



Sao Paulo, 14 May 2014

# 2014 ICC BRAZILIAN ARBITRATION DAY

## Programme

**Wednesday 14 May 2014**

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09.00 - 09.30 **Opening remarks**

- **José Emilio Nunes Pinto**, Founding partner, José Emilio Nunes Pinto Advogados, Brazil; Vice-President, ICC International Court of Arbitration
- **Yves Derains**, Founding partner, Derains & Gharavi, France; President, ICC Institute of World Business Law

09.30 - 10.00 **ICC Arbitration: The current state of affairs**

- **José Ricardo Feris**, Deputy Secretary General, ICC International Court of Arbitration, Paris

10.00 - 11.00 **Corporate arbitration in Brazil: current problems and possible solutions**

Corporate arbitration has been one of the more recent trends in international commercial arbitration. Within the last five years, States from around the globe have amended either their arbitration or corporation laws to permit the resolution by arbitration of disputes between shareholders, or between one or more shareholders and the corporation itself. Brazil is no exception to this trend, and instances of corporate arbitration have taken place under Brazilian law.

*This roundtable will cover the following topics:*

- Validity of an arbitration agreement inserted in a company's bylaws. Validity of such agreement for shareholders who joined the company after the agreement was entered?
- Third-party intervention by the corporation in a shareholders' dispute: is there a difference in this intervention if the arbitration agreement is contained in a shareholders' agreement or in the company's bylaws? Should the company be obliged to intervene?
- The right for minority shareholders to be 'bought out'
- *Kompentenz- Kompetenz* in Brazil: where do we stand after *Samarco Mineração S/A v Jerson Valadares da Cruz*?
- Remedies and enforcement of arbitral awards in this field
  - **Adriana Braghetta**, Partner, L O Baptista Schmidt Valois Miranda Ferreira Agel, Brazil
  - **Marcelo Roberto Ferro**, Partner, Ferro, Castro Neves, Daltro & Gomide, Brazil
  - **Eduardo Damião Gonçalves**, Partner, Mattos Filho Veiga Filho Marrey Jr e Quiroga Advogados, Brazil
  - **Eduardo Grebler**, Partner, Grebler Advogados, Brazil
  - **Hermes Marcelo Huck**, Partner, Lilla, Huck, Otranto, Camargo, Brazil

*Moderator*

- **Marcelo Inglez de Souza**, Partner, Demarest Advogados, Brazil

11.00 - 11.30 **Discussion**

11.30 - 12.00 *Coffee break*

12.00 - 13.00 **The 2014 New ICC Mediation Rules**

ICC's new Mediation Rules came into force on 1 January 2014. Produced within the ICC Commission on Arbitration and ADR by a task force of dispute resolution specialists and company representatives from 29 countries, the new Rules are administered by the ICC International Centre for ADR. They replace the ICC ADR rules, used for amicable dispute resolution since 2001. Akin to similar events organized in other parts of the globe, this panel will constitute the official launch of the 2014 ICC Mediation Rules in Brazil. This panel will offer the participants the opportunity to acquire a comprehensive overview of the new Rules, including the new ICC model clauses for mediation and multi-tiered clauses; its main differences with its predecessor, the ICC ADR Rules, will also be covered. A general appraisal of mediation, and more specifically administered mediation in business today, will kick off this panel's discussion.

*This roundtable will cover the following topics:*

- Why mediate? Why mediate under institutional rules? The relevance of mediations and administered mediation to business today
  - ADR becomes Mediation: the drafting of the new ICC Mediation Rules
  - Getting started: how to initiate proceedings under the ICC Mediation Rules (Articles 2 and 3)
  - The mediator: finding the right person for your dispute (Article 5)
  - Conduct of the proceedings: avoiding and overcoming hurdles and dealing with confidentiality (Articles 4, 7 and 9)
  - Money matters: Costs and payments under the new ICC Mediation Rules (Articles 6 and Appendix)
  - The new ICC model clauses for mediation and multi-tiered clauses
    - **David J. A. Cairns**, Partner, B. Cremades y Asociados, Spain
    - **Nadia de Araujo**, Partner, Nadia de Araujo Advogados, Brazil
    - **Daniel E. González**, Partner, Hogan Lovells, United States
    - **Mathilde Vital Durand**, Deputy Manager, ICC International Centre for ADR, Paris
- Moderator*
- **Octavio Fragata Martins de Barros**, Partner, Tozzini Freire Advogados, Brazil

