LexisNexis® Expert Commentaries

Arnoldo Wald and Rodrigo Garcia Da Fonseca on

The "Interclínicas Case": Brazil's Superior Court of Justice Rules on the Arbitrability of Disputes Involving Bankrupt Companies and Reaffirms the Principle of *Kompetenz-Kompetenz*

2008 Emerging Issues 2780

Brazil's Superior Court of Justice has recently issued a landmark decision in a thorny issue faced by local arbitration practitioners: are disputes involving bankrupt companies arbitrable? The answer given by the Brazilian high court in the "*Interclínicas* Case" was, to a great extent, yes.

Legal Background Prior to the "*Interclínicas* Case". The Brazilian Arbitration Act, Law n. 9.307/96, establishes in its article 1 that disputes are arbitrable when the parties are legally capable of entering into enforceable agreements ("*pessoas capazes de contratar*"), and the discussion relates to negotiable rights of a patrimonial nature ("*direitos patrimoniais disponíveis*"). There were doubts among the professionals in the field as to whether the applicability of bankruptcy laws, which impose a number of restrictions as to the disposition of rights and obligations of insolvent companies, would bar the arbitrability of disputes involving such entities.[1]

The ruling of the Superior Court of Justice in the *Interclínicas* Case has shed some light on the matter, and is expected to function as a guide for future decisions of the Brazilian Judiciary and of Arbitral Tribunals. And it is a very good and positive guide, one may add.

Case History and Proceedings. The case arose out of a transaction entered into between two companies that operate in the health-care sector. Some years ago, *Interclínicas Planos de Saúde SA* ("*Interclínicas*") was in financial trouble and the continuity of its business was threatened by the imminent intervention of the regulatory authorities of the *Agência Nacional de Saúde Suplementar* ("*ANS*"). In late 2004, *Interclínicas* made a deal with another health-care operator, *Saúde ABC Serviços Médicos Hospitalares Ltda*

1. These doubts can be summarized in the words of Jan Kleinheisterkamp, in his book "International Commercial Arbitration in Latin America", Oceana Publications, 2005, ps. 63-64, who said that the jurisdiction of bankruptcy courts in Brazil is of a nature "which has been interpreted as excluding arbitration in all questions involved in bankruptcy, although good reasons suggest that this may still be possible". Actually, there have not been many works about this matter published in Brazil. However, there are some good pieces that deserve to be read by those interested in the subject, like: "*A arbitragem na recuperação de empresas*", by José Emílio Nunes Pinto, *Revista de Arbitragem e Mediação*, vol. 7, oct.-dec. 2005, ps. 79-100; "*A arbitragem, a falência e a liquidação extrajudicial*", by Donaldo Armelin, *Revista de Arbitragem e Mediação*, vol. 13, apr.-jun. 2007, ps. 17-29; and "*O instituto da arbitragem no âmbito da recuperação judicial*", by J. A. Penalva Santos, in "*Arbitragem Doméstica e Internacional - Estudos em Homenagem ao Prof. Theóphilo de Azeredo Santos*", Rafaella Ferraz and Joaquim de Paiva Muniz, coord., Ed. Forense, 2008, ps. 155-171.

TOTAL SOLUTIONS

Legal Academic Risk & Information Analytics Corporate & Professional Government

LexisNexis®

LexisNexis, Lexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

Copyright © 2008 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

("*Saúde ABC*"), through which the latter would take over the former's clients, and succeed it before them as their heath-care service provider. The contract for the assignment of *Interclínicas'* clientele to *Saúde ABC* was approved by the *ANS* and the dispute resolution clause called for arbitration before the Center of Arbitration of the Brazil-Canada Chamber of Commerce ("CCBC"), in São Paulo.

A series of problems started to occur soon after the execution of the agreement between *Interclínicas* and *Saúde ABC*. On one hand, *Interclínicas'* financial situation had deteriorated so much that the *ANS* decided to decree its extrajudicial liquidation ("*liquidação extrajudicial*").[2] On the other hand, the contracting parties could not come to an understanding as to the payments due under the agreement, and *Saúde ABC* claimed *Interclínicas* had made false representations as to the state of its business and the number of clients, which caused significant impacts in the costs of running *Saúde ABC*'s post-transaction operations.

