LATIN LAWYER REFERENCE CONSTRUCTION 2019

Brazil

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LATIN LAWYER INSIGHT

1 Are construction contracts for projects developed in your jurisdiction required to be governed by local law? Are foreign choice-of-law clauses enforceable in contracts for construction projects developed in your jurisdiction?

There is a certain flexibility related to the election of the applicable law, particularly if the parties choose arbitration rather than the local courts to resolve their disputes. The arbitrator's decisions can follow foreign law and even ex aequo et bono principles, as long as they do not violate the national public order. If an arbitration involves a public administration entity, the arbitration must be governed by the rules of law, usually Brazilian law. There are public companies that traditionally contract internationally. They usually accept foreign law, as well as foreign courts and international arbitration. If the parties choose the local courts and the contract have not an element that characterises it as an international contract, the state judges are likely to disregard the parties' choice of a foreign law and apply national regulations.

2 Are there any formalities applicable to construction contracts?

Construction contracts are regular agreements generally ruled by the Brazilian Civil Code, which does not require any sort of formality save the parties' signatures. In fact, the "lump sum" contract is the only type of construction contract expressly governed by a specific set of rules provided by Brazilian law. The Brazilian Civil Code, however, allows parties to draw up contracts that are different from those set forth in Brazilian statutory law. It is indeed very common that parties complete construction contracts that are not governed by a specific set of statutory rules, such as EPC or design & build (for infrastructure works), cost plus fee (more common in real estate buildings), etc. It is important to note that these contracts are, nevertheless, subject to mandatory rules of Brazilian law. Although it is not mandatory, it is convenient to collect signatures from two unrelated witnesses, to turn the construction contract into an enforceable title.

3 Are contractors entitled to impose mechanics' or similar liens on work performed in order to secure payment in your jurisdiction? Are lien waivers from contractors and subcontractors enforceable in your jurisdiction? Are these commonly used in your jurisdiction? Can payments to contractors be contingent on receipt of lien waivers?

These sorts of mechanisms are uncommon in infrastructure projects, as contractors usually impose no liens against the owners, mostly for cultural reasons. Liens could be implemented, but they always tend to be disregarded for competitive reasons. Waivers are enforceable, but such conditions tend to be interpreted in a restricted way.

4 Are there any strict liabilities that extend to owners of construction projects in your jurisdiction?

Given that construction is an activity dealt with by many areas of law, there are usually a few things that owners should consider while negotiating a construction agreement and also while managing its execution or performance.

Environmental issues are likely to impact on all construction projects; however, if environmental damages are underwent throughout the works for the contractor's fault, the owner shall be held liable before the public authorities, thus being subject to penalties, indemnifications and remediation. Subsequently, the owner may seek proportional reimbursement from the contractor.

As regards labour issues, the owner should negotiate protective clauses and pay special attention to the contractor's and subcontractor's assiduity in paying its payroll, as employees may file lawsuits claiming that the labour rights of all parties involved have been violated.

Tax responsibilities related to the contractor may also creep up to the owner, particularly those related to social security rights. In this case, contractual clauses (eg, right of retention) may also protect the owner against the contractor's potential default.

Regarding tort law, the Brazilian Civil Code expressly imposes on the owner the liability for damage caused to third parties if the building falls into ruin owing to poor building maintenance.

5 Do owners typically negotiate a full pass-through of liabilities from their revenue contracts to contractors?

Back-to-back clauses are common in the Brazilian scenario, but they used to be narrowed down to a few provisions, as contractors are not always willing to hold the risk of the whole enterprise, as their activities are limited to construction per se.

6 What are the most common pricing modalities in your jurisdiction? Is one modality more prevalent in certain types of projects than others?

Lump-sum agreements are by far the most frequently used modality, especially in less sophisticated enterprises and most public contracts. Other sorts of agreements are also very familiar to the Brazilian market, such as EPC (in infrastructure projects), cost plus fee with guaranteed maximum price (in real estate projects) and other FIDIC adapted variations. Some major companies in very sophisticated infrastructure projects have also executed alliance agreements, but they have not yet taken off in the Brazilian jurisdiction, as some of their concepts were not perfectly applied by the operators, causing difficulties to the partners as they seem to be reluctant to change their lump sum mentality.