13.00 - 13.30 **Discussion**

13.30 - 15.00 *Lunch*

15.00 - 16.00 **Emergency Arbitrator and provisional measure: recent experience**

Since its inclusion in major institutional arbitration rules around the world, emergency arbitrator proceedings have proven to be fertile ground for dynamism in international arbitration. This panel will examine the major developments in emergency arbitrator proceedings administered under the ICC Arbitration Rules, in cases seated in Brazil and elsewhere; topics include the costs of emergency arbitrator proceedings and the legal basis of the decisions issued by them. Since these proceedings are closely related to provisional measures, an examination of the latter under Brazilian arbitration law is also scheduled for this panel. The relationship between the emergency arbitrator and State courts, still unmapped to a large extent, will also be examined.

*This roundtable will cover the following topics:*

- Analysis of recent emergency arbitrator proceedings in cases seated in Brazil and elsewhere
- Should the emergency arbitrator's decision be based on the law of the place of the arbitration, the applicable law to the contract or "international standards"?
- Links between the emergency arbitrator and State courts
- Issues related to the costs in emergency arbitrator proceedings
- Provisional measures under Brazilian arbitration law

- **Nancy Andrighi**, Judge, Superior Court of Justice, Brazil
- **Jason Fry**, Partner, Clifford Chance, France; former Secretary General, ICC International Court of Arbitration
- **Renato Stephan Grion**, Partner, Pinheiro Neto, Brazil
- **Andrew McDougall**, Partner, White & Case LLP, France
- **Ana Serra e Moura**, Counsel, ICC International Court of Arbitration, Paris

*Moderator*

- **Julie Bédard**, Partner, Skadden, Arps, Slate, Meagher & Flom, United States

16.00 - 16.30 **Discussion**

16.30 - 17.00 *Coffee break*

17.00 - 18.00 **Issues pertaining to the use of experts in international arbitration**

Arbitrators rely on experts to present them difficult, technical issues in a manner that will provide them a clear understanding of the dispute at hand. But the use of experts is not without hurdles. Issues may arise with both party-appointed and tribunal appointed-experts. This panel will focus on how the tribunal handles the experts' legal reports, including an examination of techniques to assess them. Qualification of the experts will also be addressed, as well as a list of ideal characteristics to be desired by arbitrators in reports advanced by them.

*This roundtable will cover the following topics:*

- Weighing the importance of the legal expert's reports
  - Witness conferencing and expert reports: are they a good mix? Is it an appropriate tool for the arbitral tribunal to assess conflicting party-appointed expert opinions?
  - A matter of discretion: how should the tribunal handle an expert's lack of qualification, unsatisfactory methodology and deficient reports by a party-appointed expert?
  - Conflict of interests between the arbitral tribunal and party-appointed experts: how should they be handled?
  - Expert reports: the arbitrator's checklist
    - **Luiz Aboim**, Senior Associate, Freshfields Bruckhaus Deringer, England
    - **Henri C. Alvarez Q.C.**, Partner, Fasken Martineau DuMoulin LLP, Canada
    - **José-Miguel Júdece**, Partner, PLMJ Sociedade de Advogados, Portugal; Member for Portugal, ICC International Court of Arbitration
    - **Christian Leathley**, Partner, Herbert Smith Freehills, England and Spain
    - **Fernando Mantilla-Serrano**, Partner, Latham & Watkins LLP, France; Member for Colombia, ICC International Court of Arbitration
- Moderator*
- **Pedro Soares Maciel**, Partner, Veirano Advogados, Brazil

18.00 - 18.30 **Discussion**

18.30 - 18.45 **Thoughts of the day and closing remarks**

- **João Bosco Lee**, Partner, Lee Taube, Gabardo Sociedade de Advogados, Brazil; Alternate Member for Brazil, ICC International Court of Arbitration
- **José Ricardo Feris**
- **Selma Lemes**, Partner, Selma Lemes Advogados Associados, Brazil; Member for Brazil, ICC International Court of Arbitration
- **José Emilio Nunes Pinto**

19.00 *Cocktail reception*