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Contributing Editor:  
**Greg Lascelles**  
Covington & Burling LLP



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# Brazil

Visconti Law – Legal & Public Affairs



Luiz Fernando Visconti

## 1 Litigation – Preliminaries

### 1.1 What type of legal system does your jurisdiction have? Are there any rules that govern civil procedure in your jurisdiction?

The Brazilian legal system is based on the civil law system, also known as the Roman-Germanic system. The rules governing Brazilian civil procedure are primarily contained in the Brazilian Code of Civil Procedure (Law No. 13,105/2015), which establishes the norms and procedures to be followed in civil proceedings.

The Civil Law Principles refer to the fundamental principles and concepts that guide the legal system, contrasting with the Common Law system. The Civil Law Principles are one of the main legal traditions in the world, and serve as the foundation for legal systems in many countries, especially those of European and Latin American origin.

### 1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

The Brazilian civil judicial system is structured into various levels of jurisdiction. “Appealable at 2<sup>nd</sup> instance” (*Duplo Grau de Jurisdição*) is a fundamental principle of the Brazilian system that guarantees parties involved in a judicial action the right to appeal an unfavourable decision to a higher court. This principle is an integral part of due process, and aims to ensure the right to a full defence.

The first level is the Lower Courts, which handle initial cases. Next is the Appellate Court, whose courts (collegiate bodies) review (or maintain) the decisions of First Instance judges. Additionally, there are superior courts, such as the Superior Court of Justice (STJ) and the Supreme Federal Court (STF), which act as courts to adjudicate, among other things, matters related to laws and the Brazilian Federal Constitution.

### 1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

Considering the Common Procedure provided for in the Brazilian Code of Civil Procedure, there are well-defined stages that make up the phases of the process, as follows:

- Pleadings:
  - Initial Complaint: The plaintiff submits their initial complaint describing the facts, legal grounds, and what is being requested from the Judiciary.

- Service of Process: The defendant is served with process and given notice of the initial complaint.
- Defendant’s Response Phase:
  - Answer: The defendant files the answer in which it is possible to admit or deny the alleged facts, present defences, and, if required, file a counterclaim against the plaintiff.
  - Possible Counterclaim: The defendant can file a counterclaim, which is an action brought against the plaintiff within the same proceeding.
- Organisation Phase:
  - Conciliation Hearing: The judge may attempt to reconcile the parties during an initial hearing.
  - Decision on Preliminary Issues: The judge decides the admissibility of the initial complaint. The judge defines the points in dispute, determines the production of evidence, and sets deadlines.
- Evidentiary Phase:
  - Evidence: The parties present evidence, such as witness testimonies, expert reports, documents, etc.
  - Witness Testimonies: Witnesses are heard at a hearing.
  - Expert Examinations: If necessary, technical examinations are conducted by a court-appointed expert.
- Final Arguments Phase:
  - The parties present their final arguments, summarising the arguments and evidence presented.
- Judgment Phase:
  - The judge renders the judgment.
- Appeals Phase:
  - The parties can appeal the judgment.
- Enforcement Phase:
  - If the judgment is in favour of the plaintiff and enforcement is necessary, the execution phase begins.
- Compliance with Judgment Phase:
  - If the defendant does not comply voluntarily with the judgment, it may be necessary to initiate a phase to enforce the judgment.
- Closing Phase:
  - The process is closed after compliance with the judicial decisions or due to other legal reasons.

### 1.4 What is your jurisdiction’s local judiciary’s approach to exclusive jurisdiction clauses?

The Brazilian Judiciary respects exclusive jurisdiction clauses as agreed upon between the parties in a contract if they are valid and not contrary to public order.

### 1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

The costs associated with a legal dispute in Brazil can be significant.

There is a system of court fees that must be paid to initiate a lawsuit. In addition to the costs of initiating a lawsuit, it is common for parties to bear the costs of expert reports and other expenses related to the process.

