

Brazil confirms its vocation to be a arbitration friendly country.

The Secretariat of Jurisprudence of the Superior Court of Justice (STJ) published the 122nd edition of its *Jurisprudence in Theses*, with the specific theme of Arbitration. The understandings were extracted from judgments published by the Court until 03/22/2019 and reveal that Brazil is becoming an increasingly friendly country to arbitration. See below the published understandings:

- 1) The arbitration agreement, either in the form of arbitration agreement or in the modality of arbitration clause, once contracted by the parties, has binding force and mandatory character, defining to the chosen arbitration court the jurisdiction to settle the litigations related to the arbitrable matters, derogating the State jurisdiction.
- 2) Once expressing the desire to establish, by contract, a broad arbitration clause, its dismissal must come through the same express declaration of the parties, not serving, therefore, a mere allusion to acts or agreements that do not have the power to exclude the parties' agreement.
- 3) The contractual provision of an arbitration agreement entails the recognition of the jurisdiction of the arbitral tribunal to decide *prima facie*, *ex officio* or by provocation of the parties, the questions regarding the existence, validity and effectiveness of the arbitration agreement and contract containing the arbitration clause.
- 4) The Judiciary may, in exceptional situations, declare the nullity of an arbitration clause, regardless of the state of the arbitration procedure, when it bets on a clearly illegal arbitration agreement.
- 5) The Brazilian Arbitration Law applies to contracts that contain an arbitration clause, even though they were entered into prior to their issue.
- 6) The prior filing of an emergency proceeding before the Judiciary does not detract from the effectiveness of the arbitration clause.
- 7) The arbitrator has no direct coercive power, being prohibited the practice of executive acts, and it is incumbent upon the Judiciary to enforce the right recognized in the arbitral
- 8) In the context of compliance with an arbitral award, a fine of 10% (ten per cent) of article 475-J of the Brazilian Code of Judicial Proceedings shall apply if the executor fails to pay spontaneously within a period of 15 (fifteen) days (in the case of an instrument containing a net sum) or the summons of the debtor, in the person of his lawyer, by means of publication in the official press (in case of prior liquidation of the obligation certified by the arbitral tribunal).
- 9) The activity developed in the scope of the arbitration has a jurisdictional nature, which makes possible the existence of a conflict of jurisdiction between the state and arbitral judgments, and the Superior Court of Justice (STJ) is responsible for its judgment.
- 10) It does not constitute an obstacle to the homologation of a foreign arbitral award the service of the respondent by any means of communication whose veracity can be attested, provided there is unequivocal proof of receipt of the service related to the existence of the arbitral proceedings.

- 11) Consumer legislation prevents the prior and compulsory adoption of arbitration at the time of conclusion of the contract, but does not prohibit that, in the event of a dispute, if there is a consensus between the parties, the arbitration procedure is instituted.
- 12) In the face of the coercive force of a condominium agreement with an arbitration clause, any co-owner that joins the condominium group is obliged to obey the rules therein, so that any co-owners conflicts must be solved by means of arbitration, excluding the participation of the State Court.
- 13) There is no legal obstacle in the stipulation of arbitration by the public authority, especially by mixed capital companies, for the resolution of conflicts related to arbitrable matters.
- 14) The legitimacy for the enforcement of a writ of mandamus with the purpose of ensuring the right to comply with an arbitration award relating to the Fund for Severance of Service - FGTS is only the holder of each linked account, not the Arbitration Chamber or the arbitrator itself.