship between the emergency arbitrator and State courts, still unmapped to a large extent, will also be examined.

This roundtable will cover the following topics:

- Analysis of recent emergency arbitrator proceedings in cases seated in Brazil and elsewhere.
- Should the emergency arbitrator's decision be based on the law of the place of the arbitration, the applicable law to the contract or "international standards"?
- Links between the emergency arbitrator and State courts.
- Issues related to the costs in emergency arbitrator proceedings.
- Provisional measures under Brazilian arbitration law.

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16.00 – 16.30 Q & A session

16.30 – 17.00 Coffee Break

17.00 – 18.00 **Issues pertaining to the use of experts in international arbitration**

Arbitrators rely on experts to present them difficult, technical issues in a manner that will provide them a clear understanding of the dispute at hand. But the use of experts is not without hurdles. Issues may arise with both party-appointed and tribunal appointed-experts. This panel will focus on how the tribunal handles the experts' legal reports, including an examination of techniques to assess them. Qualification of the experts will also be addressed, as well as a list of ideal characteristics to be desired by arbitrators in reports advanced by them.

This roundtable will cover the following topics:

- Weighing the importance of the legal expert's reports.
- Witness conferencing and expert reports: are they a good mix? Is it an appropriate tool for the arbitral tribunal to assess conflicting party-appointed expert opinions?
- A matter of discretion: how should the tribunal handle an expert's lack of qualification, unsatisfactory methodology and deficient reports by a party-appointed expert?
- Conflict of interests between the arbitral tribunal and party-appointed experts: how should they be handled?
- Expert reports: the arbitrator's checklist.

18.00 – 18.30 Q & A session

18.30 – 18.45 **Thoughts of the day and Closing Remarks**

José Emilio Nunes Pinto. Vice-President, ICC International Court of Arbitration (São Paulo).

José Ricardo Feris. Deputy Secretary General, ICC International Court of Arbitration (Paris).

João Bosco Lee. Member for Brazil, ICC International Court of Arbitration (Curitiba).

Selma Lemes. Member for Brazil, ICC International Court of Arbitration (São Paulo).

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Speakers

- **Luiz Claudio Aboim.** Senior Associate, Freshfields Bruckhaus Deringer, England.
- **Henri C. Alvarez Q.C.** Partner, Fasken Martineau, Canada.
- **Nancy Andrighi.** Judge, Superior Court of Justice, Brazil.
- **Julie Bédard.** Partner, Skadden, Arps, Slate, Meagher & Flom, United States.
- **Adriana Braghetta.** Partner, L O Baptista Schmidt Valois Miranda Ferreira Agel, Brazil.
- **David J. A. Cairns.** Partner, B. Cremades y Asociados, Spain.
- **Frederico F. Curado.** ICC Executive Board Member; Chief Executive Officer and President of EMBRAER, S.A., Brazil.
- **Nadia de Araujo.** Partner, Nadia de Araujo Advogados, Brazil.
- **Hélène De Backer.** Partner, DS De Backer & Bastin, Belgium.
- **Yves Derains.** President, ICC Institute of World Business Law; Founding partner, Derains & Gharavi, France.
- **Elisabeth Eljuri.** Partner, Norton Rose Fulbright, Venezuela.
- **José Ricardo Feris.** Deputy Secretary General, ICC International Court of Arbitration.
- **Marcelo Roberto Ferro.** Partner, Ferro, Castro Neves, Daltro & Gomide, Brazil.
- **Octavio Fragata Martins de Barros.** Partner, TozziniFreire Advogados, Brazil.
- **Jason Fry.** Partner, Clifford Chance, France.
- **Eduardo Damião Gonçalves.** Partner, Mattos Filho Veiga Fliho Marrey Jr e Quiroga Advogados, Brazil.
- **Daniel E. González.** Partner, Hogan Lovells, United States.
- **Eduardo Grebler.** Partner, Grebler Advogados, Brazil.
- **Renato Stephan Grion.** Partner, Pinheiro Neto, Brazil.
- **Hermes Marcelo Huck.** Partner, Lilla, Huck, Otranto, Camargo, Brazil.
- **Christian Leathley.** Partner, Herbert Smith Freehills, England and Spain.
- **João Bosco Lee.** Member for Brazil, ICC International Court of Arbitration; Partner, Lee, Taube, Gabardo Sociedade de Advogados, Brazil.
- **Selma Lemes.** Member for Brazil, ICC International Court of Arbitration; Partner, Selma Lemes Advogados Associados, Brazil.
- **Pedro Soares Maciel.** Partner, Veirano Advogados, Brazil.
- **Fernando Mantilla-Serrano.** Member for Colombia, ICC International Court of Arbitration; Partner, Shearman & Sterling LLP, France.
- **Andrew McDougall.** Partner, White & Case LLP, France.
- **José Emilio Nunes Pinto.** Vice-President, ICC International Court of Arbitration; Founding partner, José Emilio Nunes Pinto Advogados, Brazil.
- **Ana Serra e Moura.** Counsel, ICC International Court of Arbitration.
- **Marcelo Inglez de Souza.** Partner, Demarest Advogados, Brazil.
- **Mathilde Vital Durand.** Deputy Manager, ICC International Centre for ADR.

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Rua dos Coropés, 88, Pinheiros

Working languages:

English and Portuguese with simultaneous translation.

To register, complete this form and send it before 10 May 2014 to ICC Events

events@iccwbo.org

Tel: +33 1 49 53 28 67

Fax: +33 1 49 53 30 30

Post: ICC Services, Training and Conferences
33-43 Avenue du Président Wilson
75116 Paris, France

I wish to participate in the Conference "2014 ICC Brazilian Arbitration Day" on 14 May 2014, and I agree to pay the registration fee indicated below.

☐ Yes ☐ No

Registration Fee:

ICC Members: 175 € / 569.55 reais*

Non-Members: 210 € / 683.46 reais*

Students: 125 € / 406.82 reais*

**Prices in reais are approximate. They are subject to the valid exchange rate at the time of payment.*

The Registration Fee includes participation in all sessions described in the 2014 ICC Brazilian Arbitration Day program, including materials, cocktails, coffee breaks and lunch.

Payment:

Please [register online](#).

Participant information (Please print or type):

Title (Dr/Mr./Mrs./Prof/etc.):

Family name:

First/given name:

Position:

Company:

Address:

City/state:

ZIP/postal code:

Country:

E-mail:

Phone:

Fax:

Please note that the number of seats in the conference room is limited. As they will be distributed on a 'first come, first served basis, we recommend that you register ASAP.

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