

# ACERIS LAW LLC

## Brazil

### LAW NO 9.307 OF 23 September 1996

The President of the Republic

I hereby make known that the National Congress decrees and I sanction the following Law:

#### **Chapter I. General Provisions**

##### **Article 1**

Persons capable of contracting may settle through arbitration disputes related to patrimonial rights over which they may dispose.

##### **Article 2**

At the parties' discretion, arbitration may be conducted under the rules of law or in equity.

First Paragraph : The parties may freely choose the rules of law applicable in the arbitration provided that their choice does not violate good morals and public policy.

Second Paragraph : The parties may also agree that the arbitration shall be conducted under the general principles of law, customs, usages and international rules of trade.

#### **Chapter II. The Arbitration Agreement and Its Effects**

##### **Article 3**

The interested parties may submit the settlement of their disputes to an arbitral tribunal by virtue of an arbitration agreement, which may be in the form of either an arbitration clause or a submission to arbitration ( acte de compromis ).

##### **Article 4**

The arbitration clause is the agreement whereby contracting parties oblige themselves to settle through arbitration all disputes that may arise relating to the contract.

First Paragraph : The arbitration clause shall be in writing contained in the contract itself or in a separate document referring thereto.

Second Paragraph : In adhesion contracts, the arbitration clause will only be valid if the adhering party initiates arbitral proceedings or if it expressly agrees to arbitration by means of an attached written document, or if it signs or initials the corresponding contractual clause, inserted in boldface type.

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### **Article 5**

If the parties, in the arbitration clause, select the rules of an arbitral institution or specialized entity, the arbitral proceedings shall be commenced and conducted pursuant to such rules; it being also possible that the parties determine in the arbitration clause itself, or in a separate document, the agreed procedure for instituting the arbitral proceedings.

### **Article 6**

If the parties fail to agree ahead of time on the form for instituting the arbitral proceedings, the interested party shall notify the other party, either by mail or through any other means of communication, with confirmation of receipt, of its intention to commence arbitral proceedings, fixing a date, time and place for the signature of the submission to arbitration.

**Sole Paragraph** : If the notified party fails to appear, or if it refuses to sign the submission to arbitration, the other party may institute the action provided for in Article 7 of this Law, at the State Court originally competent to decide the case.

### **Article 7**

If there is an arbitration clause but resistance as to the commencement of the arbitral proceedings, the interested party may request the Court to summon the other party to appear in Court so that the submission to arbitration may be signed; the Judge shall order a special hearing for this purpose.

**First Paragraph** : The plaintiff shall specify, in detail, the subject matter of the arbitration, attaching to its motion the document containing the arbitration clause.

**Second Paragraph** : If the parties attend the hearing, the Judge shall first try to conciliate their dispute. If he does not succeed, the Judge shall try to persuade them to sign, by mutual agreement, the submission to arbitration.

**Third Paragraph** : If the parties disagree on the terms of the submission to arbitration, the Judge, after hearing the defendant, shall decide on the contents thereof, either at the same hearing or within ten days, in accordance with the provisions of the arbitration clause, and taking account of the provisions of Articles 10 and 21, second paragraph, of this Law.

**Fourth Paragraph** : If the arbitration clause fails to provide for the appointment of arbitrators, the Judge, after hearing the parties, shall rule thereon, being allowed to appoint a sole arbitrator to decide the dispute.

**Fifth Paragraph** : If the plaintiff, without good cause, fails to attend the hearing designated for the drafting of the submission to arbitration, the case will be terminated without judgment on the merits.

**Sixth Paragraph** : If the defendant fails to attend the hearing, the Judge shall have the authority, after hearing the plaintiff, to establish the contents of the submission to arbitration, and to appoint a sole arbitrator.

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Seventh Paragraph : The judgment granting the motion shall have the force of a submission to arbitration.

### **Article 8**

The arbitration clause is autonomous from the contract in which it is included, meaning that the nullity of the latter does not necessarily imply the nullity of the arbitration clause.

Sole Paragraph : The arbitrator is competent to decide, ex officio or at the parties' request, the issues concerning the existence, validity and effectiveness of the arbitration agreement, as well as of the contract containing the arbitration clause.