7 What are the key approvals and permits required for a construction project? What is the typical cost and timing to obtain or fulfil such approvals, permits and obligations for large-scale infrastructure projects in your jurisdiction?

Approvals and permits may vary according to the municipality, as each town may have its particular requirements for construction projects. In general, however, municipalities tend to require a construction approval certificate, a construction execution certificate and, after completion, an occupancy certificate. Buildings and infrastructure projects in general also require certification from the fire department, and all projects of this nature shall appoint a responsible engineer, who shall obtain before the competent technical institution (CREA) its registration attesting its technical responsibility for that particular project.

Perhaps even more important are the environmental licences that the owners must obtain, which may take a long time to be issued, depending on the complexity and the area where the construction is to be held. Depending on the scale and coverage of the impacts, local, state or federal authority may be competent to analyse and grant environmental licences and permits. In any case, the owners shall submit environmental studies to the competent authorities, and may only start civil works after obtaining the installation licence.

8 Are subsurface conditions a common source of delays for construction projects in your jurisdiction? Do the laws of your jurisdiction permit the parties to freely allocate this risk contractually?

Yes, it is. Depending on the region and on the type of infrastructure being built, notwithstanding the quality of geological surveys, the parties often face difficulties in dealing with geological risks. This is why the Brazilian Civil Code grants the contractor (specifically in lump sum contracts) the right to stop the works in case the owner is not willing to rebalance the contract, despite the increase in costs for unforeseen geological difficulties. However, the parties in the contract can exclude this legal protection.

As a matter of fact, severe problems of such nature were noted when a great number of small hydroelectric power plants were being implemented between 2000 and 2010. For this reason, the parties tend to invest more time and money in previous geological investigations and tend to be very careful while allocating geological risks, as the parties are free to negotiate clauses in this regard.

9 Does your jurisdiction provide statutory protection for 'unforeseeable' or similar risks? Do such statutory protections supersede contractual allocations of risk?

Brazilian jurisdiction does provide statutory protection for 'unforeseeable' or similar risks, which can be derogated or further negotiated by the parties. Article 393 of the Brazilian Civil Code exempts the parties from default in case of force majeure. Article 478 also entitles the party to terminate the agreement if it suffers extreme impact of an unpredictable and extraordinary event, which would also bring extreme advantage to the other party.

In fact, these legal provisions allow for a comparison between concept of hardship and the French theorie de l'imprevision as both institutes fall within the hypothesis of a substantial change of circumstances, which hinders the economic performance of the contract, but does not render it impossible. These laws diverge, however, considering the range of the judge's action in reforming the contract. While the French theory allows for the judge's direct intervention, the Brazilian Civil Code does not prescribe such a possibility. In Brazil, albeit a defined doctrinaire position on the matter is inexistent, it is undeniable that, according to article 478, the contract's renegotiation is bound to the parties' consent.

10 Will the laws of your jurisdiction strictly interpret contractual provisions granting cost or schedule relief? Or is there flexibility to arrive at 'equitable' solutions even if contrary to contractual provisions? Are there any specific rules in your jurisdiction regarding the evidence required to support cost or schedule relief claims?

In general the contract provisions tend be strictly interpreted (pacta sunt servanda), but in extreme cases a more equitable solution is likely to prevail. Delay penalties, for example, may be reduced by the courts to provide a greater level of fairness to the contract (Brazilian Civil Code, article 413). There is also the possibility to argue substantial performance to avoid delay penalties, which can be recognised by judges and arbitrators as an expression of the principle of good faith.

Reliefs are commonly granted in case default by one of the parties prevents the other from carrying out works. As standard principles, the Brazilian Civil Code does not rule specifically on the exact evidences that are required to support cost or schedule relief claims, therefore it is advisable that the parties negotiate the terms to bring clearer parameters to their contractual relationship.

In relation to public contracts, cost and schedule relief may be accepted in the following cases: (i) project modification or specification changes, (ii) unpredicted and exceptional events, (iii) disruption caused by the owner, (iv) increase of quantities, (v) obstruction caused by third parties and (vi) owner default.