The losing party is responsible for covering all costs; however, the Brazilian Federal Constitution itself states that: “The law shall not exclude from the Judiciary’s appreciation injury or the threat of a right.” Therefore, those unable to afford such costs may request for judicial assistance or the installment of court costs.

### 1.6 Are there any particular rules about funding litigation in your jurisdiction? Are claimants and defendants permitted to enter into contingency fee arrangements and conditional fee arrangements?

Litigation financing by third parties, also known as third-party funding, is permitted in Brazil. However, this practice is not regulated by specific legislation. Therefore, the terms and conditions of such financing are typically established in private contracts among the involved parties, namely the funder, the plaintiff, and/or the defendant.

Brazilian courts generally tend to favour third-party litigation financing, provided that the agreements entered comply with Brazilian laws and do not violate ethical principles.

Litigation funders assume a portion of the risks and costs of the litigation in exchange for a share of the proceeds if the litigation is successful. It is essential for these agreements to be transparent and not contravene the professional ethics of the involved attorneys.

In the Brazilian jurisdiction success fee agreements and conditional fee agreements are also allowed. Success fee agreements enable attorneys and clients to establish that the payment of legal fees will be contingent upon the success of the case. This means that the attorney will receive a predetermined percentage of the client’s winnings if the litigation is successful, in whole or in part, including cases where it is possible to reduce the estimated loss. Conditional fee agreements are similar but usually involve the payment of legal fees only if specific conditions are met, such as winning the court case.

It is crucial to include such provisions in the fee agreement, ensuring that the client is fully aware of all financial implications arising from the agreement.

### 1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

The assignment of judicial claims or causes of action is permitted in Brazil, but with certain limitations, such as claims of a personal nature (those related to family rights and personal rights that cannot be transferred, for instance).

While the assignment of claims is allowed, Brazilian jurisprudence has determined that the opposing party may object to the assignment in specific cases if there is just cause, such as when the assignment is made with the intent to harm the other party or cause undue harm.

### 1.8 Can a party obtain security for/a guarantee over its legal costs?

A party can obtain security or a guarantee for its legal costs in Brazil. The Brazilian Code of Civil Procedure allows the defendant to request the posting of a bond or guarantee to cover legal costs if the plaintiff is unable to cover these costs in the event of losing the case.

In some cases, it may be necessary to make a judicial deposit. In this regard, judicial bond insurance is an alternative to judicial or appeal deposits. Parties can obtain an insurance policy while legal discussions and other stages of the process are ongoing. This type of insurance replaces the judicial deposit, seizure of assets, or bank guarantees until the end of the action.

## 2 Before Commencing Proceedings

### 2.1 Is there any particular formality with which you must comply before you initiate proceedings?

Before initiating a Civil lawsuit, specific formalities must be complied with, such as:

- Requirements of the initial complaint: The party wishing to file a civil action must submit an initial complaint containing detailed information about the parties involved, the cause of action, the alleged facts, the request for preliminary injunction, and available evidence. This complaint must meet legal requirements, and may vary depending on the type of action being filed.
- Jurisdiction and competence: The choice of the court must be appropriate to jurisdiction and competence.
- Payment of initial court fees: As previously mentioned, the plaintiff must pay the initial court fees, which vary according to the value of the case and the jurisdiction.
- Attempt at alternative dispute resolution: In some cases, the parties may be required to attempt to resolve their disputes through alternative dispute resolution methods, such as mediation or conciliation, before filing a lawsuit.

### 2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Limitation periods in Brazil vary depending on the nature of the violated right. It establishes the time within which a lawsuit must be filed from the occurrence of the event that gave rise to it. For example:

- General limitation period: In most civil lawsuits, three years from the date the right of action arose.
- Limitation period for contract-related actions: 10 years from the violation of the contractual provision.