Saúde ABC then started an arbitration before the CCBC, as per the contract's dispute resolution mechanism. *Interclínicas*, on its part, now represented by its liquidator named by the *ANS*, started two lawsuits before the State Courts of São Paulo. In the first one, it sought the payment of monies allegedly owed to it under the agreement. The second one was an anti-arbitration suit, requesting a judicial order of dismissal of the arbitration proceeding, based in the assertion of inarbitrability of the dispute, due to the fact that *Interclínicas* was under the extrajudicial liquidation regime.

According to *Interclínicas*' allegations, the decree of its extrajudicial liquidation amounted to a supervening cause of invalidity of the arbitration clause inserted in the agreement with *Saúde ABC*. The legal constraints imposed on the liquidator for the disposition of the company's assets, the rights of the creditors, and the public interest in the oversight of the liquidation by the *ANS* and the public prosecutors ("*ministério público*") all meant, according to *Interclínicas*, that it could not take part in an arbitration, and any disputes involving it had to be decided in court.

2. The extrajudicial liquidation of a health-care operator is an administrative winding-up proceeding conducted by the ANS, as provided for in Law n. 9.656/98 and Law n. 6.024/74. It is in many ways similar to a bankruptcy proceeding, with the major difference that it is not conducted in court, being overseen by an administrative body, not by a judge. In certain situations foreseen in the mentioned statutes, the extrajudicial liquidation may be converted into a judicial bankruptcy.

TOTAL SOLUTIONS

Legal Academic Risk & Information Analytics Corporate & Professional Government

LexisNexis®

LexisNexis, Lexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.
Copyright © 2008 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

A court of first instance initially granted a suspension of the arbitration proceeding and issued and injunction ordering the Arbitration Tribunal to stay the proceedings pending the final outcome of the litigation. *Saúde ABC* appealed, and a panel of the 2nd Chamber of Private Law of the São Paulo Court of Appeals stayed the lower judge's order, allowing CCBC and the Arbitrators to move forward with the arbitration.[3]

It is relevant to mention that after the initial anti-arbitration injunction was stayed, the Arbitral Tribunal handed down a decision on jurisdiction, in which it rejected all of *Interclínicas*' arguments, which had also been raised in the context of the arbitration. The Arbitral Tribunal recognized the arbitrability of the dispute, affirmed its own jurisdiction and decided to move forward with the arbitration.[4]

In the meantime, *Interclínicas* continued to pursue its anti-arbitration claim, and appealed the decision of the São Paulo Court of Appeals to the Superior Court of Justice.[5] *Interclínicas* also asked the Superior Court of Justice to provisionally stay the appealed decision, and to reinstate the anti-arbitration injunction pending a final decision on the merits of the matter. It did so through the filing of a *Medida Cautelar*.

The Superior Court's Ruling. It was in the context of this request for a provisional stay that the Superior Court of Justice issued the ruling referred to in the beginning. The *Medida Cautelar* was outright dismissed in a decision by Justice Nancy Andrighi,[6] which also confirmed the prior decision of the São Paulo Court of Appeals and made it clear that *Interclínicas*' appeal is to be denied. In an opinion nine pages long, Justice Andrighi analyzed the facts of the case and reached some very important conclusions for the further development of arbitration in Brazil.

3. The decision of the Court of Appeals of São Paulo in Interlocutory Appeal ("*Agravo de Instrumento*") n. 460.034-4/5-00, reported by Judge José Roberto Bedran, has been published, followed by commentaries of Marina Mendes Costa, in *Revista de Arbitragem e Mediação*, vol. 15, oct.-dec. 2007, ps. 206-216.

4. The decision of the Arbitral Tribunal eventually became public by reason of the court litigation initiated by *Interclínicas*. The decision on jurisdiction has been published in *Revista de Arbitragem e Mediação*, vol. 15, oct.-dec. 2007, ps. 239-247. The Arbitral Tribunal was composed of three well-known and reputed Brazilian Arbitrators, Pedro Batista Martins, Selma Lemes and Carlos Nehring Netto.