11 Does your jurisdiction recognise economic equilibrium clauses? Have any such clauses been utilised in practice?

Not only are equilibrium clauses accepted in the Brazilian jurisdiction and can be freely negotiated, but also the law itself rules on the circumstances where rebalance is admissible. As per private projects, article 478 of the Brazilian Civil Code determines the right of termination, in case one of the parties undergoes extreme impacts derived from extraordinary and unpredictable events, which also bring extreme advantage to the unaffected party. Article 479, however, allows the unaffected party to avoid termination if it accepts to equitably modify the contract conditions. Article 480 goes even further, allowing the affected party to impose a modification (scope reduction, for example) in case it undertakes excessive burden.

Despite the legal provisions above, Brazilian private law is still considered to be laconic in relation to economic equilibrium mechanisms. For this reason, it is recommended that the parties negotiate specific hardship clauses with customised equilibrium provisions.

In public contracts, there is a specific governing act (Law No. 6.666/93). It clearly provides, in article 58, V, second paragraph, that economic provisions shall be revised in order to keep the contract balanced.

12 How significant is the impact of labour unions on construction projects in your jurisdiction?

Although Brazilian employment laws are equally applied in all states of the federation, the political and economic strength of labour unions differs between cities and states, thereby resulting in more or less "active" and "flexible" unions depending on their location and represented category. It is thus safe to say that labour unions used to play a very strong role in the Brazilian market, notably, in the construction sector, until the Labour Law reform, occurred in 2017. Since then, mainly because workers are not enforced to pay monthly contributions anymore, the Unions lost great part of its force and influence. Nevertheless, they remain an important stakeholder in a project.

13 Highlight any significant public procurement law provisions applicable to public construction project tenders.

The most relevant legislation related to public procurement applicable to construction contracts are: Law No. 8.666/1993 (Public Procurement Law), Law No. 8.987/1995 (Concession Law), Law No. 11.079/2004 (Public-Private Partnership), Law No. 12.462/2001 (RDC – Special Regime for Public Procurement), Law No. 13.303/2016 (State Owned Companies Procurement Law) and Law No. 13.448/2017 (extension and rebidding provisions for road, rail and airport projects).

14 Do contractors commonly carry out construction activities through consortia or other types of joint ventures? Under these arrangements in your jurisdiction, are joint venture partners jointly and severally liable for their obligations?

Consortia and other types of joint ventures are legal structures commonly used by contractors not only when participating in public biddings but also in private works. Consortium agreements engaged by private parties do not make them jointly/severally

liable for their obligations unless stated otherwise in their by-laws according to article 278, first paragraph, of the Brazilian Joint-Stock Company Law (Law No. 6.404/1976). However, if the consortium or joint venture is contracted by the Public Administration, then joint liability is mandatory, pursuant to article 33, item V, of Law No. 8.666/1993. In any case, consortia and joint ventures do give rise to a separate legal person in Brazilian law.

15 Are time-bar clauses for claims enforceable in your jurisdiction? Do courts in your jurisdiction interpret these provisions strictly?

According to Brazilian law, there is a difference between being entitled to a right and being entitled to a claim resulting from a violation of such right. Regarding the former, the parties may agree to a clause determining a time period to exercise the right. Regarding the latter, the time periods are mandatory and cannot be modified by the parties' agreement. Because it is a mandatory law, courts interpret these provisions strictly, in consonance with articles 192 and 211 of the Brazilian Civil Code.

16 Are limitations of liability enforceable in your jurisdiction? What are the exclusions for such limitations?

Limitation of liability clauses are enforceable in Brazil.

The limitation of liability clause may be disregarded in the case of gross negligence and wilful misconduct. However, the concept of gross negligence is not established by the law, and is only considered by doctrine and case law (jurisprudence).

The lack of regulation and legal definition, in addition to the Brazilian court's and arbitrator's parsimony in attesting gross negligence in construction disputes, can impose difficulties on the application of such concept. This is why it is highly advisable that the parties negotiate and insert a well-defined description of gross negligence into their contracts, to restrict further discussions whenever a dispute arises.