## 3 Commencing Proceedings

### 3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

Civil proceedings are initiated through the filing of an initial complaint by the plaintiff before the competent court. The main steps are as follows:

- Initial complaint: The plaintiff prepares the initial complaint containing detailed information about the parties, the cause of action, the alleged facts, the request for preliminary injunction (if the case), and available evidence.
- Summons: After the initial complaint is filed, the court issues a summons to the defendant. The summons is a procedural act that notifies the defendant of the lawsuit. A summons is usually served by a court officer but can also be done by mail.
- Presumed date of notification: In the case of service by a court officer, this is the date of service. If the summons is done by other means, the date of notification may vary.
- Notification outside jurisdiction: Specific procedures are required, often based on international treaties and agreements. This involves the use of a letter rogatory, where the Brazilian court requests the cooperation of the foreign court to affect the notification.
- Foreign proceedings: Foreign proceedings can be notified in Brazil through the letter rogatory process. The Brazilian court receives the letter rogatory and forwards it to the competent foreign court for notification.

### 3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

They can be requested through a separate and autonomous process. The main criteria to obtain them include demonstrating the existence of a right to be protected, the risk of irreparable or difficult-to-repair harm, and the likelihood of success in the main action.

### 3.3 What are the main elements of the claimant's pleadings?

The main elements of the plaintiff's allegations typically include:

- Identification of the parties involved.
- Description of the facts giving rise to the action.
- Presentation of the legal grounds on which it is based.
- Specific request for preliminary injunction sought from the court, such as compensation, restitution, and contract enforcement, among others.

### 3.4 Can the pleadings be amended? If so, are there any restrictions?

The plaintiff's allegations can be amended, provided that certain restrictions are respected. Amendments are allowed before the defendant is served with summons. After service of summons on the defendant, amendments are only admitted with the defendant's consent or judicial authorisation. There are exceptions, such as the disregard of legal entity request, and others.

### 3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

The plaintiff's allegations can be withdrawn by the plaintiff at any time before service of summons on the defendant. After service of summons, the withdrawal is at the discretion of the judge, who will consider the circumstances of the case and the stage of the proceedings.

## 4 Defending a Claim

### 4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

In the defence, the defendant presents their response in opposition to the plaintiff's claim. The main elements of a defence typically include:

- Admission or denial of the facts alleged by the plaintiff.
- Presentation of the legal grounds justifying the defence.
- Presentation of any defence arguments, such as allegations of prescription, lapse of time, and lack of standing, among others.
- Specific request for what the defendant expects from the court, such as the dismissal of the action, counterclaim, or other appropriate remedies.

The defendant may file a counterclaim, which is an independent action against the plaintiff in the same proceeding, seeking for injunction related to the same facts or connected to the main action.

### 4.2 What is the time limit within which the statement of defence has to be served?

Generally, the deadline for filing a defence is 15 business days (Article 335 of the Brazilian Code of Civil Procedure), counted from (i) the date of service of process by an official court server, or (ii) the date of the notice of receipt being added to the case records when service is made by mail, among other possibilities outlined in Article 231 of the Brazilian Code of Civil Procedure.

### 4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

The Brazilian civil justice system allows the defendant to transfer or share responsibility by bringing in a third party ("*Denúnciação da Lide*", which is the forced intervention of a third party in an ongoing lawsuit when the denouncer alleges the existence of a contractual or legal duty of guarantee on the part of the denounced party, and "*Chamamento ao Processo*", which aims to summon all potential debtors of a common obligation to the proceedings).

### 4.4 What happens if the defendant does not defend the claim?

If the defendant does not respond to the lawsuit within the legal timeframe, they will be considered in default, meaning their inaction will be interpreted as an admission of the facts alleged by the plaintiff. This can result in an unfavourable judgment against the defendant, which will be based on the plaintiff's allegations.

### 4.5 Can the defendant dispute the court's jurisdiction?

The defendant can challenge the jurisdiction of the court in Brazil if it believes that the court lacks jurisdiction over the case, raising this issue as a preliminary defence in their answer, which will be

reviewed by the presiding judge. If the judge declares themselves as lacking jurisdiction, the case will be transferred to the appropriate court; otherwise, it will remain in the original court.