5. The Superior Court of Justice is Brazil's highest court for non-constitutional issues. It is formed by 33 Justices who sit in Brasília, the Federal Capital. Among other matters, it hears appeals from States' and Federal Courts of Appeals on statutory issues. Constitutional appeals are heard by the Federal Supreme Court.

6. This decision was rendered in Provisional Measure ("*Medida Cautelar*") n. 14.295-SP, and was published in the Federal Official Gazette of June, 13, 2008. The full opinion is available in Portuguese at the Court's website: http://www.stj.gov.br.

LexisNexis, Lexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.
Copyright © 2008 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

First, she rejected any arguments as to subjective inarbitrability of the dispute. The fact the *Interclínicas* is under extrajudicial liquidation does not render it incapable of entering into enforceable agreements, which is the subjective standard required by article 1 of the Brazilian Arbitration Act. The liquidator named by the ANS has broad powers to represent to company in new or pending transactions, and the restrictions as to what he or she can or cannot do are not such that would prevent the company from going to arbitration.

Another relevant issue pointed out in Justice Andrighi's opinion is that, in the case at hand, the arbitration clause was agreed to before the decree of the extrajudicial liquidation of the company. There can be no doubt that it was a valid contractual provision at the time it was agreed to, entered into between two companies in a commercial setting. The opinion then goes on to say that there is no legal reason to invalidate the arbitration clause *ex post facto*.[7]

There is nothing that prevents the insolvent company and the liquidator from taking part in an arbitration, just as they can take part in court proceedings. The arbitration can go forward and the procedural rights of the entity in liquidation are in no way harmed, because the rules applicable to arbitration proceedings fully protect the due process rights of the parties. Therefore, Justice Andrighi added, the public interest related to the liquidation of the company is not at risk by its participation in the arbitration, as provided for in the dispute resolution clause of the agreement. Given that all the rights of the company subject to liquidation are protected and can be defended in the arbitration, there is no prejudice to the rights of its creditors.

The participation of a company subject to the extrajudicial liquidation in an arbitration does not mean that the liquidator will be disposing of or encumbering any of its remaining assets. The arbitration is merely the manner in which a dispute will be resolved, and is not prejudicial *per se* to the company in any way whatsoever.

Justice Andrighi's opinion also indicates that there is no legal prohibition to a settlement involving a company in extrajudicial liquidation. In the case of health-care operators, the law allows settlements as long as there is the prior approval of the *ANS*. Nothing pre-

7. The opinion does not expressly address the hypothetical of the validity of an arbitration clause executed by a company already in extrajudicial liquidation. However, many of the arguments laid out in the opinion seem to imply that such a clause should also be considered valid, if all legal formalities are observed.

LexisNexis, Lexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.
Copyright © 2008 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

vents such a settlement from being reached in the context of an arbitration, if the proper approvals are in place.

The ruling of the Superior Court of Justice in the *Interclínicas* Case stresses, moreover, that Arbitral Tribunals do not have the legal power to enforce their own awards, which need to be taken to court in case the loser resists compliance, and there are legal remedies available to the parties to correct any possible wrongdoings in the arbitration.

Finally, the high court recognized that although there are legal limitations to the kinds of claims that can be filed or proceed once the insolvency of the company is characterized and the liquidation decreed, the prevailing case-law allows the continuity of cases in which a determination of liability or a quantification of damages is sought; only enforcement and foreclosure are stayed, so that the rights of all creditors can be put in equal footing, according to each of their particular natures (privileged, secured, unsecured, etc). This is a valid principle for court lawsuits and for arbitrations alike, with no justifiable distinctions between the two.

Impact of Decision. The quality and the scope of the reasoning found in the opinion in the *Interclínicas* case are admirable. This decision is a true landmark in the development of arbitration in Brazil. It was the first time of the Superior Court of Justice dealt with the arbitrability of disputes in the context of the application of bankruptcy laws, and it did so with a clear pro-arbitration attitude.

