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INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

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**PROJECTS**

Research Group on  
Arbitrator Immunity

**BRAZIL**

**Co-Chairs:**

**Kate Brown de Vejar**  
**Victoria Shannon Sahani**  
**Damien Nyer**

## SURVEY RESPONSES ON ARBITRATOR IMMUNITY – BRAZIL

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BRAZIL		
I. Definitions	Yes/No/NA	Comments, if any.
<p>I.1.</p> <p>“Arbitrator”</p> <p>For the purpose of this survey, an “arbitrator” is a person appointed by the parties, on behalf of the parties, or by an institution to adjudicate a dispute under an arbitration agreement, either alone or as one member of an arbitral tribunal. When answering the questions in this survey, please include all regulations, standards, or duties that apply to or include arbitrators but not those that apply solely to mediators.</p>	<p><b>Yes</b></p>	<p>Brazilian legislation does not expressly define “arbitrator”, but the concept can be extracted by a systematic interpretation of the law.</p> <p>The Brazilian Arbitration Act (hereinafter referred to as “BAA”) provides that any capable person who enjoys the trust (confidence) of the parties may serve as an arbitrator (Article 13, BAA).</p> <p>In performing its function, the arbitrator shall act with impartiality, independence, competence, diligence, and discretion (Article 13, § 6, BAA). The BAA also codified the arbitrator’s duty of disclosure (Article 14, § 1, BAA).</p>
<p>I.2.</p> <p>“Legislation”</p> <p>For the purpose of this survey, “legislation” includes laws in force and any draft bills or legislative initiatives that are currently at an advanced stage, including for example if the proposal is before a legislative body for vote or approval. It is helpful to signal the content and status of any such legislative initiatives in this survey, so that readers can also be aware of changes that may be forthcoming.</p>	<p><b>Yes</b></p>	<p>In Brazil, the primary legislation on arbitration is the BAA, which was enacted in 1996 and reformed in 2015. The BAA aligns with the international standards of the UNCITRAL Model Law and provides rules on the “Arbitration Agreement and its Effects”, “the Arbitrators”, the “Arbitral Proceedings”, “Interim Measures”, “Rogatory”, Arbitral Award”, and “the Recognition and Enforcement of Foreign Arbitral Awards.”</p> <p>The 2015 reform expanded the possibility of arbitration to disputes involving the State and state-owned entities and detailed the legal regime applicable to the granting of provisional and urgent relief in arbitration cases, among other matters.</p> <p>The BAA establishes a sophisticated framework for dispute resolution where the relationship of arbitration with the Brazilian Code of Civil Procedure is defined by cooperation instead of subordination. The central thesis of Brazil’s modern approach is that the BAA creates a self-sufficient legal microsystem.</p>

			<p>Brazil’s Superior Court of Justice (STJ), the highest court for non-constitutional matters, has been the primary judicial guardian of arbitration’s autonomy and efficacy. In a consistent and forceful line of case law, the STJ has definitively rejected the notion that the Brazilian Code of Civil Procedure applies automatically or subsidiarily to arbitration proceedings. The Court’s position is grounded in the understanding that arbitration is an autonomous, “self-referential” legal system that cannot be burdened by the procedural rules of state litigation unless an exception is expressly and narrowly defined.</p> <p>Recent rulings by the STJ held that (i) the Brazilian Code of Civil Procedure should not even be considered a subsidiary source in arbitral proceedings, given the autonomy of the two types of procedures, and that (ii) any gaps in the arbitral process can only be filled with the rules of the Brazilian Code of Civil Procedure if the parties so agree.<sup>1</sup></p>
<b>II. General</b>		<b>Yes/No/NA</b>	<b>Comments, if any.</b>
II.1.	<p>What standards or duties (including ethical standards or duties) apply to arbitrators in your jurisdiction? Please briefly describe these standards or duties and cite to their legislative, regulatory, jurisprudential, or other basis.</p> <p>[Examples of such standards or duties may include:</p> <ul style="list-style-type: none"> <li>– Duty to disclose potential conflicts of interest.</li> <li>– Duty of impartiality.</li> <li>– Duty of care/competence.</li> </ul>	<b>Yes</b>	<p>The legal duties applicable to arbitrators within the Brazilian jurisdiction are set forth in the BAA.</p> <p>Article 13, §6, of the BAA establishes the following duties: (i) duty of impartiality; (ii) duty of independence; (iii) duty of competence; (iv) duty of care/diligence; and (v) duty of discretion.</p> <p>Commentators<sup>2</sup> have explored the meaning of each of these duties, as follows:</p> <ul style="list-style-type: none"> <li>(i) duty of impartiality: lack of interest in the result of the dispute in favor of either party;</li> <li>(ii) duty of independence: inexistence of economic, professional, ethical, social and personal relationship with the parties and/or the dispute;</li> <li>(iii) duty of competence: responsibility for managing the proceedings carefully and swiftly, adopting a proactive stance and promoting pragmatic measures in the search for the best elements of conviction and effectiveness of the parties’ rights; and</li> </ul>

<sup>1</sup> STJ, Special Appeal No. 1.851.324/RS, Reporting Justice Marco Aurélio Bellizze, published on August 23<sup>rd</sup>, 2024.

<sup>2</sup> CAHALI, Francisco José. *Curso de arbitragem: mediação, conciliação, tribunal multiportas*. 9 ed. São Paulo: Thomson Reuters Brasil, 2022. RB-7.7. E-book. Available at: <<https://proview.thomsonreuters.com/launchapp/title/rt/monografias/77225019/v9/page/RB-7.7>>. Accessed on 28 August 2025.

	<ul style="list-style-type: none"> <li>- Duty to respect and maintain the confidentiality of the arbitration.</li> <li>- Duty to conduct the proceeding in an appropriate/fair/judicious manner.</li> </ul>		<p>(iv) duty of discretion: even though confidentiality is not imposed by law in arbitration procedures, it is expected that the arbitrator avoids commenting on the facts, evidence, details and intimacies that got to his knowledge via the proceedings.</p> <p>The duties of independence and impartiality are further reinforced by Article 14 of the BAA, which provides that arbitrators, where applicable, are subject to the same objective criteria of impartiality and independence applied to State judges in cases of recusal – a category that includes situations of impediment and “suspicion,” as defined under Brazilian procedural law and set forth in Articles 144 and 145 of the Brazilian Code of Civil Procedure.</p> <p>These rules set out objective circumstances that would require the recusal of a judge and indicate a lack of independence on the part of an arbitrator. For example, Articles 144 and 145 of the Brazilian Code of Civil Procedure establish that a person cannot serve as a judge – or as an arbitrator, pursuant to Article 14 of the BAA – if they are personally involved in the case or have previously acted as legal counsel for one of the parties, as a technical expert, or as a witness (Article 144, items I and IV). The same applies if a party to the dispute is a relative, close friend, creditor, or debtor of the adjudicator (Article 144, item IV, and Article 145, items I and III), or if the adjudicator has any interest in the success of one of the parties (Article 145, item IV).</p> <p>According to scholars, both independence and impartiality are standards of conduct. Independence refers to the arbitrator’s ability to maintain a level of objectivity such that, in carrying out their duties, they do not yield to pressure from either third parties or the parties themselves. Independence is associated with objective criteria that can be externally verified. Impartiality, by contrast, is linked to subjective criteria and is more difficult to assess, as it reflects a state of mind<sup>3</sup>.</p> <p>Arbitrators are also subject to a duty of disclosure. According to Article 14, §1 of the BAA, arbitrators have “a duty to disclose any circumstances likely to give rise to justifiable doubt as to their impartiality and independence.” The STJ has held that this duty is continuous and must be observed throughout the entire arbitral proceeding. It has also clarified that the circumstances listed in Articles 144 and 145 of the Brazilian Code of Civil Procedure are not exhaustive<sup>4</sup>.</p>
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3 LEMES, Selma Maria Ferreira; BARROS, Vera Monteiro de. Comentários ao art. 13. In: WEBER, Ana Carolina; LEITE, Fabiana de Cerqueira (Coords.). *Lei de Arbitragem Comentada*: Lei nº 9.307/1996. São Paulo: Thomson Reuters Brasil, 2023. RL-1.4. E-book. Available at: < <https://proview.thomsonreuters.com/launchapp/title/rt/codigos/307807290/v1/page/RL-1.4>>. Accessed on 28 August 2025.

4 STJ, 3<sup>rd</sup> Panel, REsp no. 1,526,789, Reporting Justice Nancy Andrighi, DJ 6/22/2017, unanimous vote; STJ, CE, SEC 9,412, Reporting Justice for appellate decision João Otávio de Noronha, DJ 5/30/2017, majority vote.