17 Are exclusive remedy clauses enforceable in your jurisdiction?

Exclusive remedy clauses, although uncommon in Brazil are likely to be enforceable (pacta sunt servanda), as long as they are not against public order principles and provisions. This sort of clauses should also be treated carefully so as not to be considered abusive. As an example: although liquidated damages per se are not properly considered as exclusive remedy, the aggrieved party can only claim the liquidated damages when parties agree on such a clause without expressly allowing for the payment of outstanding damages (ie, damages that exceed the amount of the liquidated damages).

18 Are liquidated damage provisions enforceable in your jurisdiction? Are there any limitations on the formulation of such liquidated damages? Does local law allow courts in your jurisdiction to reduce the amount of liquidated damages provided in a construction contract?

Liquidated damage provisions are enforceable under Brazilian law but there are some limitations. According to article 412 of Brazilian Civil Code, liquidated damages shall not exceed the amount of the obligor's main obligation. Also, article 413 allows the judge or the arbitrator to reduce the amount of the liquidated damages when it is excessively high or when the obligation has been partially performed. Although not expressly stated in the Brazilian Civil Code, the liability limitations resulting from liquidated damages clauses can be further disregarded when the contractual breach is caused by wilful misconduct or gross negligence.

19 How is force majeure governed in your jurisdiction? Are carve outs to general force majeure provisions provided by law enforceable?

Article 393, sole paragraph, of the Brazilian Civil Code relates to force majeure as all unavoidable and unforeseeable events, whose impacts exempt the debtor from its obligation. According to Brazilian law, the parties are free to negotiate force majeure clauses, carving out general principles or provisions at their own convenience.

20 What instruments are typically used as performance security in your jurisdiction? Are such instruments liquid?

The two most commonly used instruments are insurances (performance bond) and bank guarantees. Performance bonds provided by insurance companies are not as liquid as bank guarantees, as the insurer needs to be notified of the damages

incurred in order to evaluate them before deciding whether or not to indemnify the beneficiary. Bank guarantees, on the other hand, are a first demand bond, which can be paid immediately after its presentation to the bank.

Construction companies tend to reject the idea of bank guarantees for two reasons: they are more expensive than insurances and they give too much power to the employer, which can use it in abusive ways. So, performance bonds are used more widely than bank guarantees.

21 How is concurrent delay in construction projects treated in your jurisdiction?

When concurrent delay is under discussion, the central issue is causation: who is liable for the events that caused the delay? It is therefore necessary to determine the proportion of each party's liability.

Where a true concurrent delay occurs, the owner may not impose any delay penalties and the contractor may be entitled to an extension of time if it demonstrates that the owner-related delay supersedes the contractor-related delay.

Additional costs incurred may be sought in accordance with article 945 of the Brazilian Civil Code, which states that in case of concurrence, the compensation of the aggrieved party would take into account both parties' degree of culpability.

22 Does your jurisdiction recognise degrees of negligence and culpability?

Brazilian law does recognise degrees of negligence and culpability. Articles 944, sole paragraph, and 945 of the Brazilian Civil Code provide that the amount of compensation may be reduced in cases of minor negligence. Gross negligence, however, is not expressly regulated by the Brazilian Civil Code, but it is recognised by doctrine and case law, and its effects are considered the same as those resulting from wilful misconduct.

23 Is there a distinction in your jurisdiction between consequential losses and those resulting 'naturally' from a breach of contract?

According to article 944 of the Brazilian Civil Code, the compensation shall be determined in view of the proportion of damages incurred, and, in this regard, article 403 provides that only damage directly caused by the wrongful act is considered for the purposes of indemnity. In addition, article 402 provides that the concept of damages shall include not just effective losses but also loss of profits.

Direct damage must be compensated if it is caused by a breach of contract. Scholars also affirm that consequential losses may be subject to compensation if decisively caused by the breach of contract.

24 Are there mandatory provisions in connection with the transfer of title of works or materials delivered in your jurisdiction?

There are no mandatory provisions determined by law with regards to the transfer of title of works or materials. The parties tend to negotiate the mechanisms on how these procedures should be conducted among them.

25 Must a contractor fulfil specific requirements when presenting an application for payment in your jurisdiction? What is the maximum time provided by law to pay an invoice from a contractor? Do local laws allow owners to make set-offs, deductions, withholdings or retentions from payments due to contractors, and are there any limitations on the circumstances in which owners can exercise these rights?