This ruling sends a powerful message to the Brazilian legal community, showing that the Superior Court of Justice is committed to the respect of Law n. 9.307/96 and of its principles, and the construction of a modern arbitration culture, in line with the most advanced ones in the rest of the world. Resistance and prejudice against arbitration by the Judiciary are problems to be buried in the past.

The Brazilian high court has been clearly positioning itself for the last few years as a leader and a pioneer in the case-law related to arbitration. For example, the court has speeded up the proceedings for the recognition of foreign arbitral awards, reinforced the principle that arbitration awards are not subject to judicial review on the merits and recognized the arbitrability of disputes involving state-owned companies.[8]

---

8. In Brazil, the jurisdiction to rule on the recognition of foreign arbitral awards ("*homologação de sentenças arbitrais estrangeiras*") traditionally belonged to the Supreme Court, but it was shifted to the Superior Court of Justice in late 2004, due to Consti-

LexisNexis, Lexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.
Copyright © 2008 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

An important aspect of the decision in *Interclínicas* is that Justice Andrighi's opinion leaves no place for dissent in relation to two very relevant points: first, certain restrictions in the capacity to enter into contracts do not mean legal incapacity, and therefore may not support allegations of subjective inarbitrability of disputes; second, the presence of public interest in the destination of the rights and assets of a party does not necessarily mean that such rights and assets are inalienable and cannot be subject to a transaction; as a consequence, public interest *per se* is not necessarily sufficient grounds to support allegations of objective inarbitrability of disputes.

These notions – which are perfectly correct in our opinion – might have been somewhat unclear in the existing case-law related to arbitration in Brazil so far, but they now tend to be consolidated in the local courts after such a strong pro-arbitration statement by the Superior Court of Justice.

Although the *Interclínicas* Case arose in the context of an extrajudicial liquidation, because the company involved was a health-care operator, there is no reason why its grounds cannot be used in the scenario of an ordinary bankruptcy of any commercial company. Actually, just a few days after the *Interclínicas* ruling by the Superior Court of Justice, the Court of Appeals of São Paulo faced this very issue, and although the high court's opinion was not quoted, the conclusion was equivalent.

A company called *Jackson Empreendimentos Ltda* ("*Jackson*") had initiated an arbitration against *Diagrama Construtora Ltda* ("*Diagrama*"), claiming damages for default in a construction contract. *Diagrama* went bankrupt, and subsequently alleged that the arbitration should be dismissed and the claim litigated before the Bankruptcy Court instead. The arbitration continued and the Arbitral Tribunal rendered an award in favor of *Jackson*. The award was then taken to the Bankruptcy Court, and *Jackson* asked to be listed as a creditor. *Diagrama* opposed the request, alleging the nullity of the award, due to the non-arbitrability of a claim involving a bankrupt company. The Court of Appeals of

---

tutional Amendment n. 45. Since then, the time for recognition of foreign arbitral awards was significantly reduced, and in all cases the Court consistently restrained itself to the analysis of the required formalities, and refused to review the merits of the awards. As to the arbitrability of disputes involving state-owned companies, a subject that had produced a variety of different and inconsistent decisions of lower courts throughout the country, the Superior Court of Justice has decided affirmatively, favoring the possibility of arbitration, in at least three occasions: Special Appeal ("*Recurso Especial*") n. 612.439-RS, reporting Justice João Otávio Noronha, published in the Federal Official Gazette of September 14, 2006; Special Appeal ("*Recurso Especial*") n. 606.345-RS, reporting Justice João Otávio Noronha, published in the Federal Official Gazette of June 08, 2007; Writ of Mandamus ("*Mandado de Segurança*") n. 11.308-DF, reporting Justice Luiz Fux, published in the Federal Official Gazzette of May, 19, 2008. All three opinions are available in their entirety, in Portuguese, at the Court's website: http://www.stj.gov.br.