## 5 Joinder & Consolidation

**5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?**

It is possible to include third parties in ongoing legal proceedings. This can occur through a mechanism called “intervention of a third party”, as described in question 4.3 above.

**5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?**

The Brazilian civil justice system allows for the consolidation of two sets of proceedings. This can occur when there is a connection between the proceedings, meaning that the actions involve similar or related facts or legal issues. In cases of connection, the court may determine consolidation to avoid conflicting decisions and promote procedural efficiency.

**5.3 Do you have split trials/bifurcation of proceedings?**

Yes, this occurs when a lawsuit unfolds into two or more distinct parts with separate proceedings, often due to different issues or claims raised by the parties involved.

## 6 Duties & Powers of the Courts

**6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?**

The allocation of specific cases in civil courts is generally determined based on territorial and material jurisdiction. Cases are allocated to specific courts according to the subject matter of the action and the location where the events occurred. For example, in larger districts (regions), family law matters are typically handled by Family Courts, while issues involving bankruptcy are addressed by Bankruptcy Courts. Territorial jurisdiction is defined based on the location where the events occurred, where one of the parties resides or where the real property is located.

**6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?**

Courts have case management powers and can issue interim orders, such as preliminary injunctions to protect the rights of the parties during the proceedings. The financial consequences of such interim orders may vary depending on the circumstances of the case and the court’s decisions. Parties may be required to pay costs or provide guarantees to ensure the enforcement of the measures.

**6.3 In what circumstances (if any) do the civil courts in your jurisdiction allow hearings or trials to be conducted fully or partially remotely by telephone or video conferencing, and what protocols apply? For example, does the court – and/or may parties – record and/or live-stream the hearings and may transcriptions be taken? May participants attend hearings remotely when they are physically located outside of the jurisdiction? Are electronic or hard-copy bundles used for remote hearings?**

Brazilian civil courts have increasingly adopted remote hearings and trials conducted either wholly or partially via videoconferencing. There are protocols established by the court.

**6.4 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court’s orders or directions?**

In Brazil, courts have the power to impose sanctions on a party that disobeys court orders or directives, such as fines and coercive measures against witnesses, among others.

**6.5 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?**

Brazilian civil courts have the power to strike out part of a pleading or dismiss a case entirely under certain circumstances. This can occur, for example, when the pleading does not meet legal requirements, or when the cause of action is manifestly unfounded. Typically, this decision occurs in the early stages of the proceedings.

**6.6 Can the civil courts in your jurisdiction enter summary judgment?**

Yes, courts can render a judgment on the merits of a case in advance. The Brazilian Code of Civil Procedure provides for the possibility of it in cases where there is no need for additional evidence (such as witness or expert testimony, for example). The judge can decide the case based on the documents and allegations presented by the parties when the dispute is solely a matter of law and there is no need for additional evidence.

**6.7 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?**

The courts interrupt or suspend proceedings in some cases, such as: *force majeure* or an “act of God”; parties’ agreement; request for additional time for evidence gathering; incident of disregard of a legal entity; request for judicial examination; and a prejudicial issue.

Interruption of proceedings may occur:

- Waiver or loss of interest: If one of the parties waives the proceedings or loses interest in them, the proceedings may be interrupted.
- Death of one of the parties: If one of the parties passes away, the proceedings may be temporarily interrupted until their heirs or legal successors are properly notified.

- Withdrawal or extinction of the claim: When the parties reach an agreement and withdraw from the proceedings, or when the cause of action becomes extinct, the proceedings may be interrupted and archived.
- Decision with pending appeal: If one of the parties appeals a judicial decision, the proceedings may be interrupted until the higher court decides on the appeal.