### **Article 9**

The submission to arbitration is the judicial or extrajudicial agreement through which parties submit a dispute to arbitration by one or more persons.

First Paragraph : The judicial submission to arbitration shall be entered into by a written deed entered in the case record, at the Court where the motion has been heard.

Second Paragraph : The extrajudicial submission to arbitration shall be entered into by a private written deed, executed by two witnesses, or by a notarial act.

### **Article 10**

The submission to arbitration must mandatorily indicate:

- I - the name, profession, marital status and domicile of the parties;
- II - the name, profession and domicile of the arbitrator or arbitrators, or, if applicable, the identity of the institution to which parties have delegated the appointment of arbitrators;
- III - the subject matter of the arbitral proceedings; and
- IV - the place where the arbitral award shall be made.

### **Article 11**

The submission to arbitration may also indicate:

- I - the place or places where the arbitral proceedings shall be held;
- II - if so agreed by the parties, the authorization for the arbitrator or arbitrators to decide in equity;
- III - the time limit for the making of the arbitral award;
- IV - the choice of the national law or institutional rules applicable to the arbitral proceedings, if the parties so agree;
- V - provisions as to the responsibility for the fees and costs involved in the arbitral proceedings; and
- VI - stipulations as to the fees of the arbitrator or arbitrators.

Sole Paragraph : If the parties establish the fees of the arbitrator or arbitrators in the submission to arbitration, such document will be considered an extrajudicial

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enforceable instrument. Otherwise, the arbitrator shall request the Court originally competent to decide the dispute to rule upon such question.

### **Article 12**

The submission to arbitration is extinguished:

I - if any arbitrator excuses himself, prior to accepting his appointment, once the parties have expressly declared not to accept substitution;

II - if any arbitrator dies or becomes unable to express his decision, once the parties have expressly declared not to accept substitution;

III - upon expiration of the time limit referred to in Article 11, item III, after the interested party gave notice to the arbitrator or the President of the arbitral tribunal, granting him a further period of ten days for the making and presentation of the arbitral award.

## **Chapter III. Arbitrators**

### **Article 13**

Any legally capable individual, trusted by the parties, may act as an arbitrator.

First Paragraph : The parties shall appoint one or more arbitrators, always in an odd number, being also able to appoint their respective alternates.

Second Paragraph : If the parties appoint an even number of arbitrators, the latter are authorized immediately to nominate another arbitrator. In case of disagreement thereon, the parties shall request the State Court originally competent to decide the case, to appoint such arbitrator, following as much as possible the procedure foreseen in Article 7 of this Law.

Third Paragraph : The parties may, by mutual agreement, define the rules for the appointment of arbitrators, or adopt the rules of an arbitral institution or specialized entity.

Fourth Paragraph : If several arbitrators are appointed, these will select, by majority vote, the President of the arbitral tribunal. Failing consensus, the eldest member shall become the President.

Fifth Paragraph : The sole arbitrator or the President of the arbitral tribunal, if he deems it necessary, may designate a secretary, who could also be one of the other arbitrators.

Sixth Paragraph : In performing his duty, the arbitrator shall behave in an impartial, independent, competent, diligent and discreet manner.

Seventh Paragraph : The sole arbitrator or the arbitral tribunal may order the parties to advance funds to cover expenses and actions it may deem necessary.

### **Article 14**

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Individuals somehow linked to the parties or to the submitted dispute, by any of the relationships resulting in the impediment or suspicion of Court members, are prevented from acting as arbitrators and become subject, as the case may be and to the applicable extent, to the same duties and responsibilities imposed on Court members by the Code of Civil Procedure.

**First Paragraph** : Persons appointed as arbitrators are obliged to disclose, before accepting to act as such, any facts likely to give rise to justified doubts as to their impartiality and independence.

**Second Paragraph** : An arbitrator may be challenged only for reasons which occurred after his appointment. However, he may be challenged for a reason which occurred before his appointment, when:

- a) he is not appointed directly by a party; or
- b) the reason for the challenge of the arbitrator becomes known after his appointment.

### **Article 15**

The party who intends to challenge the arbitrator shall send, in accordance with Article 20, the challenge motion, either directly to the arbitrator or to the President of the arbitral tribunal, in properly motivated form and with supporting evidence.

**Sole Paragraph** : If the motion is granted, the suspect or impeded arbitrator will be discharged and substituted in accordance with Article 16 of this Law.

### **Article 16**

If the arbitrator withdraws prior to accepting his appointment, or if, after acceptance, he dies or becomes unable to perform his functions, or if he is successfully challenged, his position shall be taken by the alternate member appointed in the submission to arbitration, if any.

**First Paragraph** : If no alternate has been appointed, the rules of the arbitral institution or specialized entity shall apply, if such provision has been made in the arbitration agreement.

**Second Paragraph** : If the arbitration agreement is silent and parties do not agree on the appointment of a substitute arbitrator, the interested party shall act according to the procedure established in Article 7 of this Law, unless the parties have stated, in the arbitration agreement, that substitution is impossible.

### **Article 17**

The arbitrators, in the exercise of their functions or as a result thereof, are subject to the same criminal law provisions applicable to civil servants.

### **Article 18**

The arbitrator is the judge in fact and right, and his decision does not become subject to appeal or homologation by State Courts.

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## Chapter IV. Arbitration Procedure

### Article 19

An arbitral procedure is commenced when the appointment is accepted by the sole arbitrator or by the arbitrators, if several.

Sole Paragraph : Once the arbitral procedure is commenced, if the arbitrator or the arbitral tribunal considers that an issue included in the arbitration agreement must be clarified, an addendum shall be drafted, together with the parties, and be executed by all, this document becoming part of the arbitration agreement.

### Article 20

A party wishing to raise issues as to the jurisdiction, suspicion or impediment of an arbitrator or arbitrators, or as to the nullity, invalidity or ineffectiveness of the arbitration agreement, must do so at the first possible opportunity after the commencement of the arbitral proceedings.

First Paragraph : If the suspicion or impediment motion is accepted, the arbitrator shall be substituted in accordance with Article 16 of this Law; and, if the lack of jurisdiction of the arbitrator or of the arbitral tribunal, as well as the nullity, invalidity or ineffectiveness of the arbitration agreement is confirmed, the parties shall revert to the State Court competent to decide the dispute.

Second Paragraph : If such motion is not granted, the arbitral proceedings shall proceed normally, regardless of the possibility that such decision may be reviewed by the competent State Court, if an action as dealt with in Article 33 of this Law is instituted.

### Article 21

The arbitral procedure shall comply with the procedure agreed upon by the parties in the arbitration agreement, which may refer to the rules of an arbitral institution or specialized entity, it being possible for the parties to empower the sole arbitrator or the arbitral tribunal to regulate the procedure.

First Paragraph : In the absence of any provisions on the procedure, the sole arbitrator or the arbitral tribunal shall rule on the matter.

Second Paragraph : The principles of adversary proceeding, equal treatment of the parties, impartiality of the arbitrator and freedom of decision, shall always be respected.

Third Paragraph : The parties may be represented by legal counsel, and may always be free to choose their representative or assistant at the arbitral procedure.

Fourth Paragraph : The arbitrator or the arbitral tribunal shall, at the beginning of the procedure, try to conciliate the parties, applying, to the extent possible, Article 28 of this Law.

### Article 22

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The arbitrator or the arbitral tribunal may take the parties' deposition, hear witnesses and determine the production of expertises and other evidence deemed necessary, either ex officio or at the parties' request.

First Paragraph : Depositions by parties and witnesses shall be taken at places, dates and hours previously communicated in writing to the parties, and a summary record thereof shall be signed by the deponent or at his request, also by the arbitrators.

Second Paragraph : If a party fails, without just cause, to comply with a request to render a personal deposition, the arbitrator or the arbitral tribunal shall give due consideration to such behaviour when issuing the award; and if a witness, under the same conditions, is absent, the arbitrator or the President of the arbitral tribunal may request the State Court to compel the appearance of the defaulting witness, upon evidence of the existence of an arbitration agreement.

Third Paragraph : Non-appearance of a party does not prevent the making of an arbitral award.

Fourth Paragraph : With the exception of the provisions of Paragraph 2, if coercive or injunctive orders become necessary, the arbitrators may request them from the State Court originally competent to decide the case.