TOTAL SOLUTIONS

Legal Academic Risk & Information Analytics Corporate & Professional Government

LexisNexis®

LexisNexis, Lexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.
Copyright © 2008 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

São Paulo eventually decided that *Jackson*'s credit had be validated in the bankruptcy proceedings, because the dispute was arbitrable and the award was perfectly legal.[9]

The recent *Diagrama* and *Interclínicas* Cases, both out of São Paulo, the country's main economic hub, help consolidate a line of case-law that allows the use of arbitration in disputes involving bankrupt companies, reinforcing a legal framework that consistently restricts allegations of inarbitrability whenever the parties had previously and freely agreed to establish an arbitration clause in their contract.

As a rule, the supervening insolvency of one of the contracting companies – either through bankruptcy or through extrajudicial liquidation – is not enough to annul the legal effects of an arbitration clause. This is the main lesson contained in *Interclínicas*.

Last but not least, while the decision of the *Interclínicas* Case offered arbitration practitioners a juicy main course in the recognition of the arbitrability of disputes involving bankrupt companies, it also provided the local legal community with a sweet and tasty dessert. Such dessert is one of the most outspoken speeches in favor of the *kompetenz-kompetenz* principle ever made in a court opinion in Brazil.

The *kompetenz-kompetenz* principle applicable to arbitration – or the Arbitral Tribunal's jurisdiction to rule on its own jurisdiction – is known worldwide, although with different shades of variations from one legal system to another. It is a very important legal principle that is necessary to protect the integrity of arbitration proceedings and to prevent undue judicial intervention prompted by bad-faith litigants that do not respect the dispute resolution mechanism that they agreed to in the first place, a problem that has been steadily growing in the recent practice almost everywhere. Without the Arbitral Tribunal's jurisdiction to rule on its own jurisdiction, any party can ambush an arbitration in court, and start frivolous lawsuits by simply making up allegations of inarbitrability, causing undue disturbances, delay and expenses.

---

9. The decision of the *Diagrama* Case, Interlocutory Appeal ("*Agravo de Instrumento*") n. 531.020-4/3-00, consists of a 22-pages long opinion of the Special Chamber of Bankruptcy of the Court of Appeals of São Paulo, reported by Judge Pereira Calças, dated June 25, 2008. It is available in Portuguese at the Court's website: http://www.tj.sp.gov.br. We believe the *Interclínicas* decision of the Superior Court of Justice was not referred to in the opinion because it was very recent, just a few days old, and it probably had not come to the attention of the São Paulo Court yet.

LexisNexis, Lexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.
Copyright © 2008 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

The Superior Court of Justice had already pronounced a couple of decisions in line with the *kompetenz-kompetenz* principle[10], but none until now had gone so far as the one in *Interclínicas* did.

In Brazil, articles 8 and 20 of the Brazilian Arbitration Act are very clear in relation to the *kompetenz-kompetenz* principle. The sole paragraph of article 8 establishes that the Arbitrator (or the Arbitral Tribunal, as the case may be) has the jurisdiction to decide – *ex officio* or per the request of the parties – any issues related to the existence, validity and efficacy of the arbitration clause and of the contract in which it has been inserted. Article 20 strongly defines that any allegations of inarbitrability of the dispute must be brought by the party in the first intervention that it makes in the arbitration; if the allegation is accepted by the Arbitrator (or the Arbitral Tribunal), then the arbitration is dismissed; if it is rejected, the arbitration can go forward until a final award, without prejudice of the party's right to present the same allegation again in court, in a lawsuit to vacate the award.

In the *Interclínicas* Case, the Court of Appeals of São Paulo had based its decision, *inter alia*, in articles 8 and 20 of the Brazilian Arbitration Act, recognizing the Arbitral Tribunal's chronological priority to rule on its own jurisdiction, before any judicial authority. Although *Interclínicas* did not specifically attack this ground in its appeal, Justice Andrighi found it imperative to include the issue in her opinion.

According to Justice Andrighi, "*kompetenz-kompetenz* is one of the main principles in arbitration, giving the arbitrator the power to decide about his/her own jurisdiction, and any attempt by the parties or a judge to modify this reality is condemnable. In other words, in the clash with the judicial authorities, the arbitrator will have the preference in the analysis of the matter, he/she will have the benefit of the doubt."[11] This is essential – she says further – to ensure that arbitration is a safe and effective means of dispute resolution, avoiding protelatory measures and delaying tactics from litigants that do not honor the arbitration bargain they originally accepted when they executed the contract.