## 7 Disclosure

**7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?**

The basic rules of disclosure in civil proceedings are provided for in the Brazilian Code of Civil Procedure. Some of the key features are:

- **Mandatory disclosure:** Parties have a duty to disclose all documents that may influence the judgment of the merits of the case. This includes documents in paper, electronic, or any other format.
- **Pre-litigation disclosure:** There is no formal pre-litigation disclosure procedure, but it is possible to request information from third parties before initiating a lawsuit through extrajudicial notifications or evidence-gathering procedures.
- **Categories of documents not requiring disclosure:** Some information may be protected by legal privilege and may not be disclosed in certain circumstances, such as documents protected by attorney–client privilege, documents related to national defence, or documents subject to judicial secrecy.
- **Disclosure of electronic documents:** Follows the same general disclosure rules. Predictive coding and other electronic practices may be used to assist in searching for and organising relevant electronic documents.

**7.2 What are the rules on privilege in civil proceedings in your jurisdiction?**

The rules regarding privilege in civil proceedings in Brazil are relatively limited compared to common law systems. There is no absolute privilege; however, there are some important aspects to highlight:

- **Attorney–client privilege:** Confidential communication between attorney and client is protected by attorney–client privilege. This means that communications and documents exchanged between the client and their attorney for the purpose of legal advice cannot be disclosed in court unless the client waives that privilege.
- **Protection of other professionals:** In addition to attorneys, other professionals who have confidentiality obligations, such as doctors and psychologists, also have an obligation to maintain the confidentiality of information exchanged with their clients or patients.
- **Privacy regarding third parties:** Attorney–client privilege does not extend to information that is not inherently confidential, nor to communications shared with third parties present during the interaction. The privilege applies only to communications strictly between an attorney and client.

**7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?**

The rules for third-party disclosure in Brazil vary depending on the context and the nature of the information. Usually, third parties are not obligated to disclose information unless they are legally required to do so through a court subpoena or other legal order.

**7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?**

The court plays an important role in overseeing and regulating the disclosure of information in civil proceedings in Brazil. The judge can issue orders to protect confidential information, preserve attorney–client privilege, and ensure that parties comply with applicable disclosure rules.

**7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?**

Documents obtained through disclosure in civil proceedings are generally protected by confidentiality and are intended for exclusive use in the specific case. Improper use of these documents, such as unauthorised disclosure to third parties or for purposes unrelated to the case, may result in legal sanctions.

## 8 Evidence

**8.1 What are the basic rules of evidence in your jurisdiction?**

The basic rules of evidence are governed by the Brazilian Code of Civil Procedure and other specific laws, such as:

- **Principle of Orality and Immediacy:** The judge must gather evidence immediately, meaning that parties and witnesses provide testimonies directly before the judge.
- **Principle of Admissibility:** The general rule is the broad admissibility of evidence, but there are exceptions, such as illegally obtained evidence.
- **Principle of Free Conviction:** The judge has the freedom to form their conviction based on the evidence presented by the parties, as long as they justify their decision according to the evidence on record.

**8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?**

A variety of types of evidence are admissible, including witness testimonies, documents, technical expert opinions, reports, judicial inspections, confessions of the parties, personal depositions of the parties, recordings, photographs, and other means of proof.

An expert is someone with specific technical or scientific knowledge in a relevant area to the case in question. They may be called upon to provide analysis, interpretations, or opinions based on their expertise.

Expert evidence is admitted in judicial proceedings and refers to the presentation of technical and specialised opinions by experts in a specific field to assist the court in understanding complex issues and making informed decisions. Their conclusions can be crucial in determining the truth of the facts and justice in the process.

Therefore, in the Brazilian legal system, expert evidence is used and admitted to assist in clarifying technical and scientific issues in legal disputes.

### 8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?

Parties can summon fact witnesses to testify in court. Depositions are taken orally before the judge, at a hearing, and parties have the right to directly question the witnesses. The judge may also question the witnesses.

### 8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

There are specific rules for the summoning and presentation of evidence from expert witnesses in Brazil. Some relevant aspects include:

- Appointment of experts.
- Expert reports: Experts must prepare technical reports that explain their conclusions. These reports must be submitted to the parties and the judge in advance to allow for analysis and challenges.
- Examination at the hearing: Experts are called to testify at a hearing, where they are questioned by the parties and the judge. Their conclusions can be challenged and debated during the process.
- Expert's duties: Experts have a duty of impartiality and must provide technical explanations to the court.
- Adversarial process: Parties have the right to challenge the expert's conclusions and present contradictory evidence, if necessary.
- Judge's Decision: The judge may consider the expert opinions along with other evidence in cases when forming their conviction and delivering the judgment. In summary, the evidence system in Brazil allows for the presentation of a wide range of proof, including witness testimonies, documents, and technical expert opinions, with specific rules to ensure impartiality and adversarial process in the proceedings.

## 9 Judgments & Orders

### 9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

Civil courts in Brazil have the authority to issue various types of judgments and orders in various circumstances, including:

- Judgments on the merits, granting or denying the requests of the parties: They can be condemnatory, imposing obligations on the parties, or absolving, not recognising the claimed rights.
- Partial judgments: Courts can issue partial judgments that resolve only part of the merits of the case, leaving some issues pending for future decisions.
- Liquidation judgments: When a condemnatory judgment does not specify the exact amount of the condemnation, a liquidation judgment may be issued to calculate the amount due.

- Urgent protection orders: Courts can issue urgent protection orders, such as preliminary injunctions to protect the rights of the parties before the final judgment.
- Declaratory judgments: Establish declarations of rights without imposing specific condemnations.
- Constitutive judgments: Create, modify, or extinguish legal relationships between the parties.

### 9.2 Are the civil courts in your jurisdiction empowered to issue binding declarations as to (i) parties' contractual or other civil law rights or obligations, (ii) the proper interpretation of wording in contracts, statutes or other documents, (iii) the existence of facts, or (iv) a principle of law? If so, when may such relief be sought and what factors are relevant to whether such relief is granted? In particular, may such relief be granted where the party seeking the declaration has no subsisting cause of action, and/or no party has suffered loss, and/or there has been no breach of contract/duty?

Civil courts in Brazil have the authority to issue binding declarations and decide on contractual or civil rights or obligations of the parties. This can be requested in some situations, such as:

- The party seeking the declaration has a legitimate and current interest in the declaration.
- The declaration is necessary to avoid future litigation or to resolve an existing dispute.
- The declaration does not involve speculation about future events or hypothetical issues.
- The declaration is relevant to the resolution of the case.

It is possible to request the review by the Brazilian Judiciary in these types of situations if there is a threat to rights, and it may even grant preliminary relief, depending on the factual situation and provided the legal requirements are met.

### 9.3 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The Brazilian Judiciary has the power to make decisions regarding damages, interest, and litigation costs, including the award of compensatory damages, moral damages, and interest on late payments, as provided by law. This includes the payment, by the losing party in the lawsuit, of their costs, including the attorney's fees of the winning party.

### 9.4 How can a domestic/foreign judgment be recognised and enforced?

To recognise and enforce a domestic or foreign judgment in Brazil, specific procedures must be followed. In the case of foreign judgments, homologation by the STJ is usually required. The judgment must be compatible with Brazilian law and will have binding effect after homologation.

### 9.5 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

The rules for appealing against a judgment are subject to the provisions of the Brazilian Code of Civil Procedure.

A party dissatisfied with a judgment can file an appeal (15 days from the notification of the judgment) before the competent



second-tier court. The appeal will be reviewed by a tribunal (a collegiate body), which can confirm, modify, or annul the first-instance judgment. The party can also seek the review of the decision of the mentioned second-tier court before the higher courts, such as the STJ and/or the STF, based on questions of law, with the STF involving issues related to the Brazilian Federal Constitution.

## 10 Settlement

### 10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

There are formal mechanisms and procedures encouraged by the judicial system for the resolution of conflicts outside of traditional litigation. Some of these mechanisms include:

- **Mediation:** A voluntary process in which a neutral third party, the mediator, facilitates communication between the disputing parties and helps them reach a mutually acceptable agreement. The Brazilian Judiciary encourages mediation, and many courts have mediation centres to assist parties in resolving conflicts.
- **Conciliation:** Conciliation is a process in which a neutral third party, the conciliator, actively works to bring the parties together and seek an agreement. Many courts have conciliation programmes to handle judicial proceedings.
- **Arbitration:** Arbitration is an alternative dispute resolution method in which the parties agree to submit their dispute to an arbitrator or panel of arbitrators, whose decision is binding. Brazilian Arbitration Law (Law No. 9,307/1996) regulates arbitration and allows parties to choose private arbitrators to resolve disputes, often in a (ideally) quicker and more confidential manner than the judicial system.
- **Direct negotiation:** Parties also have the freedom to negotiate directly to reach an agreement before or during a judicial proceeding.

Additionally, the Brazilian Code of Civil Procedure establishes that the judge must promote, whenever possible, self-composition, which means the consensual resolution of disputes, before issuing a judgment.

## 11 Alternative Dispute Resolution

### 11.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Various alternative dispute resolution methods are available and commonly utilised. Some of the main methods include:

- **Arbitration:** Arbitration, as explained above, is a method in which the disputing parties agree to submit their dispute to an arbitrator or panel of arbitrators, whose decision is binding, commonly used in commercial and contractual matters.
- **Mediation:** Mediation is a process in which an impartial mediator assists the parties in reaching a mutually acceptable agreement. Mediation is encouraged in family, civil, and commercial matters, with the possibility of being conducted in mediation centres or by private mediators.
- **Conciliation:** Conciliation involves a third party, the conciliator, who actively works to bring the parties together and seek an agreement. It is encouraged in judicial matters and can be conducted by judicial or private conciliators.

- **Expert Determination (Dispute Resolution Board – DRB):** This method involves the appointment of technical experts or specialists to resolve specific issues, such as damage assessment or the interpretation of technical terms in contracts, especially in the infrastructure sector.

### 11.2 What are the laws or rules governing the different methods of alternative dispute resolution?

The laws governing the different alternative dispute resolution methods in Brazil include the Arbitration Law for arbitration and the Brazilian Code of Civil Procedure for mediation and conciliation. Additionally, there are specific regulations for institutions that administer arbitration and mediation procedures.

### 11.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

There are no areas of law in Brazil that are completely barred from using alternative dispute resolution methods. However, in some cases, the choice of method may be limited by legal issues or the parties' will.

### 11.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

Brazilian local courts can help parties wishing to invoke alternative dispute resolution methods. A court may issue interim measures or protective orders in support of arbitration proceedings, compel parties to arbitrate when agreed upon, or order parties to mediate or seek expert determination. The Brazilian Code of Civil Procedure also provides for the possibility of suspending judicial proceedings to allow for mediation or conciliation.

### 11.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

The binding nature of alternative dispute resolution methods varies depending on the method in question.

Arbitration decisions are generally binding and can be judicially confirmed and enforced. However, parties have the right to annul arbitral decisions in specific cases, such as those involving the nullity of the arbitral award.

Decisions from mediation and conciliation are generally binding if the parties reach an agreement. These agreements can be sanctioned by the court, becoming enforceable judicial titles. There are no legal sanctions for refusing mediation.

#### 11.6 What are the major alternative dispute resolution institutions in your jurisdiction?

There are various public and private alternative dispute resolution institutions. Some examples include the Center for Arbitration and Mediation of the Brazil-Canada Chamber of Commerce (CAM-CCBC), the Chamber of Conciliation, Mediation, and Arbitration (CIESP/FIESP), Brazilian Centre for Mediation and Arbitration (CBMA), and FGV Chamber of Mediation and Arbitration, among others. These institutions play a significant role in administering alternative dispute resolution procedures in different areas of law.



**Luiz Fernando Visconti** has a highly recognised career, spanning over 25 years. Throughout his professional career, Visconti has gained extensive experience in the practice of law, whether in Dispute Resolution, with a focus on highly complex judicial litigation and the management of large client portfolios, or by participating in various projects, demands, and discussions in the Mineral Sector, including the highly relevant Greenfields, with extensive experience in sector-related transactions, acting before the National Mining Agency and the Ministry of Mines and Energy, advising companies, both in Brazil and abroad. He has also accumulated expertise in Institutional and Government Relations, working on public policy projects, bringing together clients and the public sector.

