

Arbitration and public registries

31.08.2023 3 min read

Authors

João Rafael Castro de
Oliveira

Luiz Fernando Fraga

Mario Felipe de Lemos Gelli

Related areas

Dispute Resolution

Topics

BMA Review

When Brazil's Arbitration Law (Law 9307/1996) came into effect, it revoked article 1097 of the 1973 Brazilian Code of Civil Procedure, which required that arbitral awards were ratified by the ordinary courts in order to produce the same effects as a judgment.

Article 18 of the Arbitration Law provides that arbitrators are judges of both the facts and the law, and article 31 gives arbitral awards the same effects as a judgment issued by the ordinary courts. It follows that there is no need for judicial ratification of arbitral decisions.

The Brazilian legal system thus leaves no doubt as to the adjudicatory authority of arbitration. In practice, however, various registries, such as the Commercial Registries, which are responsible for registering commercial legal entities and their incorporating documents, among other functions, and Immovable Property Registries, which maintain records of ownership of land and other immovable property, along with encumbrances and interests in immovable property, are unwilling to comply with arbitral decisions, on the grounds that arbitration lacks adjudicatory authority, or that the award must first be ratified by the ordinary courts.

The question, then, is this: Are the public registries offices (like the Commercial and the Immovable Property Registries) required to promptly comply with arbitral awards directed to them, without need for an order issued by the ordinary courts?

To answer this the question, that is frequently of great importance to companies involved in arbitrations, as previously stated, we must keep in mind that arbitrators are judges of fact and of law, and that their decisions do not require ratification by the courts to produce the same effects that a decision rendered by the judicial branch of government.

Article 167(II)(12) of Law 6015/1973 (the Public Registries Law) provides that "decisions, appeals and their effects, having as their object acts or titles registered or entered" in the Immovable Property Registry must likewise be entered in the registry's records.

Statement (Enunciado) no. 9 of the Federal Courts Administration's Judicial Studies Center (CEJ – Centro de Estudos Judiciários da Corregedoria da Justiça Federal) provides that "arbitral awards may be filed, annotated, entered and registered in public registries, without need for authorization or ratification of any kind by the ordinary courts."

Two points in CEJ Statement no. 9 merit attention, and have received support from specialized legal scholars. The first is that the wording of the Statement is sufficiently broad that it can apply to all registry services, not just the Immovable Property Registries. Second, although the Statement refers to "arbitral awards", the same treatment should be given to other decisions issued during an arbitration that are comparable to interlocutory decisions in

civil proceedings in the ordinary courts.

Moreover, the National Council of Justice (CNJ – Conselho Nacional de Justiça) has already determined that the reference to "abstract of judgment" (carta de sentença) in article 221(IV) of the Public Registries Law also contemplates abstracts of arbitral awards (response to Consultation no. 0008630-40.2021.2.00.0000).

Another important point is that, in general, decisions that determine entries in public registers generally have "constitutive" effects – they create or perfect rights – unlike decisions of a condemnatory or punitive nature, which depend on the coercive power of the ordinary courts to become effective.

The issues we have briefly examined in this article have been considered by both the courts in judicial proceedings and legal scholars, who agree that the best interpretation of the law in Brazil is that public registries are indeed required to promptly comply with arbitral decisions, without need for any authorization or ratification by the ordinary courts.

In this scenario, taking into account the above mentioned seems to us of great importance in defining strategies for arbitration disputes that involve necessary measures before registry authorities.

>>>*This article belongs to BMA Review 80. [Click here](#) to read more articles.*

› PROFESSIONALS

Professionals who combine legal insight and market perspective



João Rafael Castro de Oliveira



Luiz Fernando Fraga



Mario Felipe de Lemos Gelli