Brazilian law does not make any specific requirement for presenting application for payment, and neither defines a minimum or maximum period for payment to be done, which entitles the parties to freely negotiate on this regard.

The parties are also free to negotiate compensation clauses, as local law does allow the parties to make set-offs, deductions, retentions and so on. In fact, retention clauses are very common in Brazil, as way to assure the fulfilment of obligations.

26 Must insurance policies for construction projects in your jurisdiction be placed with local insurers? Are there restrictions in your jurisdiction regarding the payment of insurance proceeds offshore or to third parties?

In general, insurance policies for construction projects must be placed with local insurers, as states article 19 of Complementary Law No. 126/2007. However, article 20 of the same Complementary Law, alongside article 6 of Brazilian's National Council of

Private Insurance (CNSP) Resolution No. 197/2008, allows legal entities domiciled in Brazil to place insurance policies with foreign insurances if there is no offer in Brazil and no legal infringement.

On the other hand, CNSP Resolution No. 353/2017 brought an important change to the Brazilian insurance market: it is now permitted to take out insurance policies with local insurers in Brazil and facultative reinsurance abroad.

According to Central Bank of Brazil Resolution No. 3.691/2013, there are no restrictions regarding payment of insurance proceeds offshore. Third parties such as lenders may be entitled to insurance proceeds as long as they are included as obligee in the policy.

27 Briefly describe the tax regime applicable to construction projects. Are withholding and value added taxes applicable? Are construction contracts typically structured so that onshore and offshore work are performed by separate contractors?

Regarding the tax regime applicable to construction projects, either actual profit method or deemed profited method may be applied. In both regimes, the most common taxes applicable are: corporate income tax (IRPJ), social contribution on net profits (CSLL), contribution to the social integration plan (PIS), contribution for social security financing (COFINS) and service tax (ISS). The main difference between them refers to the tax base: it will be the actual profit for the first regime and the deemed revenue for the latter. In any case, the first regime is mandatory when the company's revenue is above 78 million reais in the previous fiscal year.

Also, withholding and value added taxes are both applicable. Onshore and offshore work should not necessarily be performed by separate contractors; it will depend on the parties' wishes.

28 Are there any statutorily mandated or implied warranties under the laws of your jurisdiction? What is the minimum defect liability period in your jurisdiction? Are there specific minimum defect liability periods for certain types of works?

The main warranty period under the Brazilian laws for large buildings and constructions can be found in article 618 of Brazilian Civil Code, which explains that in construction contracts the contractor is responsible, for a period of five years, for the soundness and safety of the works. This provision applies to all types of large-scale works, regardless of the procurement method adopted by the parties. It is also important to note that this warranty is mandatory and cannot be excluded nor reduced by the parties.

Article 445 of Brazilian Civil Code also determines warranty periods for movable properties and real properties in general. For the former, the liability period is of 30 days and, for the latter, one year. In case of defects that, "due to their nature, can only be discovered later" (hidden defects), the liability periods are extended, respectively, to 180 days and one year counted from the date when the aggrieved party becomes aware of the defect. Therefore the maximum liability period imposed by the law for defects that do not jeopardise the soundness and safety of the construction is of 210 days for movables (30 days + 180 days) and two years for real estate.

Finally, it is worth mentioning that the parties may also agree on a warranty period. In this case, the warranty period set forth in the agreement precedes the beginning of the warranty periods imposed by the law. In other words, the warranty period imposed by the law starts after the end of a warranty period agreed between the parties in their contract. This rule is contained in article 446 of Brazilian Civil Code.

29 What is the statute of limitations for contractual and non-contractual claims in your jurisdiction?

Traditionally, the statute of limitations is 10 years for contractual claims (article 105 of Brazilian Civil Code), and three years for non-contractual claims (article 206, 3rd paragraph, item V, of the same Code).

Despite the traditional understanding above, in 2016, the Third Chamber of the Brazilian Superior Tribunal of Justice (STJ) issued a decision determining the period of three years as applicable to both types of claim, which has caused great commotion among scholars.

Since that decision, the statute of limitation for contractual claims has become a major controvertial issue. In 2017, the majority of the decisions regarding this matter adopted the three-year period for the statute, with only one dissenting sentence by the Fourth Chamber.

30 Describe any local arbitration institutions and any specialised construction law courts in your jurisdiction.

There are no specialised construction law courts in Brazil. Regarding arbitration, the most used chambers are: Arbitration and Mediation Center of the Chamber of Commerce Brazil-Canada, Chamber of de Conciliation, Mediation and Arbitration Ciesp/Fiesp, Chamber FGV of Mediation and Arbitration, Amcham-Brasil, CAMARB and ICC Brasil.

31 Are agreements to mediate enforceable? Are there any mandatory mediation provisions for construction contracts in your jurisdiction?

Brazil has sanctioned the Mediation Act (Law No. 13.140/2015), which allows the parties to enter into mediation agreements, including the Public Administration. Mediation, however, is not mandatory as the parties' autonomy and free will tend to prevail if they opt to seek jurisdiction directly.

Nevertheless, there still is a controversy as to whether a mediation clause could be overcome to allow the parties to skip the mediation procedure and move straight to the courts or arbitration. In this sense, although rare, there is jurisprudence favourable to the enforcement of the agreement to mediate.

32 How prevalent are dispute adjudication boards appointed by the parties in construction contracts in your jurisdiction? Are agreements to submit disputes to dispute adjudication boards enforceable?

Dispute adjudication boards are growing an incipient method of dispute resolution in Brazil. There are important signs showing that mechanisms of such nature are blossoming, as they have been used in some public contracts, mainly because of developing banks fundings.

There is a recent municipal act in the city of São Paulo which provides Dispute Boards in public contracts. There are also two bill in federal level to make Dispute Boards mandatory in federal public contracts.

A decision issued by the State Court of São Paulo in 2018 became iconic to Dispute Adjudication Boards, as it recognised the mechanism as a free choice of the parties and, as a consequence, its decisions must be respected and complied by the parties until final arbitral or judicial award.

33 Discuss recent trends in your jurisdiction affecting large-scale construction projects.

Currently, there is one important bill drawing the attention of players in public projects. Bill No. 6.814/2017, which is under discussion in the Upper House, establishes a new set of rules for public bids and contracts. Among its new provisions, it sets forth a mandatory performance bond of 30 per cent of the contract price for large-scale engineering works and services. Also, it allows insurers to step in and continue the performance of the contract in case of default by the contractor.

Law No. 13.655/2018, which was sanctioned on 25 April 2018, aims to provide legal security for private investors and public agents in public projects. According to its provisions, public agents must take into account the practical consequences of their decisions under administrative, controlling and judicial spheres. In addition, changes in positioning or new interpretation by public authorities must not affect previously set up situations. On the other hand, the law provides that public agents may only be prosecuted for wilful misconduct or gross error for their decisions. Such provision grants some security not only for the public agent, but also for the public project itself, as the agent would prefer to procrastinate any decision for being afraid of eventual sanctions only by making decisions contrary to the interpretation of the controlling body. Since January 2019, when the new federal government took office, the provisions of this law are being implemented in the new bids.

Fernando Marcondes

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Represents national and international clients in major operations involving infrastructure, industries and real estate buildings, legal management of construction contracts, negotiation and dispute resolution. Acts as an arbitrator in construction and real estate related matters. Has been acting as an arbitrator in a number of procedures on real estate and infrastructure projects (hydropower, thermoelectric, wind power, highways) and mining.

Founder and former president of the Brazilian Institute of Construction Law (IBDiC). He is acting as one of the Dispute Adjudication Board members in the contract of expansion of the yellow line of São Paulo Metro, the most iconic project using DBs in Brazil at this moment. Appointed by the board of the Dispute Resolution Board Foundation as country representative in Brazil since 2016. Former vice president of the Infrastructure Law Commission of the Brazilian Bar Association (Rio de Janeiro). Vice-president of the Brazilian chapter of Club Español de Arbitraje. Member of the Legal Committee of SINDUSCON/SP, the Construction Industry Superior Council of FIESP, the Society of Construction Law, the Dispute Resolution Board Foundation and the Brazilian Arbitration Committee (CBAr). Member of the list of arbitrators at: CAM-CCBC, CMA CIESP/FIESP, FGV Chamber, CBMA, ARBITAC, CAMARB, Centro de Arbitraje de la Cámara Boliviana de Hidrocarburos y Energía and Centro de Resolución de Conflictos del Colegio Federado de Ingenieros e Abogados de Costa Rica. Dispute board member certified by the DRBF. Acted for DRBF as the trainer of engineers and lawyers certified by the foundation to act as dispute board members in the contracts for the Olympic Games 2016 in Rio de Janeiro.