			<p>This is particularly relevant because, despite some debate on the matter, the prevailing view in Brazil is that arbitrators and judges are deontologically distinct.<sup>5</sup> As a result, arbitrators are subject to a broader range of circumstances that may give rise to doubts about their impartiality or independence in the eyes of the parties.</p> <p>The STJ has also held that an arbitrator’s failure to disclose a fact that may cast doubt on their impartiality or independence does not, in itself, establish bias or lack of independence. For an undisclosed fact to justify annulment of the arbitral award, it must be shown to have extinguished the party’s confidence and undermined the arbitrator’s impartiality and independence. To this end, compelling evidence is required; mere subjective allegations without demonstrable impact are insufficient<sup>6</sup>.</p> <p>State courts have also addressed this issue. For example, the Court of Justice of the State of São Paulo ruled on the annulment of an arbitral award due to breach of the duty of disclosure. In that case, the arbitrator failed to disclose a pre-existing relationship with the respondent’s attorney, as both had previously served on the same arbitral tribunal in another proceeding. The Court found that this relationship constituted a breach of impartiality<sup>7</sup>.</p> <p>Finally, some scholars emphasize that arbitrators have a contractual duty to render a decision in the dispute entrusted to them. Accordingly, parties reasonably expect the arbitrator to fulfill their duties by delivering an enforceable award<sup>8</sup>.</p> <p>Commentators have also argued that arbitrators are subject to a range of secondary obligations derived from the principle of objective good faith. These include duties of care, prudence, and diligence; duties to warn and clarify; duties to inform and account; and duties of collaboration and cooperation<sup>9</sup>.</p>
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5 LIMA, Leandro Rigueira Rennó. A responsabilidade civil do árbitro. In: CELLI JUNIOR, Umberto; BASSO, Maristela; AMARAL JÚNIOR, Alberto do (coord.). *Arbitragem e Comércio Internacional: Estudos em homenagem a Luiz Olavo Baptista*. São Paulo: Quartier Latin, 2013, p. 919-920; MARQUES, Ricardo Tadeu Dalmaso. O dever de revelação do árbitro. São Paulo: Almedina, 2018, p. 77-85.

6 STJ; STJ, Third Panel of the Superior Court of Justice, Special Appeal No. 2101901 /SP, Reporting Justice Mrs. Nancy Adriaghi, June 21, 2025.

7 TJSP, 27th Chamber of Private Law of the Court of Justice of the State of São Paulo, Appeal No. 00242551320238260100, Reporting Justice Alfredo Attié, February 4, 2025.

8 BAPTISTA, Luiz Olavo. *Arbitragem comercial e internacional*. São Paulo: Lex magister, 2011, p. 177.

9 MARTINS-COSTA, Judith. *A boa-fé no direito privado: sistema e tópica no processo obrigacional*. São Paulo: RT, 1999, p. 439.

			Finally, in terms of soft law (non-binding), the Brazilian Arbitration Committee (CBar), an academic institution, has recently enacted guidelines on the arbitrators' duty of disclosure, with some additional guidance on how arbitrators, parties and institutions are expected to behave and act in such regard <sup>10</sup> .
II.2.	<p>In cases of potential arbitrator misconduct of a civil (as opposed to criminal) nature, what remedies or disciplinary measures are available in your jurisdiction <i>vis-à-vis</i> the arbitrator?</p> <p>Please provide citations to any relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>	<b>Yes</b>	<p>It is well established that arbitrators are only liable for procedural errors (<i>i.e. error in procedendo</i>) and not for incorrectly applying the law (<i>i.e. error in iudicando</i>).<sup>11</sup> Arbitrators are protected by a form of functional immunity regarding their decision-making acts.</p> <p>To some extent, arbitrators enjoy a similar immunity to that granted to State judges.<sup>12</sup> Although they are subject to a different liability regime, arbitrators likewise cannot be held liable for damages resulting from the quality or content of a judicial decision or arbitral award. In other words, errors of judgment fall outside the scope of civil liability.<sup>13</sup> Arbitrators, therefore, are not responsible for the merits of their decisions, but may be held liable for procedural errors, such as issuing an arbitral award after the agreed deadline, rendering an award lacking essential elements such as a report or reasoning, or even failing to properly assess the evidence.<sup>14</sup></p> <p>The BAA does not establish specific remedies, disciplinary measures, or penalties applicable to arbitrators for civil misconduct, such as breaches of legal or contractual duties. Nonetheless, commentators agree that a scenario in which arbitrators face no liability for their actions is inconceivable<sup>15</sup>.</p>

10 <https://cbar.org.br/site/wp-content/uploads/2024/05/diretrizes-cbar-sobre-dever-de-revelacao.pdf>, accessed August 31, 2025.

11 CARMONA, Carlos Alberto. *Arbitragem e processo: um comentário à Lei nº 9.307/96*. 4ª ed. Barueri: Atlas, 2023, p. 271; LEVY, Marcela. Comentários ao art. 17. In: WEBER, Ana Carolina; LEITE, Fabiana de Cerqueira (Coords.). *Lei de Arbitragem Comentada: Lei nº 9.307/1996*. São Paulo: Thomson Reuters Brasil, 2023. RL-1.4. E-book. Available at: <<https://proview.thomsonreuters.com/launchapp/title/rt/codigos/307807290/v1/page/RL-1.4>>. Accessed on 28 August 2025. See also: LEMES, Selma Maria Ferreira. *Aspectos Fundamentais da Lei de Arbitragem*. Rio de Janeiro: Forense, 1999. pp. 277-278.

12 Complementary Law no. 35/1979, Article 41.

13 CARMONA, Carlos Alberto. *Arbitragem e processo: um comentário à Lei nº 9.307/96*. 4ª ed. Barueri: Atlas, 2023, p. 271. MARTINS, Pedro A. Batista. *Apontamentos sobre a lei de arbitragem*. Rio de Janeiro: Forense, 2008, p. 216.

14 CARMONA, Carlos Alberto. *Arbitragem e processo: um comentário à Lei nº 9.307/96*. 4ª ed. Barueri: Atlas, 2023, p. 271-272.

15 CARMONA, Carlos Alberto. *Arbitragem e processo: um comentário à Lei nº 9.307/96*. 4ª ed. Barueri: Atlas, 2023, p. 271.

			<p>In the absence of such specific provisions, a debate persists – without definitive resolution in either academia or the courts – on whether the civil liability of arbitrators should (i) follow the general framework of civil liability under Brazilian law, as set forth in the Brazilian Civil Code; or (ii) follow the special regime applicable to State judges, as provided in Article 143 of the Brazilian Code of Civil Procedure.</p> <p>Most scholars argue that (i) the BAA does not regulate the civil liability of arbitrators, meaning that only their criminal liability is subject to the same rules as State judges (pursuant to Article 17 of the BAA); and (ii) arbitrators are contractually bound to the parties (under a service provision agreement).</p> <p>In this scenario, arbitrators acting within the Brazilian jurisdiction may be held personally liable under the general principles of civil liability set forth in the Brazilian Civil Code. Specifically, Article 186 holds individuals liable for unlawful actions or omissions, while Article 927 requires compensation for damages resulting from such conduct.</p> <p>However, some commentators argue that arbitrators’ civil liability must be strictly limited to cases of fraud (<i>dolo</i>) or gross negligence, even where procedural mistakes (<i>errors in procedendo</i>) occur. According to these scholars, extending liability beyond these situations would place undue pressure on arbitrators, as their procedural or interpretative decisions could be second-guessed by courts in annulment actions. Examples include reordering witness testimony, selecting a technical expert appointed by one party over another, or interpreting arbitration rules – none of which should be equated with fraud or gross negligence. Since arbitrators perform an adjudicatory function, they necessarily bear duties and obligations, but they must also be afforded a degree of protection against liability for ordinary procedural decisions or interpretative judgments.<sup>16</sup></p>
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16 CARMONA, Carlos Alberto. *Arbitragem e processo: um comentário à Lei nº 9.307/96*. 4ª ed. Barueri: Atlas, 2023, p. 271.

			<p>The second alternative considers that, by establishing an equivalence between arbitrators and State judges (“an arbitrator is judge of the facts and of the law”; Article 18 of the BAA), the BAA intended to subject arbitrators to the same standards applicable to State judges in cases of misconduct or breach of duty – standards that are stricter than those under the general civil liability regime. In particular, Article 143 of the Brazilian Code of Civil Procedure provides that State judges may be held liable for “<i>if he acts with intent or fraud</i>”; or if “<i>he or she refuses, omits, or delays, without just cause, a measure that should be ordered ex officio or upon request of a party</i>”. This regime imposes a higher evidentiary threshold than the general civil liability framework, as the burden of proof lies with the accuser, who must demonstrate the judge’s or arbitrator’s intent or fraudulent conduct.<sup>17</sup></p> <p>There is no significant case law to settle this debate, as the STJ has not yet been called upon to rule on the matter. However, State courts have been known to invoke Article 143 of the Brazilian Code of Civil Procedure in at least a couple of cases.<sup>18</sup></p> <p>Under both approaches, however, the applicable remedy for a violation of the arbitrator’s duties would be the payment of damages to the aggrieved party.</p>
II.3.	Is there anything in the <u>legislation</u> of your jurisdiction recognizing a general principle of arbitrator liability and/or a principle that could provide a basis for an arbitrator to be subject to suit or found liable personally for breaches of any of the duties/standards described above?	<b>Yes</b>	Although there is no general principle of liability that applies <u>specifically</u> to arbitrators for breach of their duties, the civil liability of arbitrators is governed by the legal framework discussed in item II.2 above.