He has been recognised for multiple years in *Chambers Global*, *Chambers Latin America*, *Chambers Brazil*, *Leaders League*, *The Legal 500*, *Latin Lawyer 250*, *Who's Who Legal* and *Anuário (Yearbook) ORIGEM*.

#### Activities

- Guest Professor of the Postgraduate Programme at the Law School of *Universidade Presbiteriana Mackenzie*.
- Board member, founding member, coordinator of the Government Relations Group and former Legal and Regulatory Director of *Organização Mineronegocio* (Mining Business Organisation).
- Vice-President of the Ethics Committee of the Brazilian Committee of Resources and Reserves (CBRR).
- Co-coordinator of the Regulation and Competition Nucleus of the Legal Committee of the Italian-Brazilian Chamber of Commerce, Industry and Agriculture (ITALCAM).
- Member and former Regional Director of the Brazilian Association of Institutional and Governmental Relations (Abrig) of the State of São Paulo.
- Visiting Professor in the Executive Education courses at *Instituto de Ensino e Pesquisa (INSPER)*.
- Member of the Legal Committee of the Brazilian Association of Mineral Research Companies (ABPM).
- Member of the Prospectors & Developers Association of Canada (PDAC).
- Member of the São Paulo Bar Association (AASP).
- Civil Law – Professor's monitor at PUC-SP, from 1994–2002.

#### Publications

- Co-author of "Mining and Agribusiness in Brazil and in the world – characteristics, similarities and intersection", of agribusiness, and of the Declaration of Rights of Economic Freedom, with emphasis on business activity and agribusiness, published by *D'Plácido*, 2020.
- Co-author of "Governance of Regulatory Agencies", published by the *Brazilian Institute of Corporate Governance (IBGC)*, 2018.
- Co-author of "Managing Corruption Risk in the Resource Sector", published by the *Rocky Mountain Mineral Law Foundation* at the Proceeding of the 60<sup>th</sup> Annual Rocky Mountain Mineral Law Institute, 2014.
- Co-author of the chapter "Brazil" in the *International Comparative Legal Guide for: Minas Gerais Law 2014, 2015, 2016, 2017 and 2018*. London: Global Legal Group.
- Author of the chapter "Brazil" in the Mining Law Review. London: *Law Business Research*, 2012 and 2013.
- Author of the article "The General Theory of Contracts in the New Civil Code – A New Vision of Contractual Civil Law", published by the *Journal of the Japanese Chamber of Commerce and Industry of Brazil*. São Paulo: *Japanese Chamber of Commerce and Industry of Brazil*, 2002.
- Author of articles published in specialised journals and related newspapers.

#### Visconti Law – Legal & Public Affairs

Av. Nações Unidas, 8.501, 17<sup>th</sup> Floor  
Pinheiros, São Paulo 05425-070  
Brazil

Tel: +55 11 3434 6525 / +55 11 98345 4035  
Email: visconti@viscontilaw.com.br  
URL: www.viscontilaw.com.br

Personality is one of the hallmarks of Visconti Law, combining modernity and agility with excellence and combativeness, offering legal solutions from a pro-business perspective – because being a boutique firm means to also exercise agile advocacy, focused on our clients' businesses, in compliance with the highest ethical standards.

Visconti Law – Legal & Public Affairs is a law firm focused on the excellence and personality of the services provided for Dispute Resolution, Business Law and Institutional and Governmental Relations, with a lot of expertise in the Mineral Sector, with the following practice focuses: Prevention and Resolution of Conflicts; Arbitration and Mediation Civil Litigation; Labour Relations – both Consultative and Litigation; Mining Practice; Environmental Audit/Due Diligence; Advisory Administrative Litigation; and Regulatory Government Relations.

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