Professor, author of many books and articles on arbitration and construction law. One of the references in Arbitration in Brazil. – *LACCA Approved* 2017, 2018 and 2019, Appointed by WWL in 2019 as one of the world's Thought Leaders in Construction Law.

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Represents Brazilian and foreign clients with a presence in Brazil and many Latin American countries such as Chile, Argentina, Peru, Nicaragua, Venezuela, and the Dominican Republic. Has unrivalled experience in engineering and construction products, bidding procedures, EPC contracts, alliance agreements, management agreements, public concessions, public–private partnerships, short (bridge loan) and long-term financing agreements. Has an extensive background in public law, particularly in the areas of constitutional law, administrative law and environmental law. Focuses his practices in infrastructure and regulatory matters, suits for declaration of unconstitutionality of rules and regulations, globalisation and political power, public services, metropolitan region, constitutional provisions governing public services, public concessions, privatisations, legal relationship between the government and private parties, operation and environmental licensing, condemnations, and prosecution and defence of all manner of constitutional claims such as writ of mandamus, class action, public-interest civil actions, habeas data, injunction reliefs, and defense of disputes pending with the Federal Treasury Court and state and city governments. Has served as statutory officer at Construtora Queiroz Galvão SA, where he worked in a wide variety of areas such as dams, thermoelectric plants, nuclear power plants, oil and gas plants, road, shipyards, offshore platforms, and airport projects. Has also acted as in-house counsel at Construtora Norberto Odebrecht SA and adviser for institutional, legal and compliance matters at Concessionária Rodovia dos Tamoios SA. Holds a law degree and master's in urban and environmental law from São Paulo's Pontifícia Universidade Católica. Currently pursuing a master's in law, Justice and Society at University of Giron, Spain. Speaks at many Symposiums, Courses and Trainings in the Contract and Legal Management industry. Administrative law professor at Universidade do Vale do Paraíba – UNIVAP. Nominated for the General Counsel Award Latin America by ILO Latin American Counsel Awards in 2013. Arbitrator at CBMA – Centro Brasileiro de Mediação e Arbitragem. Member of ABCR – Associação Brasileira de Concessionárias de Rodovias.

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Marlon Shigueru Ushiro Ieiri's practice focus is construction law, representing national and international clients in public and private engineering, construction and infrastructure projects. His works as a lawyer include advice on contracting strategies, drafting and negotiation of construction contracts, legal project management, including drafting of claims and/or counter-claims, and dispute resolution (arbitration and ADRs). Marlon has assisted clients in private projects involving the construction of gas pipelines, oil refineries, FPSO, ports, shipyard, iron ore plants, iron ore pipeline, steel mill, pulp mill, roads, industries, airport, powerplants, hotels and real estate. His experience also includes public projects such as concession of airports and federal roads. He is a project manager professional (PMP) certified by the Project Management Institute (PMI). He is a member and founder of the Brazilian Institute of Construction Law (IBDiC) and a certified member of the Dispute Resolution Board Foundation (DRBF). Other memberships include the Society of Construction Law (SCL); the Association for the Advancement of Cost Engineering (AACE); the Chartered Institute of Arbitrators (CIArb); the Spanish Arbitration Club (CEA); and the Brazilian Arbitration Committee (CBAr). Marlon is co-author of Direito da Construção – estudos sobre as várias áreas do Direito aplicadas ao mercado da construção. He has a bachelor's degree in law from the State University of Londrina (UEL); a master's degree in European union law from Carlos III de Madrid University; and a master's degree in international trade law from Paris X University. He also studied infrastructure contracts at Getúlio Vargas Foundation (FGV-SP). Marlon speaks Portuguese, English, Spanish and French.

