



Agreement Between Associations for Arbitration Procedures in Franchise Deals

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Last August, the Brazilian Franchising Association (“ABF”) signed an agreement with the Brazilian Intellectual Property Association (“ABPI”), formalizing the ABPI as an accredited institution for conciliation, mediation, arbitration and dispute resolution procedures in the franchising area.

ABPI has the renowned Intellectual Property Dispute Resolution Center (“CSD-ABPI”), with the presence of several Brazilian experts in intellectual property as arbitrators, as an alternative to the Judiciary.

The use of arbitration to resolve disputes in the franchising area has been strengthened, especially due to the consolidated legislative framework on the subject through federal laws No. 9.307/96 (“Arbitration Law”) and No. 13.966/19 (“New Franchise Law”). The latter, in particular, provides in its § 1st of article 7 that the parties may elect an arbitration center to resolve disputes related to franchise agreements

The introduction of an express provision for the possibility of including an arbitration clause in franchise agreements eliminated any doubts that could still arise regarding the validity of this choice by the parties.

Therefore, it is important that the contracting parties discuss the insertion of an arbitration clause, choosing arbitration as an option to resolve disputes as an alternative to the Judiciary, with care in the wording of the arbitration clause provided for in the Franchise Agreement, in the choice of the Arbitration Chamber and its regulation, as well as in the choice of the arbitrator(s).

The main benefits of choosing arbitration for the franchising area in Brazil are (i) Secrecy and confidentiality of information restricted to the parties, lawyers and arbitrators; (ii) Speed of the procedure compared to the judicial process; (iii) Expertise in the possibility of choosing arbitrators who are familiar with and experienced in the franchising area as an alternative to the judicial process, which often does not have the necessary expertise in the matter ; (iv) cheaper procedure compared to litigating in court ; and (iv) flexibility between the parties together with the arbitrator, in defining limits, rules and procedures that meet their interests

Finally, by choosing an institution specialized in the matter, the parties minimize what many perceive as the main disadvantage of arbitration, which is the possibility that the entire arbitration process will be seriously compromised if the arbitrator does not have adequate technical knowledge to decide the dispute.

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