

NEXT GEN ARTICLE Q&A

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Spotlight on Brazil

As part of the Next Gen series of articles, we spotlight different jurisdictions and ask our committee for some insights on their jurisdiction, and what people should know. We kick things off with Carlos Ximenes, Attorney at Castro Barros Advogados.

1) Where is the appropriate venue to enforce a contract in Brazil?

In Brazil, contracts should establish/set forth the applicable forum/choice of venue. In our experience, it is highly advisable to set out/set forth the Sao Paulo courts, which are

the most efficient and experienced courts dealing with complex and high value cases.

If the contract is silent, Brazilian Civil Procedure Code determines the forum of debtor's domicile, which might be an issue, as there are risks of the claim being reviewed by very protective courts, or by judges in the early stages of their careers. It commonly happens in recovery cases against agribusiness companies, usually located in small cities.

2) How is it possible to enforce

a foreign decision (judicial or arbitral) in Brazil? [How can a foreign decision be enforced in Brazil?]

To be enforceable in Brazil, the Superior Court of Justice (STJ) must ratify/confirm a foreign decision in a speedy proceeding in which the defendant has very strict defences available (such as, if defendants were not duly summoned, whether there is any conflicting res judicata on the same issue in Brazil, or if it violates Brazilian sovereignty or public order).

The foreign decision is enforceable before the Federal Court closest to the debtor's domicile after STJ confirms/ratifies it.

3) How can assets be traced



in Brazil?/How are assets traced in Brazil?

Electronic levy systems are quite advanced in Brazil. Upon creditor's request, the Judge can electronically (i) freeze debtor's accounts and investments, (ii) levy execution upon debtor's automobiles (via the Renajud system) and (iii) obtain debtor's tax statements, to be used for information purposes.

However, in general, such measures do not suffice to resolve recovery cases and creditors must take other measures to find debtor's assets.

In certain states (such as Sao Paulo, where most cases are heard), it is possible for creditor to electronically search for debtor's real estate properties.

Another alternative is to look for

court cases involving debtor. The vast majority of lawsuits in Brazil are public and easily accessible online. It is possible to look for cases in which debtor is the claimant, in order to freeze any available claims, as well as for cases in which debtor is the defendant, to implement measures similar to those taken by other creditors.

An alternative, in more complex cases, is to retain a company specialized in investigating debtor and affiliates/relatives to look for concealed assets and potential frauds.

4) What are the costs associated to an asset recovery case?

Court costs depend on the venue, but they are normally a small percentage of the case value. In Sao Paulo, for instance, it corresponds to 1% of the amount involved, limited to BRL 87,270.00 (USD 16,000.00)¹.

Attorney fees depend on the negotiation with the attorney involved. Counsels in Brazil generally receive a fixed fee and a success fee.

Court costs and other expenses should also be considered, for

the purposes of the pursuit of assets and other measures referred to in the previous question, which generally are unsubstantial. The fees charged by the specialization company mentioned in the previous question are also negotiable (and, as well, it is possible to connect part of such fees to the success obtained).

5) What is the timeframe of credit recovery cases in Brazil?

Credit recovery cases in Brazil are normally pushed by creditor, which actually makes the motions for the case to move forward, including, for instance, to search and request the freeze on debtor's assets.

A credit recovery case may last for just a few days/weeks (when creditor successfully obtains a preliminary injunction to freeze a relevant asset, which is obviously not very common) to several years or even on a very long term (when there are no available or insufficient assets).



¹ Amount valid for 2021, subject to annual adjustment for inflation.