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Represents clients in arbitrations. Acts in drafting and analysing real estate contracts and complex construction and engineering contracts, as well as in legal project management and drafting of claims. Has experience as a legal manager of an infrastructure company, including the development of a contracting strategy and multidisciplinary studies aimed at the governance and management of public and private contracts. Worked in the creation and management of new projects within a law firm with the purpose of creating, compiling and managing the legal knowledge produced by the members of the firm. Graduated from Pontifícia Universidade Católica do Rio Grande do Sul. Law master's (LLM) from Universidade do Vale do Rio dos Sinos (UNISINOS). Infrastructure Contracts Course at Getúlio Vargas Foundation (FGV-SP). Listed in the publications *Analysis Legal* and *Financial Executives* 2015 and 2016 as legal manager of one of the 1,500 largest Brazilian companies. Member of the Brazilian Arbitration Committee (CBar), the Institute of Private Law (IDP), the Institute of Cultural Studies (IEC) and the Dispute Resolution Board Foundation (USA).

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Represents national and foreign clients in engineering and construction projects, in bidding processes under the provisions of the Bidding Law, the Differentiated Regime of Public Contracts, Common Concession and Public Private Partnerships, with the analysis of Public notices, appeals and administrative appeals, as well as before the Regulatory Agencies and Courts of Auditors. Has solid experience in the legal management of infrastructure contracts and in the elaboration of claims, with most of his head legal of Construtora Queiroz Galvão SA in the state of São Paulo, company for which has worked in several projects such as highways, airports, subway stations, among others. He worked in the area of Administrative Law and as a General Counsel to the Municipality of São Bernardo do Campo-SP, whose functions were focused on the demands of the Tribunal de Contas do Estado de São Paulo. Also highlight is the Tribunal de Contas da União and in strategic cases, such as public civil action, civil public inquiry, actions of public interest, actions administrative law, writ of mandamus and claims. Administrative Law from the Pontifícia Universidade Católica de São Paulo and graduated from Universidade Paulista.

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Experience in the area of regulation of the electric energy sector, in generation, distribution, trade and transmission segments, in topics related to structuring of project financing, regulatory corporate governance and energy efficiency. Assistance on national and multinational energy companies in matters of arbitration, risk policies, contracting suppliers, guarantees and banking contracts. Institutions in the energy sector and associations in the defence of company matters, as well as in administrative defences against ANEEL, ARSESP, CCEE, EPE, MME and ONS. Drawing up legal opinions on energy law, in matters such as: public service concession, fulfilment of obligations, auctions, guarantee, CCEE trade rules and procedures and penalties arising from non-compliance, connection from generators to power distribution and transmission systems, distributed generation, network procedures, MRE, charges, CDE and CCC, including support for the areas of compliance, treasury, financial structuring, engineering, commercial, insurance, energy efficiency, supply and business development, energy storage including review of strategic planning reports – R & O. Master's in business administration from FGV Management. Studied international relations at the School of Business Administration of the Getulio Vargas Foundation. Bachelor of Laws from Universidade de Taubaté (UNITAU). Specialised in banking contracts, financial markets and contract law from the Law School of Getulio Vargas (FGV Law). Indicated by the Ministry of Mines and Energy to assume positions in any institutions of the electricity sector. Member of the Brazilian Institute of Energy Law Studies (IBDE).

Aaron Hwang

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Represents national and international clients in domestic and international arbitrations, as well as in major operations involving infrastructure, industries and real estate buildings. Graduated from University Presbiteriana Mackenzie. Member of the group formed by CAM-CCBC for the participation of the Competencia Internacional de Arbitraje in 2017 (Buenos Aires – Argentina) and 2018 (Bogotá – Colombia). Member of the Brazilian Arbitration Committee (CBar).

Since 1938, L. O. Baptista Advogados has been acting in the main areas of Business Law, always based on values that became the firm's brand: technical excellence with strategic view, pragmatism, agility and commitment to the clients. Our clients acknowledge the firm for being creative in approaching the legal issues and establishing lasting ties with those it works for. Our lawyers enjoy solid academic background combined with practical experience, offering business-oriented advice to each client.

Our professionals are specialised in the most diverse areas of law and economy, many of which also act as professors, arbitrators or leaders of the most reputable domestic and foreign institutions in their respective fields.

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