---

10. The subject was addressed briefly, for example, in the decisions of Provisional Measure ("*Medida Cautelar*") n. 13.274-SP, reporting Justice Nancy Andrighi, published in the Federal Official Gazzette of September 20, 2007, and of Writ of Mandamus ("*Mandado de Segurança*") n. 11.308-DF, reporting Justice Luiz Fux, published in the Federal Official Gazette of May, 19, 2008. Both opinions are available in Portuguese at the Court's website: http://www.stj.gov.br.

11. Free translation from the original Portuguese text of the opinion, page 7.

LexisNexis, Lexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.
Copyright © 2008 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

The opinion in *Interclínicas* also highlights that the *kompetenz-kompetenz* principle is not affected by the circumstance that there might have been a supervening reason to invalidate the arbitration clause, as alleged by the appellant. On the contrary, the invalidity of the clause or of the contract as a whole may indeed be the very issue to be decided, and it does not matter if it is so for original or for supervening reasons. In any event, the Arbitral Tribunal is the one that has primary jurisdiction to decide these issues, and the role of judicial courts is reserved to a post-arbitration control of the legality of this decision.

Therefore, although the discussion of the *kompetenz-kompetenz* principle is not the main feature of the decision of the Superior Court of Justice, it is also very enlightening. It is indeed quite a valuable addition inserted in the opinion by Justice Andrighi, which is certainly bound to be often quoted in future cases in Brazil.

Conclusion. In summary, the ruling of the Superior Court of Justice in *Interclínicas* is very positive for the future of arbitration in Brazil. It deserves praise from all that expect arbitration to continue flourishing as it has since the inception of the Brazilian Arbitration Act in 1996. Once again the high court has shown it embraces modern and advanced concepts in the field of arbitration, making yet another statement that Brazil is an arbitration-friendly jurisdiction in the midst of this globalized and complex world of the 21st century.

About the Authors. Arnoldo Wald is an attorney admitted to practice in Brazil, and frequently sits as an arbitrator in Brazil and abroad. Mr. Wald is the Founding Partner of Wald e Associados Advogados (www.wald.com.br/ingles/index.htm), a law firm with offices in São Paulo, Rio de Janeiro and Brasília. Mr. Wald is the Brazilian member of the Court of Arbitration of the International Chamber of Commerce. He is a Professor of Civil Law at the University of the State of Rio de Janeiro and Doctor *Honoris Causa* by the University Paris II. Mr. Wald can be reached via email at aw@wald.com.br.

Rodrigo Garcia Da Fonseca is an attorney admitted to practice in Brazil. Mr. Fonseca is a Partner of Wald e Associados Advogados (www.wald.com.br/ingles/index.htm), and his work focuses mainly in dispute resolution matters (arbitration and litigation). He is a member of the Arbitration Commission of the Rio de Janeiro Section of the Brazilian Bar Association. Mr. Fonseca can be reached via email at rodrigo@wald.com.br.

LexisNexis, Lexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.
Copyright © 2008 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.

LexisNexis® Expert Commentaries

Arnoldo Wald and Rodrigo Garcia Da Fonseca on

The "Interclínicas Case": Brazil's Superior Court of Justice Rules on the Arbitrability of Disputes Involving Bankrupt Companies and Reaffirms the Principle of *Kompetenz-Kompetenz*

Expert Commentary is the title of this LexisNexis® publication. All information provided in this publication is provided for educational purposes only and use of the term "Expert Commentary" is not intended to describe or designate the author's qualifications as a lawyer or in a subspecialty of the law. For legal advice applicable to the facts of your particular situation, you should obtain the services of a qualified attorney licensed to practice law in your state.

TOTAL SOLUTIONS

Legal Academic Risk & Information Analytics Corporate & Professional Government

LexisNexis®

LexisNexis, Lexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

Copyright © 2008 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved.