

New rules on choice of forum and territorial jurisdiction

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Law 14.879, which came into effect on June 5, 2024, made significant changes in the rules under the Code of Civil Procedure (CCP) governing the choice of forum and territorial jurisdiction in the filing and processing of lawsuits. The legislation contains a number of undefined concepts, which leave room for interpretation by the courts and may generate some uncertainty, at least initially.

As amended, article 63§1 CCP requires that the forum chosen by the parties to a contract or other instrument must “be pertinent” to the parties’ domicile or to the place where the obligation will be performed. In practice, this means that a dispute between a company established in Porto Alegre and another in Belo Horizonte over the performance of a construction contract in Rio de Janeiro cannot be decided in São Paulo, for example, even if the parties have expressly elected the courts of São Paulo in their agreement.

The change in the CCP means that parties and their legal advisors must take care, when drafting choice of forum provisions, to establish a clear connection between the selected forum, the place where the contract is to be performed, and the parties’ domicile. The same holds true for contracts that contain an arbitration agreement, if the parties select a court as the forum for urgent measures before the arbitrator or arbitral tribunal is appointed.

Law 14.879 also added a new §5 to article 63 CCP, which allows judges to decline jurisdiction when a lawsuit is filed in a “random court”. Although this new paragraph was included in a provision dealing with choice of forum, its wording seems to suggest that it may apply to all types of proceedings, even those that do not arise out of contracts and other instruments containing forum election clauses.

As for agreements made prior to the change in the CCP, Brazilian judges could take the view that the new rules have immediate application, regardless of the parties’ choice of forum in pre-amendment agreements. Such an interpretation would be questionable, but it may be worth revisiting the choice of forum clauses in agreements that are currently in effect to determine whether they should be amended to conform to the new rules.

Pending legal proceedings may also be affected. By allowing judges to decline jurisdiction *ex officio* where lawsuits are filed in a “random court”, without making it clear when the rule begins to apply, the amendment introduces an element of uncertainty into the law and opens up the possibility that jurisdiction might be declined in lawsuits filed before the new rule came into effect, regardless of the stage of the proceedings.

The change in the law may also affect the choice of forum in international contracts, since it could influence the courts’ view of the validity of the

parties' exclusive election of foreign jurisdiction in international contracts that are related to Brazilian parties or to the performance of obligations in Brazil. The problem is that article 25 CCP, which allows parties to international contracts to exclude the jurisdiction of Brazilian courts, refers to the recently-amended article 63. The São Paulo Appeal Court, for example, recently set aside a contractual choice of foreign jurisdiction based on the new wording of article 63 CCP.

The same holds true for international contracts between foreign parties that choose Brazil as the forum for resolution of disputes (article 22(III) CCP). Strictly speaking, in such cases the election of a Brazilian forum should comply with the new legal provisions, and the Brazilian courts may show some resistance to deciding disputes originating in other countries.

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