

How Brazil's Courts Are Interpreting Forum Selection Clauses

17.03.2026 3 min read

Authors

Iara Conrado

Jacqueline Tardelli Moser

Tatiana Matos

Law 14.879/2024 amended article 63 of the Code of Civil Procedure (CPC) to provide that a forum selection clause must "have a connection to the domicile or residence of one of the parties or to the place where the obligation is to be performed" (article 63§1). In the absence of such a connection, the court may consider the clause abusive, and decline jurisdiction *ex officio* (article 63§5).

Related areas

Dispute Resolution

Topics

Dispute Resolution BMA Review

Following the introduction of the amendment, there was extensive debate over the scope of its temporal application. In addressing the issue, the Second Section of the Superior Court of Justice (Superior Tribunal de Justiça – STJ) concluded that because the amendment concerns procedural law, the new rules governing forum selection apply only to proceedings filed after the amendment came into force, on June 5, 2024¹. The court thus rejected retroactive application of the new rule to proceedings filed prior to the change in the law.

Approaching the issue from a different angle, the Court of Appeal of the State of São Paulo has held that procedural law does not apply retroactively, finding that contracts entered into before the enactment of the new rule constitute perfected legal acts². The court underscored the importance of legal certainty and contractual predictability: because the limitations introduced by the current wording of article 63 CPC were not in force when the contract at issue in the case was executed, "the forum selection clause set out in the contract must be considered to be valid."

Other decisions have held that the chosen forum cannot be considered arbitrary where (i) at the time the contract was entered into, one of the parties had its registered office in the selected location, even if its domicile was later changed³; (ii) the selected forum coincides with the registered office of the controlling shareholder, the administrative headquarters, or a branch of one of the parties^{4,5}; (iii) the legal transaction underlying the contract is directly connected to the location;⁶ or (iv) the chosen forum bears a connection to the performance of the obligation⁷.

Decisions of this kind show that courts must assess the abusiveness of forum selection clauses on a case-by-case basis. In practice, however, courts often limit their review to a cursory examination of the clause's formal elements. This approach can lead to an *ex officio* declination of jurisdiction, and force the claimant to appeal in order to demonstrate that the chosen forum bears a sufficient connection to the dispute.

That kind of outcome can be avoided if the parties were heard in advance. In Conflict of Jurisdiction (CC) 206.933/SP, the Superior Court of Justice held that, under the principle that parties must not be taken by surprise by a judicial decision (the "principle of non-surprise"), courts must give the parties the opportunity to be heard (CPC, article 10), even when declining jurisdiction

ex officio.

It is clear that courts are still in the process of consolidating their interpretation of the amendment to the Code of Civil Procedure, which calls for caution in the drafting of forum selection clauses. This is particularly true where the chosen forum does not clearly fall within the objective criteria set out in article 63§1 of the CPC. In such cases, the clause should be drafted with heightened care and legal precision. Expressly setting out the reasons underlying the choice of forum and its connection to the statutory requirements helps reinforce the clause's validity and reduce the risks and practical difficulties associated with the *ex officio* declination of jurisdiction.

>>> This content is part of BMA Review #90. [Click here for more.](#)

NOTES

1 STJ, 2ª Seção, CC nº 206.933/SP, Justice Nancy Andrichi reporting, judged February 2, 2025. See also: CC nº 211.954/SC, CC nº 211.871/MG and CC nº 212.411/SP, all with Justice Daniela Teixeira reporting.

2 "Out of respect for the principle of the perfected legal act (Federal Constitution, Article 5, item XXXVI), the retroactive application of the new rules would compromise legal certainty and contractual predictability." (TJSP, 20ª CDPriv., AI nº 2344055-89.2024.8.26.0000, Judge Lidia Regina Rodrigues Monteiro Cabrini reporting, judged March 31, 2025).

3 See TJSP, CE, CC nº 00014284620258260000, Judge Torres de Carvalho reporting, judged January 21, 2025; TJSP, CE, CC nº 00401591420258260000, Judge Jorge Quadros reporting, judged November 14, 2025; and TJRJ, 12ª CDPriv., CC nº 0093942-47.2024.8.19.0000, Judge Cleber Ghelfenstein reporting, judged February 13, 2025.

4 TJRJ, 15ª CDPriv., Ag. Int. no AI nº 0020130-35.2025.8.19.0000, Judge Alexandre Scisinio reporting, judged August 20, 2025.

5 TJRJ, 7ª CDPriv., AI nº 0074623-93.2024.8.19.0000, Judge Alvaro Henrique Teixeira de Almeida reporting, judged June 17, 2025.

6 TJRJ, 14ª CDPriv., CC nº 0097196-28.2024.8.19.0000, Judge Luiz Felipe Miranda de Medeiros Francisco reporting, judged March 17, 2025.

7 TJSP, CE, CC nº 0004770-65.2025.8.26.0000, Judge Camargo Aranha Filho reporting, judged March 7, 2025.

› PROFESSIONALS

Professionals who combine legal insight and market perspective



Iara Conrado



Jacqueline Tardelli Moser



Tatiana Matos