17 BENETTI, Giovana; MARTINS-COSTA, Judith. A imunidade do árbitro: reflexões em torno e uma tendência. In GUANDALINI, Bruno; ELIAS, Carlos Eduardo Stefen (coord.) *A função do árbitro no Brasil*. São Paulo: Almedina, 2022, p. 657.

18 TJSP, Appeal no. 1018710-47.2014.8.26.0071, 3<sup>rd</sup> Private Law Chamber, Reporting Justice Carlos Alberto de Salles, j. 29.11.2016; and Brazil, TJSP, Appeal no. 1011322-30.2019.8.26.0100, 2<sup>nd</sup> Private Law Chamber, Reporting Justice Sérgio Shimura, Dje 04/05/2021.

<p>II.4.</p>	<p>Is there anything in the <u>jurisprudence/ other secondary sources of law</u> of your jurisdiction recognizing a general principle of arbitrator liability and/or a principle that could provide a basis for an arbitrator to be subject to suit or found liable personally for breaches of any of the duties/standards described above?</p>	<p><b>Yes</b></p>	<p>Although there is no general principle of liability that applies specifically to arbitrators for breach of their duties, the civil liability of arbitrators is governed by the legal framework discussed in item II.2 above.</p>
<p>II.5.</p>	<p>Is there anything in the <u>jurisprudence/ other secondary sources of law</u> of your jurisdiction that could provide a basis for an arbitrator generally to be subject to suit or found liable personally for acts or omissions in relation to an arbitration?</p>	<p><b>Yes</b></p>	<p>The legal basis for an arbitrator to be subject to suit or be found liable personally for acts or omissions in relation to an arbitration are outlined in item II.2 above.</p> <p>Additionally, despite limited case law, some State courts have allowed claims to be brought against arbitrators for acts or omissions committed during arbitration proceedings.<sup>19</sup> This interpretation supports the view that the arbitrators' civil liability would be governed by Article 143 of the Brazilian Code of Civil Procedure when an arbitral award is annulled – or may be subject to annulment – due to procedural errors, thereby allowing the injured party to seek compensation for resulting damages. As mentioned above, the STJ has not yet ruled on this issue, which therefore remains subject to interpretation by lower State courts.</p> <p>Some commentators have also posited that if an arbitrator's conduct can be directly tied to one of the grounds for annulment of the arbitral award, they may be held personally liable. The same scholars note that although the annulment of an arbitral award may result from a contractual breach by the arbitrator, there is no necessary causal link between the breach and the annulment.<sup>20</sup></p>

19 TJSP, Appeal No. 1018710-47.2014.8.26.0071, 3<sup>rd</sup> Private Law Chamber, Reporting Justice Carlos Alberto de Salles, judgement on November 29<sup>th</sup>, 2016; and TJSP, Appeal No. 1011322-30.2019.8.26.0100, 2<sup>nd</sup> Private Law Chamber, Reporting Justice Sérgio Shimura, published on May 4<sup>th</sup>, 2021; TJSC, Appeal No. 2014.071605-8, Reporting Justice Ronei Danielli, 6<sup>th</sup> Civil Law Chamber, judgement on March 3<sup>rd</sup>, 2015.

20 PORTO, Aline Piteres. A Responsabilidade Civil do Árbitro por Sentença Arbitral Anulada. In *Revista Brasileira de Arbitragem*, vol. 21, Issue 81, 2024, p. 24-56.

<p>II.6.</p>	<p>If your answer to question II.3, II.4 or II.5 is yes, is there a corresponding statute of limitations or similar time-limit in your jurisdiction for the initiation of a claim against an arbitrator?</p>	<p><b>Yes</b></p>	<p>The time limit to initiate a claim for damages depends on the legal basis for liability. If the arbitrator’s liability arises from a breach of contract (<i>i.e.</i> contractual duties), the claim would be subject to a ten-year limitation period, pursuant to Article 205 of the Brazilian Civil Code.</p> <p>However, if the liability stems from an unlawful act (such as a violation of legal duties), the applicable time limit would be three years, as provided in Article 206, §3, item V, of the Brazilian Civil Code.</p> <p>There is precedent supporting the application of the three-year statute of limitations for initiating claims against arbitrators in cases involving procedural misconduct.<sup>21</sup></p>
<p>II.7.</p>	<p>If your answer to question II.3, II.4 or II.5 is yes, is there anything in the <u>legislation</u> or <u>jurisprudence/other secondary sources of law</u> of your jurisdiction that addresses the possibility of joint liability among the members of the tribunal, either <i>vis-à-vis</i> the parties or among themselves?</p>	<p><b>Yes</b></p>	<p>According to Article 265 of the Brazilian Civil Code, joint liability cannot be presumed and may only arise by operation of law or by agreement between the parties. There is no legislation specifically regulating joint liability among members of an arbitral tribunal. Additionally, we have found no case law on the matter. Some commentators argue that, given the collegiate nature of the arbitral tribunal, the attribution of responsibility for procedural errors must consider the individual involvement of each arbitrator in the wrongful act. According to these authors, it is evident that not all arbitrators should be held liable for an error committed solely by one member. Likewise, if an arbitrator is overruled on a preliminary issue that subsequently leads to the annulment of the award, it is not appropriate to attribute joint liability to all the members of the panel, excluding the one who dissented.<sup>22</sup></p>

21 TJSP, Appeal No. 1018710-47.2014.8.26.0071, 3<sup>rd</sup> Private Law Chamber, Reporting Justice Carlos Alberto de Salles, judgement on November 29<sup>th</sup>, 2016.

22 CARMONA, Carlos Alberto. Arbitragem e processo: um comentário à Lei n. 9.307/96. São Paulo: Atlas. Acesso em: 28 ago. 2025, 2009. – p 265 – 266; CAHALI, Francisco José. *Curso de arbitragem: mediação, conciliação, tribunal multiportas*. 9 ed. São Paulo: Thomson Reuters Brasil, 2022. RB-7.11. E-book. Available at: <<https://proview.thomsonreuters.com/launchapp/title/rt/monografias/77225019/v9/page/RB-7.7>>. Accessed on 28 August 2025.

III. Limitations of Liability		Yes/No/NA	Comments, if any.
III.1.	<p>Is there a general principle of arbitrator immunity (<i>i.e.</i>, whereby an arbitrator is immune from civil liability for his or her activities undertaken as arbitrator) in your jurisdiction? If yes, is this immunity less than, equivalent to, or greater than the immunity, if any, afforded to judges or members of the judiciary?</p> <p>Please provide citations to any relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>	Yes	<p>As noted in item II.2 above, commentators extend to arbitrators the same immunity granted to State judges in relation to errors <i>in judicando</i> (that is, any errors related to the merits of the arbitrator’s decisions)<sup>23</sup>. This perspective was explicitly adopted in a judicial decision addressing the civil liability of an arbitrator, which emphasized that it is “<i>indispensable to grant certain immunity [to arbitrators], under penalty of discouraging the use [of arbitration] through the generalized condemnation of its components</i>”.<sup>24</sup></p> <p>Concerning <i>errors in procedendo</i>, however, there is no general principle granting immunity to arbitrators and as such they remain subject to civil liability under Brazilian law. The key question is not whether they can be held accountable, but rather the extent and the circumstances under which such liability may arise— whether under the general liability provisions of the Brazilian Civil Code or under the stricter standards and specific regime applicable to State judges.</p> <p>Per item II.2 above, according to Article 143 of the Brazilian Code of Civil Procedure, judges may be held civilly liable only in cases of intentional misconduct or fraud, or when they unjustifiably refuse, omit, or delay actions that they are legally required to perform or that have been formally requested by a party.</p> <p>Therefore, according to scholars who support the analogy between judges and arbitrators, arbitrators would be subject to the same limitations on liability.<sup>25</sup></p> <p>On the other hand, a different legal school of thought argues that the arbitrator’s relationship to the parties is primarily contractual. Accordingly, in cases of civil liability, general rules governing contractual obligations under the Brazilian Civil Code would apply.<sup>26</sup> However, even among these commentators, there is a prevailing view that arbitrators’ liability should be limited to cases involving intent, wilfull misconduct or gross negligence.<sup>27</sup></p>

23 CARMONA, Carlos Alberto. *Arbitragem e processo: um comentário à Lei nº 9.307/96*. 4ª ed. Barueri: Atlas, 2023, p. 271. MARTINS, Pedro A. Batista. *Apontamentos sobre a lei de arbitragem*. Rio de Janeiro: Forense, 2008, p. 216.

24 TJSC, Appeal No. 2014.071605-8, Reporting Justice Ronei Danielli, 6<sup>th</sup> Civil Law Chamber, judgment on March 3<sup>rd</sup>, 2015.

25 BENETTI, Giovana; MARTINS-COSTA, Judith. A imunidade do árbitro: reflexões em torno e uma tendência. In GUANDALINI, Bruno; ELIAS, Carlos Eduardo Stefen (coord.) *A função do árbitro no Brasil*. São Paulo: Almedina, 2022, p. 657.

26 LIMA, Leandro Rigueira Rennó. A responsabilidade civil do árbitro. In: CELLI JUNIOR, Umberto; BASSO, Maristela; AMARAL JÚNIOR, Alberto do (coord.). *Arbitragem e Comércio Internacional: Estudos em homenagem a Luiz Olavo Baptista*. São Paulo: Quartier Latin, 2013, p. 919-920.

27 CARMONA, Carlos Alberto. *Arbitragem e processo: um comentário à Lei nº 9.307/96*. 4ª ed. Barueri: Atlas, 2023, p. 271.

			<p>Importantly, even in cases where an arbitrator’s liability is equated to that of a State judge, members of the judiciary benefit from broader immunity. This is because judicial liability is regressive in nature: any claim for damages resulting from judicial misconduct must first be brought against the State. If the State is ordered to compensate the injured party, it may subsequently seek reimbursement from the judge responsible for the misconduct.</p> <p>That said, the limited case law available suggests that arbitrators are personally liable, meaning that actions for damages must be filed directly against them.<sup>28</sup></p>
III.2.	Is there anything in the <u>legislation</u> of your jurisdiction that otherwise limits an arbitrator’s personal civil liability?	<b>Yes</b>	<p>As explained above in items II.2 and II.5, some commentators and courts have understood that the BAA imposes a stricter standard of civil liability for arbitrators compared to the general regime. However, this position is not unanimous. In any event, the majority of scholars seem to agree that the legislation, although not expressly, provides for a certain degree of limitation of liability for arbitrators<sup>29</sup>, including preserving their adjudicatory role – even if the extent of such limitations remains unsettled.</p>

28 TJSP, Appeal no. 1018710-47.2014.8.26.0071, 3<sup>rd</sup> Private Law Chamber, Reporting Justice Carlos Alberto de Salles, j. 29.11.2016; and Brazil, TJSP, Appeal no. 1011322-30.2019.8.26.0100, 2<sup>nd</sup> Private Law Chamber, Reporting Justice Sérgio Shimura, Dje 04/05/2021; TJSC, Appeal no. 2014.071605-8, Reporting Justice Ronei Danielli, 6<sup>th</sup> Civil Law Chamber, j. 03-03-2015.

29 MARTINS-COSTA, Judith; BENETTI, Giovana; WEBBER, Pietro. Deveres e responsabilidade dos árbitros: entre o status e o contrato de investidura. In: MACHADO FILHO, José Augusto Bitencourt et al (Orgs.). Arbitragem e processo: homenagem ao Professor Carlos Alberto Carmona. Vol. II. São Paulo: Quartier Latin, 2022, p. 162; CARMONA, Carlos Alberto. Arbitragem e processo. São Paulo: Atlas, 4<sup>a</sup> ed., 2023, p. 271.

<p>III.3.</p>	<p>Is there anything in the <u>jurisprudence/ other secondary sources of law</u> of your jurisdiction that otherwise limits an arbitrator’s personal civil liability?</p>	<p><b>Yes</b></p>	<p>The answers given above in items II.2 and III.1 provide relevant context to this answer.</p> <p>Within the framework of Brazilian institutional arbitration, some arbitral institutions include provisions in their rules that aim to afford a degree of immunity to arbitrators.</p> <p>For instance, Article 9.7 of the 2011 Arbitration Rules of the Market Arbitration Chamber (CAM), which remain in force, states that: <i>“Arbitrators, the Arbitration Chamber, and its employees shall not be liable to any person for any facts, acts, or omissions related to an arbitration.”</i></p> <p>Similarly, Article 42.1 of the 2022 Arbitration Rules of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC), provides that: <i>“No arbitrator, the CAM-CCBC, nor any person connected with the CAM-CCBC shall be held accountable for any acts, facts, or omissions related to the arbitration, except in cases of proven willful misconduct.”</i></p> <p>Lastly, it has become common practice for some chambers (e.g., CAM-CCBC) to include similar provisions in the standard text of the Terms of Reference of arbitrations administered by them. An example of these provisions is:</p> <p style="padding-left: 40px;"><i>“X – IMMUNITY</i></p> <p style="padding-left: 40px;"><i>X.1. None of the members of the Arbitral Tribunal may be called as a party or as a witness in any judicial or other proceeding arising from this Arbitration.</i></p> <p style="padding-left: 40px;"><i>X.2. None of the members of the Arbitral Tribunal shall be liable to any of the Parties for any act or omission related to this Arbitration, except upon proof that the Arbitrator acted with intent (dolo).</i></p> <p style="padding-left: 40px;"><i>X.3. Each Party shall be responsible for indemnifying the members of the Arbitral Tribunal in respect of any liability, cost, or claim related to this Arbitration that results from its own act or omission.</i></p> <p style="padding-left: 40px;"><i>X.4. Should any member(s) of the Arbitral Tribunal be required to bear any liability, cost, or expense – of whatever nature – as a result of willful misconduct (dolo) or gross negligence by one of the Parties, that Party shall be fully responsible for reimbursing or indemnifying the Arbitrator(s).”</i></p>
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<p>III.4.</p>	<p>If your answer to question III.1, III.2, or III.3 is yes, are there any exceptions to that immunity or limitation of liability?</p> <p>For example, is there any exception to an arbitrator’s immunity from suit or limitation of liability where the arbitrator’s alleged misconduct involves fraud, bad faith, negligence, or intentional wrongdoing (to the extent these concepts are recognized in your jurisdiction’s legal framework)?</p> <p>Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>	<p><b>Yes</b></p>	<p>As explained above in items II.2 and III.1, arbitrators may not be held liable for the merits of their decisions, but only for errors <i>in procedendo</i>. Arbitrators may be held personally liable pursuant to Articles 186 and 927 of the Brazilian Civil Code, or Article 143 of the Code of Civil Procedure, depending on the school of thought adopted, in cases where the arbitral award is tainted by fraud, extortion, corruption, denial of jurisdiction, malice, or gross negligence.</p>
<p>III.5.</p>	<p>Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers the effectiveness of limitation of liability clauses found in arbitral institution rules?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> <li>– The type of misconduct alleged.</li> </ul>	<p><b>Yes</b></p>	<p>According to commentators, while institutional rules can provide some immunity to arbitrators, they cannot override civil liability in cases involving willful misconduct or gross negligence.<sup>30</sup> Under general contract law principles, the main conditions for the validity of non-liability (or non-indemnity) clauses are:</p> <ol style="list-style-type: none"> <li>a) mutual consent of the parties;</li> <li>b) absence of conflict with public policy;</li> <li>c) equality between the parties;</li> <li>d) no exemption from liability in cases of willful misconduct or gross negligence;</li> <li>e) no attempt to exclude obligations inherent to the contract’s function.<sup>31</sup></li> </ol>

30 CARMONA, Carlos Alberto. Arbitragem e processo. São Paulo: Atlas, 4<sup>a</sup> ed., 2023, p. 273; FERNANDES, Wanderley. *Cláusulas de exoneração e de limitação de responsabilidade*. Rio de Janeiro: Almedina Brasil, 2025, p. 221; 1 AZEVEDO, Antônio Junqueira de. “Nulidade de cláusula limitativa de responsabilidade em caso de culpa grave. Caso de equiparação entre dolo e culpa grave. Configuração de culpa grave em caso de responsabilidade profissional” (parecer). In *Novos Estudos e Pareceres de Direito Privado*. São Paulo: Saraiva, 2009, p. 342.

31 GONÇALVES, Carlos Roberto- *Responsabilidade Civil*. 14. ed. São Paulo: Saraiva, 2012, p. 649-650.

	<ul style="list-style-type: none"> <li>– The relevant limitation of liability language and its source (<i>i.e.</i>, UNCITRAL Arbitration Rules 2010, American Arbitration Association Commercial Arbitration Rules, etc.).</li> <li>– A summary of the court’s findings as to the effectiveness of the limitation of liability clause in limiting or excluding an arbitrator’s liability.</li> </ul>		<p>Some scholars argue that, under these conditions, such clauses may validly limit the civil liability of arbitrators. Other commentators contend that these clauses cannot be used to exempt arbitral institutions from liability for their own conduct, as such institutions act as service providers to the parties.<sup>32</sup></p> <p>We have found no case law regarding the validity of clauses that limit or exclude the civil liability of arbitrators. However, there is case law in general contract law supporting the validity of limitation of liability clauses, provided they do not exclude liability for willful misconduct or gross negligence.</p> <p>The STJ and State Courts have held that gross negligence may be equated with willful misconduct in cases involving statutory limitations of liability in air transportation services<sup>33</sup> and in situations concerning the aggravation of risks under insurance contracts.<sup>34</sup> Moreover, there is case law extending this reasoning to limitation of liability clauses in commercial contracts more broadly.<sup>35</sup></p>
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32 CAHALI, Francisco José. *Curso de arbitragem: mediação, conciliação, tribunal multiportas*. 9 ed. São Paulo: Thomson Reuters Brasil, 2022. RB-7.11. E-book. Available at: <<https://proview.thomsonreuters.com/launchapp/title/rt/monografias/77225019/v9/page/RB-7.7>>. Accessed on 28 August 2025.

33 STJ, REsp no. 1.341.364/SP, Reporting Justice Ministro Luis Felipe Salomão, 4th Panel, j. on 19.04.18, DJe 05.06.18; STJ, REsp no. 244.995/SP, Reporting Justice Ministro Ruy Rosado de Aguiar, 4th Panel, j. on 23.11.00, DJe 15.04.02; STJ, REsp no. 32.903/SP, Reporting Justice Sálvio de Figueiredo Teixeira, 4th Panel, j. on 24.06.96, DJe 23.09.96; TJSP, Appeal. no. 0302709-86.2010.8.26.0000, Reporting Justice Tersio Negrato, 17th Private Law Chamber, j. on 18.08.10, DJe 24.09.10.

34 TJSP, Appeal no. 1002162-84.2018.8.26.0562, Reporting Justice Maria Lúcia Pizzotti, 30th Private Law Chamber, j. on 28.11.18, DJe 04.12.18; TJSP, Appeal no. 0028296-06.2004.8.26.0224, Reporting Justice, 37th Private Law Chamber, j. on 07.07.11, DJe 14.07.11.

35 TJSC, Appeal no. 1996.003716-0, Reporting Justice Jorge Schaefer Martins, 2nd Civil Law Chamber, j. on 18.03.04; TJMG, Appeal no. 1.0000.20.470220-3/001, Reporting Justice José Eustáquio Lucas Pereira, 17th Civil Law Chamber, j. on 24.08.20, DJe 31.08.20.

<p>III.6.</p>	<p>Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers the effectiveness of limitation of liability clauses or indemnity clauses (<i>i.e.</i>, clauses by which the parties to the arbitration agree to cover any losses or damages suffered by the arbitrators in a potential suit, or to otherwise hold the arbitrators harmless) found in an arbitration’s procedural materials – <i>i.e.</i>, Terms of Reference, Terms of Appointment, Procedural Order No. 1, etc.?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> <li>– The type of misconduct alleged.</li> <li>– The limitation of liability or indemnity language found in the relevant procedural material (if available).</li> <li>– A summary of the court’s findings as to the effectiveness of the limitation of liability or indemnity clause in limiting or excluding an arbitrator’s liability.</li> </ul>	<p><b>Yes</b></p>	<p>Please see item III.5 above.</p> <p>Commentators have addressed the issue of limitation of liability clauses, and their reasoning applies to such clauses regardless of whether they are included in institutional rules, procedural materials, or the arbitration agreement. Likewise, we have not found any case law on the matter that draws a distinction based on the source of the limitation of liability clause.</p>
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<p>III.7.</p>	<p>Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers the effectiveness of a clause limiting the arbitrators' liability found in the parties' arbitration agreement?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> <li>– The type of misconduct alleged.</li> <li>– The relevant limitation of liability language in the parties' arbitration agreement.</li> <li>– A summary of the court's findings as to the effectiveness of the limitation of liability clause in limiting or excluding an arbitrator's liability.</li> </ul>	<p><b>Yes</b></p>	<p>Please see item III.5 above. Commentators have addressed the issue of limitation of liability clauses, and their reasoning applies to such clauses regardless of whether they are included in institutional rules, procedural materials, or the arbitration agreement. Likewise, we have not found any case law on the matter that draws a distinction based on the source of the limitation of liability clause.</p>
<p>III.8.</p>	<p>If your answer to question III.5, III.6, or III.7 is yes, does any of this <u>jurisprudence/secondary sources of law</u> comment on whether the <i>source</i> of the limitation of liability or indemnity language (<i>i.e.</i>, institutional rules v. procedural order v. terms of reference v. arbitration agreement) was relevant to the court's finding?</p> <p>If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.</p>	<p><b>No</b></p>	<p>N/A</p>

<p>III.9.</p>	<p>If your answer to question III.5, III.6, or III.7 is yes, does any of this <u>jurisprudence/secondary sources of law</u> comment on whether the particular language used in the relevant limitation of liability or indemnity clause was relevant to the court's finding?</p> <p>If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.</p>	<p>No</p>	<p>N/A</p>
<p>III.10.</p>	<p>If your answer to question III.5, III.6, or III.7 is yes, does any of this <u>jurisprudence/secondary sources of law</u> comment on whether the moment in the arbitration when the relevant limitation of liability or indemnity clause was agreed to was relevant to the court's finding, <i>i.e.</i>, whether it was agreed to <i>ex ante</i> (in advance of the relevant arbitration proceeding having been initiated) or after the arbitration was commenced?</p> <p>If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.</p>	<p>No</p>	<p>N/A</p>

<p>III.11.</p>	<p>To the extent there is any principle of arbitrator immunity or limitation of liability recognized in your jurisdiction (<i>i.e.</i>, if your answer to question III.1, III.2, or III.3 is yes), does that immunity or limitation of liability apply in proceedings in which a party is requesting interim relief (interim injunction, conservatory or similar temporary measures), as distinct from final relief (including damages), from an arbitrator?</p> <p>Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>	<p><b>Yes</b></p>	<p>The framework for the civil liability of arbitrators does not vary depending on the phase of a potential lawsuit. We found no reference to such a distinction in Brazilian law or in authoritative secondary sources.</p>
<p>III.12.</p>	<p>To the extent there is any principle of arbitrator immunity or limitation of liability recognized in your jurisdiction, (<i>i.e.</i>, if your answer to question III.1, III.2, or III.3 is yes), does that immunity or limitation of liability permit an arbitrator to refuse to serve as a witness or provide documents when subpoenaed, or otherwise compelled, by a judicial authority (for example, in enforcement proceedings)?</p> <p>Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>	<p><b>Yes</b></p>	<p>The BAA does not contain any provision exempting arbitrators from cooperating with judicial authorities.</p> <p>Although arbitrators are equated to public officials for criminal liability purposes (Article 17 of the BAA), this status does not confer immunity from judicial cooperation duties.</p> <p>Arbitrators may thus be required to testify or produce documents, provided that such cooperation does not violate the confidentiality of the arbitration or compromise their impartiality. In practice, arbitrators may invoke confidentiality obligations to justify a refusal, but such refusal must be assessed on a case-by-case basis by the competent court.</p> <p>Regarding witnesses, Article 448, item II, of the Brazilian Code of Civil Procedure provides that: <i>“A witness is not obliged to testify about facts that, due to their status or profession, they are required to keep confidential.”</i></p> <p>As to the production of documents by arbitrators, Article 404, item IV, establishes that: <i>“A party or third party is excused from presenting a document or object in court if doing so would result in the disclosure of facts that they are required to keep secret due to their status or profession.”</i></p>

			<p>In Brazil, confidentiality in arbitration is not imposed by law, but arises from the will of the parties – either through express agreement or by choosing an arbitral institution whose rules include confidentiality provisions.</p> <p>Therefore, for an arbitrator to be protected from disclosing information related to the arbitration, such confidentiality must be expressly agreed upon by the parties.</p> <p>This protection stems not from a limitation of liability clause, but from a confidentiality clause, which serves to safeguard sensitive information disclosed during the arbitral process.</p>
III.13.	<p>Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether a limitation of liability clause found in arbitral institution rules, procedural materials, or the parties’ arbitration agreement operates to permit an arbitrator to refuse to serve as a witness or provide documents when subpoenaed, or otherwise compelled, by a judicial authority?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source.</p>	<b>No</b>	N/A
III.14.	<p>To the extent an arbitrator is permitted to be called upon to act as a witness in your jurisdiction but is otherwise bound by confidentiality obligations related to the underlying arbitration, is there any guidance (found in jurisprudence or elsewhere) as to how the arbitrator should proceed?</p>	<b>Yes</b>	<p>As noted above in item III.12, arbitrators may invoke confidentiality obligations to justify a refusal, but such refusal must be assessed on a case-by-case basis by the competent court. This confidentiality obligation, however, must be previously agreed upon by the parties, whether expressly or implicitly via institutional arbitration rules.</p>

IV. Effectiveness of Professional Indemnity Insurance		Yes/No/NA	Comments, if any.
IV.1.	Does the legal framework in your jurisdiction mandate professional indemnity insurance coverage for arbitrators?	No	<p>There is no legal requirement mandating arbitrators to obtain professional indemnity insurance. The BAA does not address this issue. However, obtaining such insurance is recommended as a safeguard against risks arising from arbitral activities, such as allegations of negligence, bias, or breach of confidentiality.</p> <p>An analysis of the arbitration rules of CAMARB, FIESP/CIESP, CAM-CCBC, AMCHAM, ICC Brazil, CAMERS, FGV, and CBMA reveals that none of these institutions' regulations contain provisions that mention, recommend, or require arbitrators to obtain professional liability insurance.</p>
IV.2.	Is there any <u>legislation</u> or <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether acting as an arbitrator counts as an act constituting the practice of law?	Yes	<p>In Brazil, the BAA provides a strong foundation for understanding the legal nature of the arbitrator's role. Notably, Article 18 states that <i>"The arbitrator is a judge of fact and law, and the award rendered is not subject to appeal or judicial confirmation."</i></p> <p>This provision underscores the jurisdictional authority of arbitrators, equating their function to that of a judge. It implies that arbitrators exercise legal judgment and decision-making powers, which are inherently legal in nature. Additionally, Article 17 of the same law reinforces this equivalence by stating that arbitrators, when acting in the exercise of their functions or because of them, are considered public officials for the purposes of criminal law.</p> <p>This legal equivalence to public officials further highlights the public and legal responsibilities arbitrators assume, especially regarding integrity and accountability.</p> <p>Although the Statute of the Brazilian Bar Association (Law No. 8,906/1994) does not explicitly state that serving as an arbitrator constitutes the practice of law, the Brazilian Bar Association (OAB) addressed this gap in Article 1 of the Provision No. 196/2020, which expressly recognizes that acting as an arbitrator is considered a legal activity when performed by a licensed attorney:</p> <p><i>"Article 1. The performance of lawyers as conciliators or mediators, pursuant to Law No. 13,140/2015, or as arbitrators, in accordance with the provisions of Law No. 9,307/1996, constitutes legal practice for all purposes".</i></p>

			<p>This means that, under Brazilian professional regulation, acting as an arbitrator is considered legal practice when performed by a lawyer. The provision further clarifies that this activity retains its legal character whether conducted individually or within a law firm.</p> <p>Moreover, although arbitration proceedings are governed by their own rules and the autonomy of the parties, Article 14 of the Brazilian Arbitration Act (Law No. 9.307/96) establishes that arbitrators are subject, where applicable, to the same rules of disqualification and impediment that apply to judges under the Civil Procedure Code. This reinforces the ethical standards expected of arbitrators, aligning with the principles that govern legal professionals under the Statute of the Brazilian Bar Association (Law No. 8.906/1994).</p> <p>In summary, the BAA and OAB Provision No. 196/2020 collectively affirm that serving as an arbitrator involves legal responsibilities and constitutes legal practice when performed by a lawyer, subject to the same ethical and professional standards as other legal activities.</p>
<p>IV.3.</p>	<p>Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether the professional indemnity insurance policy of a law firm or barrister’s chambers covers activities undertaken by a member of that firm/chambers as arbitrator where the arbitrator has been appointed in an individual capacity (<i>i.e.</i>, rather than as a representative of the firm/chambers)?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p>	<p><b>No</b></p>	<p>There is no consolidated case law or specific secondary sources in Brazil addressing whether professional indemnity insurance policies cover lawyers acting as arbitrators in an individual capacity – that is, without direct representation of their law firm or chambers. Brazilian legislation also does not require arbitrators to obtain such insurance, and the rules of the main arbitration institutions (<i>e.g.</i>, CAMARB, FIESP/CIESP, CAM-CCBC, AMCHAM, ICC Brazil, CAMERS, FGV, and CBMA) do not address this issue.</p> <p>Brazilian insurance market offers several professional indemnity policies with broad coverage for law firms and individual lawyers. However, these are not off-the-shelf products. In practice, coverage will depend on the specific terms of the insurance contract, especially how the scope of “professional activity” is defined and whether the policy includes or excludes acts performed in a personal capacity. If the arbitrator is a partner or employee of the insured firm and the arbitration relates to their professional expertise as a lawyer, insurers may consider the activity covered – even if the appointment was made individually. Nonetheless, this remains a matter of contractual analysis and risk underwriting.</p>

	<ul style="list-style-type: none"> <li>– The type of misconduct alleged.</li> <li>– The relevant language of the professional indemnity insurance policy of the arbitrator’s law firm or barrister’s chambers (if available).</li> <li>– A summary of the court’s finding as to the scope of that policy’s coverage <i>vis-à-vis</i> the arbitrator’s activities as an arbitrator.</li> </ul>		<p>However, secondary sources and regulatory guidance – particularly the OAB Provision No. 196/2020 – recognize that the role of an arbitrator, when performed by a licensed lawyer, constitutes legal practice. This regulatory recognition supports the interpretation that such activities may fall within the scope of professional services covered by legal professional indemnity insurance, provided the arbitrator’s conduct aligns with the declared professional activity and there are no express exclusions in the policy.</p> <p>Also, the recent enactment of Law No. 15.040/2024, which establishes general rules for private insurance contracts, introduced important developments in the regulation of professional liability insurance, particularly for liberal professionals. Although the law does not expressly mention arbitrators, it provides that excluded risks must be described clearly and unequivocally (Art. 9, §1), and that in the event of a conflict between the contract and technical documents submitted to the regulatory authority, the interpretation most favorable to the insured shall prevail (Art. 9, §2). These provisions may be invoked in disputes over coverage for arbitral activities, especially when the arbitrator acts independently.</p>
<p>IV.4.</p>	<p>If your answer to question IV.3 is no, is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether the professional indemnity insurance policy of a law firm or barrister’s chambers covers activities undertaken by an employee or partner of that firm/chambers as a board member of an external organization (<i>i.e.</i>, a corporation, charity, etc.)?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p>	<p><b>No</b></p>	<p>There is no consolidated jurisprudence or specific secondary sources in Brazil addressing whether a professional indemnity insurance policy of a law firm or barrister’s chambers covers activities undertaken by a partner or employee acting as a board member of an external organization, such as a corporation or charity. Neither Law No. 15.040/2024 (General Rules for Private Insurance Contracts) or SUSEP Circular No. 637/2021 (which governs professional liability insurance) provide specific guidance on coverage for board-related activities.</p> <p>In practice, coverage for such external roles depends entirely on the terms of the insurance contract. Law No. 15.040/2024 reinforces that exclusions must be clearly and unequivocally stated (Art. 9, §1), and that any ambiguity must be interpreted in favor of the insured (Art. 9, §2). SUSEP’s regulatory framework also emphasizes the importance of transparency and customization in professional liability policies (Circular No. 637/2021).</p> <p>Therefore, if the role as a board member is not expressly excluded and can be reasonably interpreted as part of the insured’s professional activity – especially if the appointment is related to the lawyer’s legal expertise – coverage may be arguable. Nonetheless, most standard professional indemnity policies do not automatically extend to such roles unless specifically endorsed.</p>

	<ul style="list-style-type: none"> <li>– The type of misconduct alleged.</li> <li>– The relevant language of the professional indemnity insurance policy of the member’s law firm or barrister’s chambers (if available).</li> <li>– A summary of the court’s finding as to the scope of that policy’s coverage <i>vis-à-vis</i> the member’s activities as a board member.</li> </ul>		<p>Some professional indemnity insurance contracts expressly extend coverage to acts performed by the firm’s partners and employees, provided they are carried out in connection with the professional services rendered by the firm. If the board membership is exercised in the context of the lawyer’s professional expertise and is aligned with the firm’s declared scope of services, it may be interpreted as a covered professional activity.</p>
<p>IV.5.</p>	<p>Assuming that there is coverage of the types envisioned in questions IV.3 and IV.4, is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether that coverage extends to breaches of cybersecurity and data privacy laws?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> <li>– The nature of the alleged cybersecurity/privacy breach.</li> <li>– The relevant language of the professional indemnity insurance policy (if available).</li> <li>– A summary of the court’s finding as to the scope of that policy’s coverage <i>vis-à-vis</i> the alleged cybersecurity/privacy breach.</li> </ul>	<p><b>No</b></p>	<p>There is no consolidated jurisprudence in Brazil specifically addressing whether professional indemnity insurance policies cover breaches of cybersecurity and data privacy laws. However, the legal and regulatory framework – particularly the General Data Protection Law and the guidance issued by the Brazilian Data Protection Authority – has increasingly shaped the interpretation of such coverage.</p> <p>The Superior Court of Justice has issued key decisions affirming the liability of data controllers for personal data breaches.</p> <p>In Special Appeal No. 2.147.374/SP, the STJ held that a company could be held liable for a data breach caused by a hacker attack if it failed to demonstrate that the incident was exclusively the fault of a third party. The court emphasized the controller’s duty to adopt all reasonable measures to protect personal data, and that failure to do so constitutes irregular treatment.</p> <p>In Special Appeal No. 2.121.904/SP, the STJ recognized presumed moral damages in cases of sensitive data leakage, reinforcing the principle of objective liability and the importance of safeguarding personal information. These rulings reinforce the duty of care and proactive accountability under the LGPD, which may be interpreted as part of the professional obligations of lawyers and law firms.</p> <p>From a regulatory standpoint, the ANPD has issued specific rules that, while not directly addressing insurance coverage, significantly influence the risk landscape. Resolution No. 15/2024 issued by the Brazilian Data Protection Authority establishes mandatory procedures for reporting security incidents, and Resolution No. 4/2023 issued by the Brazilian Data Protection Authority defines the criteria for applying administrative sanctions under the LGPD. These rules increase the exposure of professionals and organizations to liability and encourage the adoption of insurance as a risk mitigation tool.</p>

			While professional indemnity insurance does not automatically include coverage for cybersecurity and data privacy breaches, Article 9 of Law No. 15.040/2024 (General Rules for Private Insurance Contracts) provides that exclusions must be clearly and unequivocally stated, and that any ambiguity must be interpreted in favor of the insured. Therefore, in the absence of express exclusions, and where the breach arises from the exercise of professional duties, coverage may be arguable.
IV.6.	Assuming that there is coverage of the type envisioned in question IV.3, please provide sample language from commonly used insurance policies that were found by those courts or secondary sources to cover work undertaken independently as an arbitrator.	N/A	N/A
IV.7.	Are there any other issues that, in your view, a prospective arbitrator should be aware of in ensuring that their work as an arbitrator in your jurisdiction is covered by their law firm’s or chamber’s professional indemnity insurance policy?	Yes	<p>In Brazil, there are no specific legal or regulatory provisions that govern professional indemnity insurance coverage for arbitrators. However, this absence of regulation does not exempt arbitrators from liability. Arbitrators may still be held responsible for breaches of their duties – such as negligence, bias, or breach of confidentiality – especially when such conduct results in harm to the parties or undermines the integrity of the proceedings.</p> <p>Given this context, prospective arbitrators should be aware of several key issues to ensure that their arbitral activities are covered by their law firm’s or chamber’s professional indemnity insurance policy:</p> <ul style="list-style-type: none"> <li>– <b>Declared Scope of Professional Activity:</b> Coverage under professional indemnity insurance typically depends on how the insured’s professional activities are defined in the policy. Arbitrators should verify that arbitration is included within the declared scope of legal services provided by the firm. If arbitration is not explicitly mentioned, coverage may be denied.</li> <li>– <b>Capacity in Which the Arbitrator Is Appointed:</b> If the arbitrator is appointed in a personal capacity rather than as a representative of the firm, insurers may argue that the activity falls outside the scope of the firm’s coverage. Although Provision No. 196/2020 of the Brazilian Bar Association recognizes arbitration as legal practice when performed by a licensed lawyer, this does not automatically bind insurers unless reflected in the policy language.</li> </ul>

			<ul style="list-style-type: none"> <li>– <b>Policy Exclusions and Endorsements:</b> Arbitrators should review the insurance contract for any express exclusions related to arbitral activities, independent appointments, or quasi-judicial functions. If exclusions exist, they may need to negotiate specific endorsements to ensure coverage.</li> <li>– <b>Risk Classification and Underwriting:</b> Because arbitration involves decision-making authority and potential exposure to claims of bias, negligence, or breach of confidentiality, insurers may classify it as a higher-risk activity. This could affect underwriting decisions and require additional disclosures or premium adjustments.</li> <li>– <b>Compliance with Ethical and Regulatory Standards:</b> Arbitrators are subject to ethical obligations similar to those of judges, as established by the Arbitration Act. Failure to comply with these standards may not only result in professional liability but also affect the insurer’s willingness to cover related claims.</li> <li>– <b>Documentation and Internal Policies:</b> Law firms should maintain clear internal policies regarding the acceptance of arbitral appointments, including whether such roles are considered part of the firm’s professional services. Arbitrators should ensure that their appointment and conduct are properly documented and aligned with the firm’s risk management protocols.</li> </ul> <p>In summary, while arbitration is recognized as legal practice in Brazil, arbitrators must take proactive steps to confirm that their activities are covered under their firm’s professional indemnity insurance. This includes reviewing policy terms, clarifying the nature of their appointment, and ensuring that arbitration is treated as part of their professional legal services.</p> <p>Moreover, arbitrators should be aware that they may be held civilly liable under Article 927 of the Civil Code for any unlawful acts that cause harm to others, reinforcing the importance of adequate insurance coverage and ethical compliance.</p>
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V.	Involvement of Arbitral Institutions	Yes/No/NA	Comments, if any.
V.1.	Is there any <u>jurisprudence</u> in your jurisdiction where an arbitral institution has been sued alongside an arbitrator?	<b>Yes</b>	<p>In Brazil, it is not uncommon for arbitrators to be included as defendants in judicial proceedings related to arbitrations. Frequently, arbitral institutions are also improperly named as defendants. Typically, arbitrators and arbitral institutions have been sued in actions concerning:</p> <p>(1) <b>Conflict of jurisdiction lawsuits:</b> This occurs when both a state court and an arbitral tribunal assert jurisdiction over the same matter (a positive conflict) or when both decline it (a negative conflict); (2) <b>Actions to Annul (set aside) Arbitral Awards</b><sup>36</sup> and; (3) <b>Civil Liability Claims</b> against an arbitrator</p> <p>In one case of an action to annul an arbitral award before the Superior Court of Justice<sup>37</sup>, the plaintiff named two of the three arbitrators and the relevant arbitral institution (CAM-B3) as defendants, even though no specific claims were brought against them. The Superior Court’s decision did not get into the merits of whether the arbitrator and the arbitration chamber should remain as defendants, and it dismissed the appeal on unrelated procedural grounds. These examples illustrate the recurring practice of including arbitrators and arbitral chambers as defendants in actions to annul arbitral awards.</p> <p>In another case judged by the Superior Court of Justice<sup>38</sup>, the Court provided clear guidance on this topic. In an appeal filed by the relevant arbitral institution (CAMARB), the Court affirmed that an arbitral institution, being a mere administrator of the procedure, has neither a procedural interest nor the legal standing to be a defendant in an action seeking the award’s annulment. The rationale is straightforward: these parties have no vested interest in whether the award is ultimately upheld or invalidated.</p> <p>Furthermore, civil liability lawsuits against arbitrators for alleged criminal or civil misconduct during arbitral proceedings are also not uncommon.</p>

36 TJMG, 2<sup>nd</sup> Business Court of Justice of the State of Minas Gerais, Case No. 6035143-14.2015.8.13.0024, Reporting Judge Mr. Adilon Cláver de Resende, Aug. 25, 2017.

37 STJ, Third Panel of the Superior Court of Justice, Special Appeal No. 2.160.576/SP, Reporting Justice Mrs. Daniela Teixeira, May 5, 2025.

38 STJ, Third Panel of the Superior Court of Justice, Special Appeal No. 1.433.940/MG, Reporting Justice Mr. Ricardo Villas Bôas Cueva, September 26, 2017.

			There are few examples of civil liability lawsuits in Brazilian case law. One example is the lawsuit filed by Francisco José Guglielmi Ranieri against the arbitrators Milton José Kerbaury and Francisco Jair Gonçalves Vella <sup>39</sup> . In this case, the arbitral institution, despite being named in the appeal decision, was not included as a defendant in the litigation. In these instances, however, it has been observed that the arbitral institution is less frequently included as a co-defendant.
V.2.	Is there any <u>jurisprudence</u> in your jurisdiction where an arbitrator has been sued and then an arbitral institution subsequently intervened in the proceeding?	<b>No</b>	We did not find any lawsuit where an arbitrator was sued and then an arbitral institution subsequently intervened in the proceedings.
V.3.	<p>If your answer to question V.1 or V.2 is yes, in your experience, or to the extent this information is publicly available, did the arbitrator and arbitral institution defend the suit jointly, or did the arbitrator defend the suit on his/her own behalf, separate from any defense mounted by the institution?</p> <p>If the suit(s) was/were defended jointly, in your experience or, to the extent this information is publicly available, did the institution pay for the arbitrator’s counsel fees?</p>	<b>Yes</b>	<p>In the cases cited above, among others analyzed for this research, some arbitral tribunals filed joint defense submissions<sup>40</sup>, while others opted to do so separately<sup>41</sup>.</p> <p>The latter is notable in cases where a specific allegation is made against a particular arbitrator.</p> <p>We have not found any publicly available information as to whether the counsel fees of the arbitrators were paid by the arbitral institution.</p>

39 TJSP, 3<sup>rd</sup> Chamber of Private Law of the Court of Justice of the State of São Paulo, Appeal No. 1018710-47.2014.8.26.0071, Reporting Justice Mr. Carlos Alberto de Salles, November 29, 2016.

40 TJMG, 2<sup>nd</sup> Business Court of Justice of the State of Minas Gerais, Case No. 6035143-14.2015.8.13.0024, Reporting Judge Mr. Adilon Cláver de Resende, Aug. 25, 2017 and STJ, Third Panel of the Superior Court of Justice, Special Appeal No. 2.160.576/SP, Reporting Justice Mrs. Daniela Teixeira, May 5, 2025.

41 TJSP, 3<sup>rd</sup> Chamber of Private Law of the Court of Justice of the State of São Paulo, Appeal No. 1018710-47.2014.8.26.0071, Reporting Justice Mr. Carlos Alberto de Salles, November 29, 2016; TJSP, 2<sup>nd</sup> Chamber of Business Law of the Court of Justice of the State of São Paulo, Appeal No. 1011322-30.2019.8.26.0100, Reporting Justice Mr. Sérgio Shimura, May 4, 2021.

V.4.	If your answer to question V.1 or V.2 is yes, in your experience, or to the extent this information is publicly available, did the suit result in a settlement?	<b>Yes</b>	From the publicly available cases we have analyzed, only one lawsuit before the 2 <sup>nd</sup> Business Court of Justice of the State of Minas Gerais (cited in item V.1 above) resulted in a settlement.
<b>VI. Procedural Issues</b>			
VI.1.	<p>Is there any <u>jurisprudence</u> in your jurisdiction where an arbitrator and/or arbitral institution was sued by a party, and the arbitrator or arbitral institution objected on the grounds of improper forum or venue?</p> <p>If yes, please provide a brief description of case(s), limited to one paragraph per case, including:</p> <ul style="list-style-type: none"> <li>– The parties.</li> <li>– The type of misconduct alleged.</li> <li>– The nature and basis of the arbitrator’s or arbitral institution’s objection to venue.</li> <li>– The outcome of the objection (<i>i.e.</i>, whether the case proceeded to be heard or was dismissed for improper forum or venue) and the court’s reasoning for the same.</li> </ul>	<b>No</b>	<p>We did not find any cases in which the arbitrators or arbitral institutions alleged grounds of improper forum or venue. This is because the majority of cases in which arbitrators and institutions are sued are cases of (1) actions for conflict of jurisdiction; (2) actions to set aside an arbitral award and; (3) actions for the civil liability of arbitrators.</p> <p>These three actions, <i>a priori</i>, are indisputably within the jurisdiction of the judiciary in Brazilian law, according to the BAA and the Code of Civil Procedure.</p>

<p>VI.2.</p>	<p>Is there any <u>legislation</u> or <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers the potential consequences if a suit against an arbitrator is unsuccessful?</p> <p>For example, if a suit against an arbitrator is unsuccessful, what remedies would be available to the arbitrator? Moreover, would any sanctions be applicable to the unsuccessful party who brought the suit if it is found that the suit was frivolous?</p>	<p><b>No</b></p>	<p>There is no specific legislation or jurisprudence in Brazil establishing consequences for the plaintiff if an action brought against an arbitrator is unsuccessful.</p> <p>Rather, the consequence of an unsuccessful lawsuit against arbitrators is the same as for other unsuccessful civil lawsuits.</p> <p>In Brazilian civil lawsuits, the losing party (either the plaintiff or the defendant) is required to pay “attorney’s fees awarded to the prevailing party”, usually amounting to 10% of the total value at stake considering the parties’ claims (per Article 85 of the Brazilian Code of Civil Procedure). This is considered one of the most peculiar characteristics of Brazilian civil litigation by international standards.</p> <p>Therefore, if a party files an action against an arbitrator and/or an arbitral institution and their claim is dismissed or rejected, either for being found unmeritorious or due to the defendant’s lack of standing to be sued, said party will have to pay attorney’s fees to the counsel of the prevailing party.</p> <p>Furthermore, there are other mechanisms in Brazilian civil procedure law to prevent and punish frivolous claims. In addition to the payment of the abovementioned loser’s fees, there is the possibility of the court imposing a fine for litigation in bad faith, which is usually set at an amount of up to 10% of the value at stake in the lawsuit – but, theoretically, can also encompass damages deriving from the bad faith litigation (per Articles 79 and 81 of the Brazilian Code of Civil Procedure).</p>
<p>VI.3.</p>	<p>While this survey generally focuses on the civil liability of arbitrators, if there is any relevant information from your jurisdiction related to claims for criminal liability brought against arbitrators, please include such information.</p>		<p>Article 17 of the BAA stipulates that arbitrators, when in the exercise of their functions or by reason thereof, are considered equivalent to public officials for the purposes of criminal law.</p> <p>Furthermore, a finding of malfeasance, extortion, or passive corruption on the part of the arbitrators will result in the annulment of the arbitral award (BAA, Article 32, VI).</p> <p>There was one case where an arbitrator faced criminal proceedings under Article 17 of the BAA<sup>42</sup> and under the Brazilian Criminal Code, which held the arbitrator accountable as if he was a public servant. In this case, a man presenting himself as an arbitrator was associated with a local arbitration chamber notably dealing with lower-value disputes. The supposed arbitrator was convicted of the crime of concussion since he had the practice of showing a document to individuals stating he was an arbitrator and subsequently trying to obtain advantages from his victims because of his arbitrator function. In this case, there were no appeals that addressed Article 17 of the BAA or similar topics.</p>

42 TJSP, 1<sup>st</sup> Criminal Court of Santa Bárbara D’Oeste, Criminal Action No. 3001931-86.2013.8.26.0533, Judge Mrs. Patrícia Ribeiro Bacciotti, July 29, 2016.

			This case did not involve commercial arbitrations or disputes with national repercussion. Nevertheless, the existence of this judicial decision allows us to conclude that the principle of holding arbitrators accountable like public servants has been put into practice at least once.
VI.4.	Is there any other information about your jurisdiction not already provided in your responses to the questions in this survey that is relevant to understanding and explaining arbitrator liability in your jurisdiction?	<b>No</b>	No.

## ICCA RESEARCH GROUP ON ARBITRATOR IMMUNITY

### Goals

The primary goal of the Arbitrator Immunity Research Group is to study questions of arbitrator liability and immunity, and to raise practitioners' and arbitrators' awareness of the current legal landscape. The project's goals include investigating the limits of arbitrator immunity, evaluating the effectiveness of language limiting arbitrator liability in procedural orders and institutional rules, and examining the impact and limitations of professional indemnity insurance.

### Methodology

To understand the current global landscape of arbitrator immunity, the Research Group designed a detailed survey and selected sample jurisdictions for inclusion. The Research Group compiled a list of survey respondents for each jurisdiction by seeking recommendations for responsive, high-quality contributors who had previously participated in ICCA research projects, as well as recommendations from arbitral institutions and colleagues in the international arbitration community. After receiving the completed surveys, the research team collaborated with the respondents in two rounds of edits to improve clarity, understanding, and formatting.

### Citations to this Research

Researchers and authors using this data should use the following citations to refer to this research:

- General citation to the project website: 'ICCA Research Group on Arbitrator Immunity' (Kate Brown de Vejar, Victoria Shannon Sahani, and Damien Nyer, eds., 2026), <https://www.arbitration-icca.org/research-group-arbitrator-immunity>
- Citation to the individual survey response: 'Survey Responses on Arbitrator Immunity for Brazil', in ICCA Research Group on Arbitrator Immunity (Kate Brown de Vejar, Victoria Shannon Sahani, and Damien Nyer, eds., 2026), <https://www.arbitration-icca.org/research-group-arbitrator-immunity>

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- **Viewpoints Disclaimer:** The survey responses do not represent the viewpoints, opinions, or research of ICCA, its Governing Board or members, or the Research Group in general, or its individual members. The Research Group's editing process focused solely on enhancing clarity, comprehension, and formatting.
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