Fifth Paragraph : If an arbitrator is substituted during the arbitral procedure, his substitute may, at his discretion, determine what evidence shall be repeated.

### **Chapter V. Arbitral Award**

#### **Article 23**

The arbitral award shall be made within the time limit stipulated by the parties. If no express stipulation is made thereon, the award shall be made within six months from the date of the commencement of the arbitral proceedings, or from the date of the substitution of an arbitrator.

Sole Paragraph : The parties and the arbitrators, by mutual consent, may extend the stipulated period.

#### **Article 24**

The decision of the sole arbitrator or of the arbitrators shall be made in writing.

First Paragraph : If there are several arbitrators, decisions shall be taken by majority vote. Failing majority consent, the opinion of the President of the tribunal shall prevail.

Second Paragraph : A dissenting arbitrator may, if he so wishes, render a separate decision.

#### **Article 25**

If, during the course of the arbitral proceedings, a dispute arises concerning rights over which a party may not dispose, and once convinced that the final decision may depend

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thereon, the arbitrator or the arbitral tribunal may refer the parties to the State Court having jurisdiction, ordering a stay of the arbitral proceedings.

**Sole paragraph :** The arbitral proceedings shall recommence after the preliminary question is settled and evidence has been entered in the file of the final non-appealable judgment thereon.

### **Article 26**

The arbitral award shall mandatorily contain:

- I - a report, including parties' personal data, as well as a summary of the dispute;
- II - the grounds for the decision, with due analysis of factual and legal issues, including, if it is the case, a statement of the decision in equity;
- III - the actual decision (dispositif), in which arbitrators will solve the submitted issues and establish a time limit for the fulfillment of the judgment, as the case may be; and
- IV - the date and place of the making of the award.

**Sole Paragraph :** The arbitral award shall be signed by the sole arbitrator or by all the arbitrators. If one or more of the arbitrators is unable to or refuse to sign the award, the President of the arbitral tribunal shall certify such fact.

### **Article 27**

The arbitral award shall decide on the parties' responsibility regarding the costs and expenses of the arbitration, as well as on any amounts resulting from bad faith litigation, as the case may be, with due respect to the stipulations of the arbitration agreement, if any.

### **Article 28**

If the parties settle the dispute by joint agreement, in the course of the arbitral proceedings, the arbitrator or the arbitral tribunal, at the parties' request, may make an arbitral award declaring such fact, containing the requirements provided for in Article 26 of this Law.

### **Article 29**

The arbitral proceedings terminate with the making of the arbitral award; the sole arbitrator or the President of the arbitral tribunal shall send to the parties a copy of the decision by mail or by any other means of communication with confirmation of receipt, or through direct delivery to the parties, against receipt.

### **Article 30**

An interested party may, within the five days immediately following the receipt of the award or the personal delivery of it, keeping the other party duly informed, ask the sole arbitrator or the arbitral tribunal to:

- I - correct any material error in the award;
- II - clarify any obscurity, doubt or contradiction of the arbitral award, or decide on an omitted issue that should have been decided.



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Sole Paragraph : The sole arbitrator or the arbitral tribunal shall decide within ten days, through an addendum to the award, which shall be communicated to the parties in accordance with Article 29.

### Article 31

The arbitral award shall have the same effect on the parties and their successors as a judgment issued by a State Court, and if it includes an obligation for payment, it shall constitute an enforceable instrument therefor.

### Article 32

An arbitral award is null and void if:

- I - the submission to arbitration is null and void;
- II - it is made by a person who could not be an arbitrator;
- III - it does not comply with the requirements of Article 26 of this Law;
- IV - it has exceeded the limits of the arbitration agreement;
- V - it does not decide the whole dispute submitted to the arbitration;
- VI - it has been duly proved that it was made through unfaithfulness, extortion or corruption;
- VII - it is made after the time limit, except in the case of Article 12, item III, of this Law; and
- VIII - it disregards the principles dealt with in Article 21, second paragraph, of this Law.

### Article 33

The interested party may submit to the State Court having jurisdiction an application for the setting aside of the arbitral award, in the cases foreseen in this Law.

First Paragraph : The action requesting the setting aside of the arbitral award shall follow the ordinary procedure provided for in the Code of Civil Procedure, and must be submitted within ninety days immediately following receipt of the award or its addendum.

Second Paragraph : The decision granting the setting aside motion shall:

- I - declare the arbitral award null and void, in the cases foreseen in Article 32, items I, II, VI, VII and VIII;
- II - order the sole arbitrator or the arbitral tribunal to make a new award, in the other cases.

Third Paragraph : The motion for the nullity of the arbitral award may also be submitted under a debtor's defense, in accordance with Articles 741 and following of the Code of Civil Procedure, if a judicial enforcement is instituted.

## Chapter VI.

### Recognition and Enforcement of Foreign Arbitral Awards

### Article 34

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A foreign arbitral award shall be recognised or enforced in Brazil pursuant to international treaties effective in the national legal system, or, if non-existent, strictly in accordance with the present Law.

Sole Paragraph: A foreign arbitral award is an award made outside of the national territory.

### **Article 35**

In order to be recognised or enforced in Brazil, a foreign arbitral award is subject only to homologation by the Federal Supreme Court.

### **Article 36**

The provisions of Articles 483 and 484 of the Code of Civil Procedure are applicable, to the extent possible, to the request for homologation of a foreign arbitral award.

### **Article 37**

The request for homologation of a foreign arbitral award shall be submitted by an interested party; this written motion shall comply with the procedural law requisites of Article 282 of the Code of Civil Procedure, and must be accompanied by:

- I - the original arbitral award or a duly certified copy, authenticated by a Brazilian Consulate, as well as a sworn translation;
- II - the original or a duly certified copy of the arbitration agreement, as well as a sworn translation.

### **Article 38**

The homologation request for the recognition or enforcement of a foreign arbitral award can be denied only if the defendant proves that:

- I - the parties to the agreement lacked capacity;
- II - the arbitration agreement was not valid under the law to which the parties have subjected it, or, failing any indication thereon, under the law of the country where the award was made;
- III - it was not given proper notice of the appointment of the arbitrator or of the arbitral procedure, or in the cases of violation of the adversary proceeding principle rendering its full defense impossible;
- IV - the arbitral award has exceeded the terms of the arbitration agreement, and it is not possible to separate the portion exceeding the terms from what has been submitted to arbitration;
- V - the commencement of the arbitral proceedings was not in accordance with the submission to arbitration or the arbitral clause;
- VI - the arbitral award is not yet binding on the parties, or has been set aside or has been suspended by a court of the country in which the arbitral award has been made.

### **Article 39**

The request of homologation for the recognition or enforcement of a foreign arbitral award shall also be denied if the Federal Supreme Court ascertains that:

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I - in accordance with Brazilian law, the subject matter of the dispute is not capable of settlement by arbitration;

II - the decision is offensive to national public policy.

Sole Paragraph : The service of summons on a party resident or domiciled in Brazil, pursuant to the arbitration agreement or to the procedural law of the country in which the arbitration took place, including through mail with confirmation of receipt, shall not be considered as offensive to national public policy, provided the Brazilian party is granted sufficient time to exercise his right of defence.

### **Article 40**

The denial of a homologation request for the recognition or enforcement of a foreign arbitral award based on formal flaws does not impede the interested party from renewing the request, once such flaws are properly corrected.

## **Chapter VII. Final Provisions**

### **Article 41**

Articles 267, item VII; 301, item IX and 584, item III, of the Code of Civil Procedure, shall henceforth read as follows:

“Art. 267.....

VII - by the arbitration agreement.”

“Art. 301.....

IX - arbitration agreement.”

“Art. 584.....

III - an arbitral award and a judgment confirming a transaction or conciliation”.

### **Article 42**

Article 520 of the Code of Civil Procedure shall have a new item, with the following wording:

“Art. 520.....

VI - grants the motion for the commencement of arbitral proceedings”.

### **Article 43**

This Law shall enter into force sixty days after its publication.

### **Article 44**

Articles 1037 through 1048 of Law nº 3.071, of 1 January 1916 - Brazilian Civil Code; Articles 101 and 1072 through 1102 of Law nº 5869, of 11 January 1973 ° Code of Civil Procedure, and all other provisions to the contrary, are hereby revoked.

(Official Gazette, Section I, 24 September 1996, pg. 18897).